

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
1	Associated Logging Contractors	11/28/2005	<p>Associated Logging Contractors, Inc., an Idaho non-profit association, submits these written comments to your office today, November 28,2005, in response to the 'Notice of Hearing" published on the Coeur d'Alene Tribe's website. A copy of these comments has been mailed to the EPA Region X in Seattle, Washington.</p> <p>Since 1966, ALC has been an association of Idaho independent logging contractors, road builders, truck haulers and other timber related businesses. There are approximately four hundred (400) members in the association. A large number of our members live and work in North Idaho. Our members have an interest in your proposed water quality standards and how these standards might affect the timber industry.</p> <p>ALC encourages the Coeur d'Alene Tribe to continue to work with the State of Idaho DEQ, as well as the EPA, in a coordinated effort towards the development of water quality standards that are consistent throughout the Coeur d'Alene Lake Basin area. ALC does not agree that different water quality standards should apply to Lake Coeur d'Alene solely because a portion of the waters are located within Reservation boundaries.</p> <p>Please be assured that ALC will continue to review your proposed water quality standards and we are hopeful that the Tribe and the State of Idaho will reach an agreement on water quality standards that is fair and consistent. Please do not hesitate to contact my office if our organization can be of some assistance to the Coeur d'Alene Tribe in this process</p>	Thank you. Comment Noted.
2	Associated Logging Contractors	1/13/2006	<p>This law firm represents Associated Logging Contractors, Inc. ("ALC"), an Idaho non-profit association located in Coeur d'Alene, Idaho. Executive Director Shawn Keough submitted comments to you on November 28, 2005, in response to the publication of the Coeur d'Alene Tribe's propose water quality standards for certain water bodies located within the boundaries of the Coeur d'Alene Reservation (the lower third of Lake Coeur d'Alene and a portion of the St. Joe River. A copy of those comments are enclosed.</p>	Thank you. Comment Noted.
3	Associated Logging Contractors	1/13/2006	<p>Senator Keough is currently in Boise at the commencement of the 2006 legislative session. On behalf of ALC, she has asked me to submit additional comments to you, pursuant to the extension of the comment period to January 13,2006.</p> <p>I have had the opportunity to review the proposed water quality standards and the proposed application of these standards to waters located within the boundaries of the Coeur d'Alene Reservation. I have also reviewed the record of decision issued by the Environmental Protection Agency regarding the Tribe's Treatment as a State Status ("TAS").</p> <p>I have also reviewed comments submitted by the Intermountain Forest Association ("IFA") in November, 2005, which contain concerns similar to the concerns of ALC regarding the proposed water quality standards as they might affect logging, timber harvesting, road building and related timber industry activities of our members.</p>	Thank you. Comment Noted.

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4	Associated Logging Contractors	1/13/2006	First and foremost, ALC is concerned that the proposed water quality standards are different from State of Idaho standards, and in certain instances appear to be more stringent, including dissolved oxygen standards, temperature standards, turbidity and some toxic pollutants.	Please see the Response to Avista's comment # 12 below.
5	Associated Logging Contractors	1/13/2006	Second, ALC is concerned about having different standards adopted for the Reservation TAS Waters than are currently in place for all other waters in North Idaho, with Idaho standards being applied on the upper two thirds of Lake Coeur d'Alene, a large portion of the St. Joe River and other rivers, stream segments and water bodies which are not located within Reservation boundaries or are not covered by the EPA decision regarding TAS.	Please see the Response to Avista's comment # 12 below.
6	Associated Logging Contractors	1/13/2006	Third, ALC members are subject to the State of Idaho's Best Management Practices ("BMPs") which are intended to protect water quality in forested watersheds and are designed to meet state water quality standards. These standards should remain consistent throughout the State of Idaho, and we encourage you to adopt standards that are not different from state standards.	Please see the Response to Avista's comment # 12 below.
7	Associated Logging Contractors	1/13/2006	Fourth, as noted in the comment letter submitted by IFA, the proposed water quality standards also contain narrative provisions that may be interpreted in a subjective manner in the future, including but not limited to odor, color, taste, bottom sediments, nuisance, biological criteria and whole effluent toxicity. Again, ALC requests that the Tribe's narrative standards be consistent with the Idaho's standards.	Please see the Response to Avista's comment # 14 below.
8	Associated Logging Contractors	1/13/2006	Fifth, ALC has also been advised that the proposed mixing zone policy deviates substantially from Idaho's mixing zone policy. We are concerned about temperature, turbidity and the rather subjective narrative which appears to require a NPDES permit holder to install all reasonable wastewater technology controls to be demonstrated by the applicant, no resulting loss of aquatic life, and no resulting damage to the ecosystem. We encourage you to eliminate such subjective language from the proposed standards and adopt standards that are different from state standards.	Please see the Response to Avista's comment # 12 below.
9	Associated Logging Contractors	1/13/2006	Sixth, another subjective component of the proposed standards is the designated use referred to as "Recreational and Cultural Use." We concur with the comments submitted by IFA that some measurable criteria needs to be included in the proposed water quality standards in order to determine compliance with new concepts like the protection or preservation of instream flow and habitat for vegetation significant to the values of the Coeur d'Alene Tribe.	Please see the Response to Avista's comment # 31 below.
10	Associated Logging Contractors	1/13/2006	In summary, ALC supports the concept of collaboration among the various public agencies, including but not limited to the Coeur d'Alene Tribe, the EPA, the State of Idaho DEQ, permit holders, users and other stakeholders in the development and promulgation of water quality standards that are consistent and substantially similar or identical to State of Idaho water quality standards.	Thank you. Comment Noted.

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11	Avista Utilities	11/28/2005	<p>Application of Standards to Approved Waters Avista understands the Tribe's position that its decision to seek what it deems "interim partial" approval of its Treatment As a State (TAS) application and correspondingly limited water quality standards is not intended to withdraw or release its claims over additional waters. Consistent with this approach, the draft standards include definitions for "Reservation TAS Waters," "Reservation Waters," and "Disputed Waters." Avista respects the efforts of the Tribe to preserve its legal position. However, Avista notes that EPA regulations provide that potential tribal water quality jurisdiction under the Clean Water Act (CWA) is limited to "water resources which are within the borders of the Indian reservation.. ." 40 C.F.R. 5 131.8 (a)(3). In light of this, Avista respectfully requests that the Tribe revise the draft standards to include a single definition of tribal waters that makes it clear that it may only exercise jurisdiction pursuant to Section 518 of the CWA over waters that are within the boundaries of its current reservation and within the area designated as part of the Tribe's TAS status. Avista is concerned that the use of three different definitions regarding tribal waters could lead to unnecessary confusion in the future regarding the scope of the Tribe's authority.</p>	<p>The three definitions were derived through a collaborative process involving the EPA, Idaho and the Tribe to demonstrate the applicable geographic scope of the Tribe's TAS jurisdiction. They, along with the entire set of definitions provided in Section Two of the proposed WQS are scientifically reasonable, consistent with those promulgated by EPA at 40 CFR131.3 and those incorporated into EPA guidance documents, and provide information needed for application and implementation of the water quality standards (40 CFR 131.6).</p> <p>The definition, "Reservation Waters," simply pertains to those portions of the Lake and St. Joe River included in the 2001 U.S. Supreme Court decision in Idaho v. United States, affirming that the United States, as trustee, and the Coeur d'Alene Tribe, as beneficiary, hold title to the beds and banks of all of the navigable waters within the current boundaries of the Coeur d'Alene reservation for the exclusive use, occupancy, and quiet enjoyment of the Tribe. That decision, however, did not address title to the beds and banks of the navigable waters claimed by Idaho within Heyburn Park nor did it address the Tribe's claims to the beds and banks of the navigable waters and the Coeur d'Alene River outside the present Reservation boundaries. The definition for "Disputed Waters" is necessary because title to submerged lands within Heyburn State Park in the south end of Lake Coeur d'Alene and title to the balance of the submerged lands in the northern 2/3 of Lake Coeur d'Alene and the Spokane River, despite exhaustive attempts by the Tribe, has not been determined. United States/Coeur d'Alene Tribe v. Idaho, 210 F.3d 1067, 1080 (9th Cir. 2000); Coeur d'Alene Tribe v. Idaho, 521 U.S. 261 (1997).</p> <p>Similarly, the definition of "Reservation TAS Waters" is necessary to delineate that subset of approved surface waters within the larger group of Reservation Waters where the Tribe's water quality standards will be in effect under the CWA once its water quality standards are approved. The Tribe also refers commenters to the maps attached to the Tribe's proposed WQS (Attachments 1-4). These maps clearly illustrate the regions referred to as "Reservation Waters", "Tribal TAS Waters" and "Disputed Waters."</p>

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12	Avista Utilities	11/28/2005	<p>Holistic Approach to-Management of the-Watershed In keeping with the Tribe's stated purpose of promoting a "holistic watershed approach" to water quality management, Avista encourages the Tribe to minimize, to the greatest extent possible, differences between its proposed standards and those of the state of Idaho, particularly in those areas such as Lake Coeur d'Alene where Idaho and the Tribe both have management responsibilities over integrally related portions of the common waterbody. Consistency between numeric criteria, narrative criteria, and anti-degradation standards is essential to promoting a holistic approach to management of the Lake Coeur d'Alene watershed. Unjustified differences on the common waterbody will likely lead to unreasonable consequences, requiring the intervention of EPA under the dispute resolution mechanism provided for in Section 518 of the CWA. 40 C.F.R. § 131.7. This can be avoided by eliminating as many substantive differences between the Tribe's proposed standards and Idaho's existing water quality standards as possible prior to adoption.</p>	<p>The Tribe recognizes that jurisdictional differences are present in the standards, however, it cannot agree with the commenter's assertion that the proposed WQS are in any way "unjustified." The Tribe has applied for and received TAS designation and is authorized to promulgate WQS that will protect uses of its waters. The divergence of the two sovereigns' standards (Idaho and the Tribe), in large part, is due to differing concepts of beneficial uses of the Lake and the required standards to protect those uses. The State's standards were adopted to encompass a broad array of Idaho waters and do not fully address beneficial uses or critical concerns of particular water bodies such as Coeur d'Alene Lake. The Tribe's standards, however, reflect its goal of protecting beneficial uses specific to Tribal TAS Waters within the Lake. The Tribe's standards also reflect the latest science considered by EPA when establishing and updating the water quality criteria.</p> <p>The Tribe is one of three sovereign governments with regulatory authority over portions of the Lake and its tributaries and has always attempted to craft intergovernmental agreements that achieve common goals. The Tribe has worked extensively with the State and EPA to consider implementation issues that could arise from having different standards in effect in shared waters. With that in mind, the Tribe, to the extent possible, attempted to develop water quality standards similar to Idaho to address water quality issues such as phosphorous levels, dissolved oxygen, chlorophyll A, cyanobacteria blooms, Eurasian milfoil, water clarity, dissolved metals and water temperature, among others. The Tribe's ultimate responsibility, however, is to protect its TAS Reservation Waters. To accomplish this required more than crafting WQS that were mirror-images of Idaho's standards and often the Tribe looked to the appropriate Federal standard when applicable.</p> <p>Moreover, it is not uncommon for adjacent entities to have different standards. There is no requirement that the Tribe's standards be identical to Idaho's nor is Idaho required to have the same standards as Washington. When a boundary is shared, however, the upstream entity is required to ensure that downstream standards are met when designating and setting criteria for waters. For example, Idaho is required to ensure that its water quality standards and activities impacting waters within its jurisdiction can attain and maintain the standards of the downstream Reservation TAS Waters. In turn, if those Reservation TAS Waters flow into waters where Idaho has jurisdiction, the Tribe is subject to the same requirement. See 40 CFR 131.10(b); EPA Handbook Sec. 2.2. As such, the Tribe and State will each apply their respective WQS for waters within their jurisdiction. See Attachments 1-4 to Coeur d'Alene Tribe's Proposed WQS (showing geographic scope of Tribe's TAS jurisdiction).</p>
13	Avista Utilities	11/28/2005	<p>Numeric Criteria Differences in the applicable numeric criteria for the same aquatic life uses, including how such criteria are measured and when they apply, are not justified in a unified waterbody such as Lake Coeur d'Alene. For example, regulating temperature in the same waterbody using "maximum daily averages" in one area versus "single daily maximums" or "maximum weekly maximums" in another, and having different seasonal variations for the same aquatic species in the same geographic location serves no useful purpose and will only lead to unnecessary confusion and delay in evaluating water quality effects and impacts. Avista strongly encourages the Tribe to work with Idaho to eliminate or minimize such differences wherever possible before submitting final numeric water quality standards to EPA. Besides averting unnecessary conflicts</p>	<p>Please see the Response to Avista's comment # 12 above.</p>

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			when applying differing standards to future activities, using the same measuring methodologies and protocols will allow for more efficient and cost-effective monitoring and data sharing on the part of all parties involved in water quality management.	
14	Avista Utilities	11/28/2005	<p>Narrative Criteria The narrative criteria proposed by the Tribe also include some troubling provisions. First, we note that these narrative criteria purport to apply to all 'Reservation Waters' rather than just to the "Reservation TAS Waters" for which EPA has expressly approved Tribal TAS status. Second, some of the narrative criteria are unduly vague. Avista understands that narrative criteria, by their nature, are less quantitative or precise than numeric criteria, but they must still provide some specificity and certainty as to what they mean and how they will be applied. The concept of "nuisance conditions" is particularly unclear in the currently proposed narrative criteria. It is impossible to ascertain what is meant by the prohibition against "otherwise caus[ing] nuisance conditions" when "nuisance conditions" are not defined. Unfortunately, relying on the plain, dictionary definition of nuisance is not helpful in this context because of the on-going legal uncertainty surrounding so many issues involving Lake Coeur d'Alene.</p>	<p>The Tribe's jurisdiction for TAS purposes applies only for those waters designated as "Reservation TAS Waters." The inclusion of the phrase "Reservation Waters" was an inadvertent error and will be changed to "Reservation TAS Waters" in the final WQS. Additionally, the Narrative Criteria in Section 5 are included to protect Reservation TAS Waters for aesthetic purposes, fish and aquatic life protection, cultural and recreation use and other purposes. The Narrative Criteria are not meant to contain scientific absolutes. The Narrative Criteria <i>supplement</i> the numeric criteria and describe the Tribe's water quality goals as applicable to all of the Tribe's designated uses. This is consistent with 40 C.F.R. 131.11(b)(2). The Tribe's six narrative criteria contain those recommended by EPA and address floating solids; oils and grease; color; odor and taste; nuisance conditions; turbidity, and bottom deposits. <i>See Water Quality Standards Handbook, 1994.</i> Lastly, in regards to the phrase "nuisance conditions," a definition of "nuisance," taken directly from the Tribal Code, has been added to the Tribe's WQS.</p>
15	Avista Utilities	11/28/2005	<p>Anti-degradation Policy The Tribe's anti-degradation policy is very similar to, but not the same as, the one contained in Idaho's water quality standards. The differences, unfortunately, are potentially significant. It is unclear how the Tribe's regarding "no calculable lowering of water quality where designated uses are impaired will be applied in those circumstances where natural conditions would not meet the standard or support the designated use. Does the Tribe intend to hold water users responsible for achieving better than natural conditions? Avista suggests that any attempt to do so would be inconsistent with the approach taken by Idaho (which has no such "no calculable lowering" provision). It would also be inconsistent with the approach taken by other water quality regulators and would exceed the authority provided by the CWA.</p>	<p>The Tribe's revised WQS deleted the term "calculable" from Section 6 (1) and replaced it with the term "measurable." This section of the antidegradation policy now reads, "[w]here designated uses of the water body are impaired, there shall be no calculable measurable lowering of water quality with respect to the pollutant or pollutants which are causing or contributing to the impairment." On a general note, however, the Tribe's water quality standards must contain the same core three elements as any state. These include: 1) one or more designated "uses" of each waterway consistent with the goals as articulated in § 101 of the Clean Water Act; 2) "criteria" expressed in numerical concentration levels or narrative statements specifying the amount of various pollutants that may be present and still protect the designated uses; and 3) an anti-degradation provision. Clean Water Act § 303(c)(2)(A), 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. Part 131 (1992). The Tribe's antidegradation policy and implementation procedures are consistent with the requirements contained in 40 CFR 131.12. As such, the Tribe's antidegradation policy provides for steps to be taken if water quality drops below the levels that are protective of existing uses. The Section 131.12(a)(1), or "Tier 1," protects "existing uses," requires that "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." Section 131.12(a)(2), or "Tier 2," applies to waters whose quality exceeds that necessary to protect the section 101(a)(2) goals of the Act. In this case, water quality may not be lowered to less than the level necessary to fully protect the "fishable/swimmable" uses and other existing uses and may be lowered even to those levels only after following all the provisions described in section 131.12(a)(2). The Tribe's antidegradation policy will be applied on a case-by-case basis using the best available science and after a full analysis of the facts.</p>

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16	Avista Utilities	1/13/2006	Avista appreciates the opportunity to submit these additional comments on the Coeur d'Alene Tribe's proposed water quality standards. Please consider these as supplemental to the preliminary comments submitted on November 28, 2005. Our comments focus on four areas: the geographic areas in which the Tribe intends to apply its standards, the uses designated by the Tribe for protection, the Tribe's proposed biological criteria, and the need for consistency with the State of Idaho's existing water quality standards. Avista requests that the Tribe consider these comments when preparing final water standards for adoption to the Tribal Council and submission to the Environmental Protection Agency (EPA) for approval. Avista also requests that EPA consider these comments as part of its review any water quality standards submitted by the Tribe to EPA	Thank you. Comment Noted.
17	Avista Utilities	1/13/2006	Geographic Application of Standards Avista reiterates the concern raised in its preliminary comment letter regarding references in the proposed standards to "reservation waters," and "waters of the Tribe." It is Avista's understanding that the proposed water quality standards apply only to the Tribe's "Reservation TAS Waters" (defined as those water for which EPA has expressly approved the Tribe's "Treatment as a State" (TAS) authority). Avista believes that any language directly or impliedly suggesting the Tribe's water quality standards might apply beyond Reservation TAS Waters is not authorized by the TAS status granted by EPA and, therefore, should be removed or changed. Specifically, Avista suggests the following clarifications regarding the applicability of the proposed standards:	Please see the Response to Avista's comment # 11 above.
18	Avista Utilities	1/13/2006	Page 1, Section 1(3): "The purposes of these water quality standards are to restore, maintain and protect...Coeur d'Alene Reservation <u>TAS</u> Waters,"..."to promote the holistic watershed approach to management of Reservation <u>TAS</u> Waters of the Coeur d'Alene Tribe..."	The revised WQS will include the suggested revisions.
19	Avista Utilities	1/13/2006	On Page 4, the definition of "Reservation Waters or Coeur d'Alene Reservation Waters" should be removed	Please see the Response to Avista's comment # 11 above.
20	Avista Utilities	1/13/2006	On page 5, the definition of "Disputed Waters" should be removed	Please see the Response to Avista's comment # 11 above.
21	Avista Utilities	1/13/2006	Page 6, Section 4(2): "The Tribe may revise criteria on TAS approved waters <u>Reservation TAS Waters</u> as needed..."	The revised proposed WQS will include the suggested revision.
22	Avista Utilities	1/13/2006	Page 6, Section 4(2)(a): "Whenever the natural conditions of the surface waters of the Tribe Reservation TAS Waters are of a lower quality..."	The revised proposed WQS will include the suggested revision.
23	Avista Utilities	1/13/2006	Page 7, Section 5: "All Reservation TAS Waters, including those within designated mixing zones..."	The revised proposed WQS will include the suggested revision.
24	Avista Utilities	1/13/2006	Page 8, Section 7(1): "Toxic substances shall not be introduced into water of the Tribe <u>Reservation TAS Waters</u> ..."	The revised proposed WQS will include the suggested revision.
25	Avista Utilities	1/13/2006	q Page 21, Section 8(1): Radioisotope concentrations in all water Reservation TAS Waters shall not exceed..."	The revised proposed WQS will include the suggested revision.

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26	Avista Utilities	1/13/2006	q Page 22, Section 11(7): “Wetlands intentionally created from non-wetland sites for the sold purpose of wastewater or stormwater treatment (constructed wetlands) are not considered “Reservation TAS Waters” and are not subject to the provisions of this section.”	The revised proposed WQS will include the suggested revision.
27	Avista Utilities	1/13/2006	Page 23, Section 13(1): “The requirements of these water quality standards shall be met for all waters of the Coeur d'Alene Tribe with approved water quality standards, <u>Reservation TAS Waters.</u> ”	The revised proposed WQS will include the suggested revision.
28	Avista Utilities	1/13/2006	q Page 28, Section 20: “Unclassified water Reservation TAS Waters” must be of sufficient quality to ensure...”	The revised proposed WQS will include the suggested revision.
29	Avista Utilities	1/13/2006	Avista notes that the Tribe’s proposed water quality standards include a definition of “Ceremonial and spiritual water use” in Section 2 but do not designate that use for any specific portion of Reservation TAS Waters, nor do they provide any criteria for the support such uses. This definition is unreasonably vague in that it fails to provide adequate notice as to what conduct may be required or prohibited. Therefore, it should be deleted.	Please see the Response to Avista's comment # 31 below.
30	Avista Utilities	1/13/2006	Similarly, the “cold water biota” use referenced in the General Classifications of Section 20 is not defined, or are criteria specified for their protection. In the absence of a definition and specific criteria or other clarification regarding “cold water biota,” this ambiguous reference is virtually meaningless and should therefore be deleted.	The term “cold water biota” was removed and replaced with “Bull Trout and Cutthroat Trout”.
31	Avista Utilities	1/13/2006	The use classification entitled “Recreational and Cultural Use” listed in Section 19 identifies specific water quality criteria needed to protect human health from harmful bacteria resulting from direct human contact with the water. The term “Cultural water use” is defined in Section 2 to mean those water uses”...including but not limited to: use for instream flow, habitat for fisheries and wildlife, and preservation of habitat for berries, roots, medicines and other vegetation significant to the values of the Coeur d’Alene People.” The term does not appear elsewhere in the proposed standards, nor are any specific criteria provided for the uses contained in the definition; consequently, Avista believes the definition is unnecessary. Avista is concerned that such broad and undefined concepts as “instream flow” and “habitat for fisheries and wildlife” are unreasonably vague and therefore should not be included with the definition of “Cultural water use.” To the extent the Tribe’s proposed standards intended to support fisheries uses, they are supported by the criteria contained in the “Aquatic Life Uses” designation	The Tribe's efforts to establish a use-based system for its Reservation TAS Waters will allow the Tribe to promulgate WQS to address water quality concerns in its waters. Each specific designated use will allow the Tribe to adopt additional and more refined uses and to develop appropriate criteria. This effort by the Tribe conforms to EPA's national strategy to help States and Tribes develop more refined aquatic life uses. Additionally, the designation of cultural water use for Tribe's with TAS status is encouraged by the EPA. In the Coeur d'Alene's case, this designation is especially poignant. Since time immemorial, the Tribe has depended continuously upon and protected this Lake and riverine environment as the <i>sine qua non</i> (essential element) of its cultural and economic existence. The heart of the Coeur d'Alene country has always been their lake and its three rivers, now known as Lake Coeur d'Alene and the St. Joe, Coeur d'Alene and Spokane Rivers. It is therefore appropriate for the Tribe to adopt criteria that not only reflect the federal standards but also protects outstanding waters of Tribal resources, critical habitat for culturally significant and threatened and endangered species, cultural water use, and waters supporting priority species as determined by the Tribe. Additionally, while instream flow are but one of several physical parameters necessary for the Tribe to identify those limitations precluding attainment of its goal to enhance the waters of the Reservation and to serve the purposes of the CWA, reference to instream flows was deleted in this definition.

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32	Avista Utilities	1/13/2006	Additionally, Avista is concerned that by including “instream flows” as a “Cultural water use” the Tribe may attempt to regulate lake levels or river flows in a manner inconsistent with the levels authorized or required by other state or federal regulators. This would violate the State’s antidegradation policy, which requires existing beneficial uses be maintained and protected, thereby creating unreasonable consequences requiring the intervention of EPA under the dispute resolution mechanism provided for in Section 518 of the Clean Water Act (CWA). 40 C.F.R. 131.7. For these reasons, we encourage the Tribe to delete the unnecessary definition of “Cultural water use” from its proposed standards.	The term "instream flow" has been deleted from this definition in the revised WQS and replaced with the term "sufficient flow". The definition now reads, " '[c]ultural water use' means those water uses necessary to support and maintain the way of life of the Coeur d'Alene People including, but not limited to: use for sufficient flow for fish survival, habitat for fisheries and wildlife needs, and preservation of habitat for berries, roots, medicines and other vegetation significant to the values of the Coeur d'Alene People."
33	Avista Utilities	1/13/2006	<p>Biological Criteria</p> <p>The narrative biological criteria proposed by the Tribe in Section 9 are unreasonably vague in that they fail to provide adequate notice as to what conduct is required or prohibited. To Avista’s knowledge, the Tribe has not developed any specific determinations of the appropriate structure and function of the resident aquatic community as it naturally occurs; therefore, it is impossible to determine what is or may be necessary to achieve them. As currently written, it appears the Tribe could use these criteria to attempt to require a return to completely natural, pristine conditions existing before any human development. Avista submits that this would be an unlawful use of narrative criteria, inconsistent with the State’s antidegradation policy.</p>	The proposed narrative biological criteria are consistent with the CWA and EPA regulations. The Tribe is integrating biological criteria into their WQS because this helps the Tribe identify problems in Reservation TAS Waters that other regulatory approaches (such as chemical analysis) may not always find. The Tribe will set goals for its Reservation TAS Waters based on the types and numbers of species that should be present. This approach is consistent with WQS regulations that allow the adoption of narrative criteria (40 CFR 131.11 (b)(2)). Additionally, as the Tribe develops numeric criteria, Section 303 (c)(2)(B) of the CWA provides that Tribes shall adopt criteria based on biological monitoring or assessment methods. The Tribe's use of biocriteria can be used to meet this requirement (WQS Handbook, 1994, EPA-823-B-94-005a, pp. 3-26 to 3-28).
34	Avista Utilities	1/13/2006	Consistency with Idaho’s Water Quality StandardsAs noted in our preliminary comment letter, Avista believes it is imperative to achieving a workable approach to holistic watershed management that the Tribe and the State have consistent water quality standards. This is certainly desirable from a management perspective, but also essential to avoid the regulatory uncertainty and unreasonable consequences caused by conflicting standards. This approach is also consistent with EPA’s recommendation in the EPA Water Quality Standards Handbook, Second Edition (1993), p. 1-18 that Tribes “use directly, or with slight modification, the standards of the adjacent States as a beginning for Tribal standards.”	Please see the Response to Avista comment # 12 above.
35	Avista Utilities	1/13/2006	The Tribe’s proposed standards differ from Idaho’s in several important areas, including, for example, dissolved oxygen (DO), pH, temperature, and turbidity. These differences are significant in some cases and more subtle in others, yet there does not appear to be an expressed scientific, technical, or policy basis offered for these differences. In order for the Tribe’s water quality standards to be approved by EPA, the criteria in such standards “must be based on sound scientific rationale” and must be “scientifically defensible.” 40 C.F.R. 131.11(a). See also, NRDC v EPA, 15 F.3d 1395 at 1401 (C.A. 4, Va, 1993).	Please see the Response to Avista comment # 12 above and IDEQ’s comment # 272 below.

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36	Avista Utilities	1/13/2006	Avista is unclear whether the Tribe's proposed temperature and DO standards apply to the epilimnion of Lake Coeur' d'Alene. If that is the intent, Avista is particularly concerned that some of the proposed criteria are not attainable under any circumstance, including natural conditions. For example, the proposed 7-day average of daily maximum temperature criteria for bull trout and cutthroat trout during the summer months are not naturally attainable in the epilimnion of Lake Coeur d'Alene. They are also not naturally attainable in the shallowest portions of southern end of the Lake and the adjacent lateral lakes. Some of these ephemeral or intermittent areas were not naturally occurring during the late summer prior to the decision to hold the summer Lake levels constant.	Please see the Response to IDEQ's comment # 272 below.
37	Avista Utilities	1/13/2006	The proposed 9.5 mg/L 7-day average for DO is also not naturally attainable in the epilimnion during the summer, when the air temperatures are naturally high. In addition, the Tribe's proposed definition of natural back ground for turbidity is likely not attainable under natural conditions, making the turbidity criteria unattainable.	Please see the Response to IDEQ's comment # 272 below.
38	Avista Utilities	1/13/2006	Differences from the State standards, particularly when the proposed standards are not attainable or scientifically derived, raise serious risks EPA may reject them as scientifically indefensible. To avoid this, Avista urges the Tribe to work closely with the State of Idaho to eliminate the incompatibilities between the two sets of standards before submitting final proposed standards to EPA for approval.	Thank you. Comment Noted. To the extent possible the Tribe has revised these standards to be more compatible with those of the state of Idaho while continuing to protect Tribal Beneficial Uses.
39	Avista Utilities	1/13/2006	Avista appreciates the Tribe's willingness to extend the comment period from November 28, 2005 until January 13, 2006, to afford Avista and others the opportunity to more fully review the proposed standards, although we note that in light of the limited notice and distribution of the proposed standards, additional notice and opportunity for public participation by other affected communities, industries, and facilities may still be necessary prior to EPA approval. We would be happy to discuss any of our concerns and/or suggested changes and look forward to seeing your revised standards prior to the Tribe's submission of them to EPA.	Thank you. Comment Noted.
40	Benewah County, Id	11/28/2005	Benewah County is submitting these written comments to your office today, November 28, 2005, in response to the 'Notice of Public Hearing' published on the Coeur d'Alene Tribe's website. A copy of these comments have been mailed to the EPA Region X office in Seattle, Washington. Benewah County recognizes that two important -NPDES permit holders are situated ". within the current boundaries of the Coeur D'Alene Reservation. Both the City of St. Maries and Potlatch Corporation are permitted to discharge to the St. Joe River, which has been identified as part of the 'Reservation TAS Waters.'" Benewah County encourages the Coeur d'Alene Tribe to continue to work the State of Idaho DEQ, as well as the EPA, in a coordinated effort towards the development of water quality standards that are consistent throughout the Coeur d'Alene Lake Basin area. Benewah County does not agree that different water quality standards should apply to waters located within Reservation boundaries.	Thank you. Comment Noted.

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41	Benewah County, Id	11/28/2005	Please be assured that Benewah County will continue to review your proposed water quality standards. We are committed to protecting the best interests of all of our county residents and we are hopeful that the Tribe and the State of Idaho will reach an agreement on water quality that are fair and consistent. Please do not hesitate to contact the Benewah County Commissioners if we can be of some assistance to the Coeur d'Alene Tribe in this process.	Thank you. Comment Noted.
42	Benewah County, Id	1/13/2006	Benewah County recognizes that two important -NPDES permit holders are situated within the current boundaries of the Coeur d'Alene Reservation. Both the City of St. Maries and Potlatch Corporation are permitted to discharge to the St. Joe River, which has been identified as part of the "Reservation TAS Waters." Benewah County encourages the Coeur d'Alene Tribe to continue to work the State of Idaho DEQ, as well as the EPA, in a coordinated effort towards the development of water quality standards that are consistent throughout the Coeur d'Alene Lake Basin area. Benewah County does not agree that different water quality standards should apply to waters located within Reservation boundaries.	Comment Noted.
43	Benewah County, Id	1/13/2006	Of particular concern and interest to Benewah County is the joint wastewater management agreement between the City and the County. Under this agreement, many Benewah County residents living in Meadowhurst, Riverdale and other subdivisions located along the St. Joe River as well as homes and subdivisions located south of St. Maries along the St. Maries River have been connected to the municipal wastewater system. The ability to provide sewer utilities to these rural residents has eliminated numerous septic systems and drainfields. Therefore, it is extremely important that the City and the Coeur d'Alene Tribe are able to develop standards that do not adversely affect the City's ability to operate its wastewater system, which discharges to the St. Joe River	Thank you. Comment Noted.
44	Bernie Wilmarth, Potlatch Corp.	11/28/2005	My name is Bernie Wilmarth, and I'm with Potlatch Corporation, 2200 Railroad Avenue, St. Maries, Idaho. I'm the environmental manager for Potlatch, St. Maries complex. I had two small comments. One, temperature criteria for point source discharges into the river, us being one, city obviously is another. There are irrigation districts on the lower St. Joe. It's our feeling, at least speaking for Potlatch, it's going to be very difficult for us to meet the temperature criteria of 18 degrees for cutthroat trout during the summertime months, taking into consideration the type of water that we're discharging, which is basically groundwater from the river valleys, how we keep our complex dewatered so we have a dry surface to work on. It's going to be real, extremely difficult in those summer months to maintain, if not impossible, to maintain that 18 degrees centigrade. We do have an NPDS permit, I should say we used to have an NPDS permit, it expired in 2001. We're working under the old permit. We're required to record our temperature on a weekly basis, and submit our monthly DMR's.	Thank you. Comment Noted. To the extent the commenter is concerned regarding potential divergences in existing conditions such as temperature versus the criteria called for in the WQS, please see the Response to IDEQ's Comment # 272 below.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
45	Bernie Wilmarth, Potlatch Corp.		The only other comment I had was, I spoke to, the mayor also spoke to our NPDES permits have expired, we're unsure how this permitting process is going to take place. And we also have at the complex a multisector general storm water permit that expired on the 30th of September of this year, has not been reissued by EPA. Is that going to be issued by the Tribe or is EPA going to continue to handle the storm water permit. Thanks for your time.	The EPA will continue to issue NPDES permits throughout Idaho. The Tribe's WQS will set goals for how clean Reservation TAS Waters should be and establish benchmarks for how activities that affect those waters can maintain acceptable water quality. For a discharge upstream of the reservation, an NPDES permit must include conditions that ensure compliance with the applicable water quality requirements of the downstream waters covered by a TAS approval. <i>See</i> 40 CFR 122.4(d); 40 CFR 122.44(d) (3) and (4). The Tribe's WQS will serve as a basis for establishing water-quality based effluent limitations for facilities with NPDES permits that are discharging to that Reservation. Additionally, as EPA develops and authorizes a NPDES permit that will affect Reservation TAS Waters, it will seek CWA Sec. 401 Certification from the Tribe.
46	Bernie Wilmarth, Potlatch Corp. (continued)	11/28/2005	And I know for a fact during the summer months we get up into 22, we'll have periods of time where we're at 22, 23 degrees centigrade. I'm assuming some of the irrigation districts or whatever they're called down there where they have the pump station going into the river, going to have the same issues. So I'm not sure how mixing zones are going to play a part of that, whether mixing zones are going to be allowed on the lower St. Joe. Based on what I read, it looks like if the Tribe deems the lower St. Joe as having significance for cultural issues, then that may not be allowed to have mixing zones there. It's going to make it very difficult for our industry and St. Maries	Thank you. Comment Noted. Mixing zones will be designated by the Tribe's Lake Management Department pursuant to and conditioned by WQS Section 12 and will be determined on a case-by-case basis after full consideration of the salient facts. To the extent the commenter is concerned regarding potential divergences in existing conditions such as temperature versus the criteria called for in the WQS, please see the Response to IDEQ's Comment # 272 below.
47	City of St Maries Idaho	11/28/2005	The City of St. Maries is one of two NPDES permit holders situated within the current boundaries of the Coeur d'Alene Reservation. The City is permitted to discharge to the St. Joe River, which has been identified as part of the "Reservation TAS Waters." The City of St. Maries is currently reviewing your proposed water quality standards. It is our understanding that the Coeur d'Alene Tribe, the EPA and the State of Idaho DEQ have been engaged in a coordinated effort towards the development of water quality standards that will be consistent and acceptable to all agencies and Stakeholders in the area. The City agrees with and encourages this approach in order to have water quality standards for all of Lake Coeur d'Alene and the St. Joe River that are applicable to all portions of these water bodies.	Thank you. Comment Noted.
48	City of St Maries Idaho	1/13/2006	Upon review by our engineers, we have been advised that for the most part, the water quality standards are consistent with those set forth by the Environmental Protection Agency (EPA) under the Clean Water Act. However, our engineers have also identified an area of particular concern to the City - a wastewater mixing zone allowable under the proposed standards.	Thank you. Comment Noted.
49	City of St Maries Idaho	1/13/2006	The wastewater mixing zone allows some mixing distance in the river before the water quality standards must be met. Without such a mixing zone, the discharge would have to meet all standards before entering the river, which most likely would be impossible to meet with respect to temperature and turbidity. Under the proposed water quality standards, it appears that a study must be conducted before a mixing zone is allowed in order to ensure that it will not negatively impact water uses.	Thank you. Comment Noted.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
50	City of St Maries Idaho	1/13/2006	Upon examination of historical data the City's engineers have concluded that the temperature of the waterwater would exceed the proposed standards in the summer months. Other parameters listed in the proposed standards that are of particular concern to the City, as identified by the City's engineers, include pH, dissolved oxygen, temperature, turbidity, chlorine, lead, copper and zinc.	Please see the Response to IDEQ's comment # 272 below.
51	City of St Maries Idaho	1/13/2006	<p>On behalf of the City of St. Maries, I recommend that we schedule a meeting prior to Finalizing your proposed water quality standards. The City would like to work with the Coeur d'Alene Tribe in a collaborative manner in order to develop standards for the wastewater mixing zone that are appropriate for the St. Joe River. The City is prepared to coordinate a meeting with our engineering staff and your water quality staff. In addition, we may find it necessary to implement a study this summer in order to determine what is achievable in the St. Joe River during the summer months.</p> <p>It is important to note that our City wastewater system not only serves residents living within the city limits, but also numerous homes in the outlying impact area of Benewah County where sewer and water services are available. Through a joint wastewater management agreement between the City and Benewah County executed in the early 1980s, many rural households in the outlying areas which were previously on septic systems with drainfields adjacent to the river corridors of the St. Joe and St. Maries Rivers are now connected to themunicipal wastewater system. It is important to be able to support and continue to provide water and sewer utilities to the impact area in order to eliminate individual septic systems.</p>	Thank you. In response to this request, the Tribe subsequently met with representatives of St. Maries to address issues raised in the comment. The result of this meeting was a Tribal-issued CWA Sec. 401 certification for the City's most recent NPDES permit. The NPDES permit was based on the Tribe's proposed WQS and represents the Tribe's ability and commitment to achieving workable solutions, on a case-by-case basis, for water quality issues impacting Reservation TAS Waters.
52	Ed Tulloch, IDEQ	11/28/2005	Ed, Tulloch. I'm with Idaho Department of Environmental Quality, Coeur d'Alene I'm the manager for Idaho Region Two and Coeur d'Alene, regional office. We have requested an extension of the public comment period, and it was granted. We're very appreciative of that. We have been working with the Tribe over the last few years to ensure the consistency of the water quality standards as we both manage the Coeur d'Alene Lake and the St. Joe River. We're in hopes that this will give us a little more time to conduct a little more thorough review of the standards package as proposed, and we intend to submit comments, written comments to you prior to the end of the comment period, July--January, January '06 comment period. Thank you for the extension	Thank you. Comment Noted.
53	EPA	1/12/2006	EPA is impressed with the Tribes efforts to develop WQS. The majority of the proposed WQS reflect new EPA guidance and/or science. We greatly appreciate the extent to which the Tribe has included the EPA Region 10 office throughout your WQS development process. We have had numerous discussions about technical issues during the WQS development process and we are available to assist the Tribe, in the future, with technical issues as you prepare your response to comments.	Thank you. Comment Noted.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
54	EPA	1/12/2006	We would like to thank the Tribe for extending the comment period to allow more time for the public to comment and for meeting with EPA and others to explain and discuss the proposed revisions. If you have any questions about our comments or you require assistance with comments from others feel free to contact Sally Brough, Tribal Water Quality Standards Coordinator, at 206-553-1295 or myself at 206-553-2724. We look forward to working with you in the future.	Thank you. Comment Noted.
55	EPA	1/12/2006	Proposed Water Quality Standards for the Coeur d'Alene Tribe U.S. Environmental Protection Agency Review Comments EPA supports the Coeur d'Alene Tribe's efforts to develop water quality standards. For the most part, the proposed water quality standards (WQS) reflect the most recent EPA guidance and/or science.	Thank you. Comment Noted.
56	EPA	1/12/2006	Please note that the positions described in our comments below, regarding the proposed water quality standards, are preliminary in nature and do not constitute an approval, disapproval or determination by EPA under the Clean Water Act (CWA) Section 303(c). Approval/disapproval decisions will be made by the Region following adoption of the new/revised standards by the Coeur d'Alene Tribe and submittal of revisions to EPA. Any determination pursuant to CWA Section 303(c)(4)(B) may only be made by the Administrator.	Thank you. Comment Noted.
57	EPA	1/12/2006	General Comment The definition section of the WQS has three definitions for reservation waters: reservation waters, reservation TAS waters, and disputed waters. The proposed WQS regulations use all three terms. EPA understands that these proposed WQS apply to reservation TAS waters only. We suggest that the WQS regulations should consistently use the "reservation TAS waters" terminology throughout the regulations to avoid confusion.	The revised WQS will include the suggested revisions.
58	EPA	1/12/2006	Section 2 - Definitions The definitions section provides the meaning of terms used in the Tribe's water quality standards or that are important in understanding the basis for the standards. The proposed definitions are scientifically reasonable, generally consistent with those promulgated by EPA at 40 CFR131.3 and those incorporated into EPA guidance documents, and provide information needed for application and implementation of the water quality standards (40 CFR 131.6). EPA has specific comments about a few definitions.	Thank you. Comment Noted.
59	EPA	1/12/2006	We suggest that the Tribe delete the definition for "fecal coliform". This phrase does not appear to be used in the proposed WQS regulations.	Comment Noted. This definition has been deleted from the proposed revised WQS.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
60	EPA	1/12/2006	Although EPA has no concerns with "reference aquatic community" the phrase "resident aquatic community" is used in Section 9 -Biological Criteria. Either define resident aquatic community or revise the terminology in Section 9 to be consistent with the definitions language.	Comment Noted. See changes in 9(3).
61	EPA	1/12/2006	The mixing zone policy contains a consideration for "bioaccumulative or persistent pollutants". Persistent pollutants are defined in Section 2 but bioaccumulative pollutants are not. EPA offers the following definition for the Tribes consideration from the EPA November 13, 2000 Federal Register Final Rule to Amend the Final Water Quality Guidance for the Great Lakes System to Prohibit Mixing Zones for Bioaccumulative Chemicals of Concern (enclosed): Bioaccumulative chemicals are any chemical that accumulates in aquatic organisms by a human health bioacctrmulation factor greater than 1000 and has the potential upon entering surface waters to cause adverse effects, either by itself or in a form of its toxic transformation product, as a result of that accumulation.	Comment Noted. The proposed revised WQS incorporates EPA's proposed definition at Section 2.
62	EPA	1/12/2006	Section 3 - General Conditions This section of the Tribe's water quality standards regulations contains direction on how the standards are to be applied, including: protection of the most sensitive use of a water body; allowance for the natural condition to be determined as the criterion; the most stringent criterion applies at the boundary between two uses; and allowance for development and adoption of site specific criteria. The proposed provisions in this section are consistent with EPA guidance and requirements for the adoption of criteria found in 40 CFR 131.11.	Thank you. Comment Noted.
63	EPA	1/12/2006	Section 4 - Site-Specific Criteria Site-specific criteria (SSC) are specifically authorized in the WQS regulations at 131.10 and are available for use by States and Tribes under the CWA. States and Tribes can use these mechanisms to change criteria without having a specific provision within their own WQS regulations.	Thank you. Comment Noted.
64	EPA	1/12/2006	The addition of the proposed site-specific criteria provision to the Tribe's WQS is a positive addition to the WQS regulations. It provides protection of existing and designated uses as well as general guidance about the process that should be followed to develop SSC. This new provision clearly states that EPA must approve SSC before they become effective for CWA purposes	Thank you. Comment Noted.
65	EPA	1/12/2006	We have a number of edits and proposed revisions to this section. We are enclosing a proposed rewrite of this section for your consideration	Thank you. Comment Noted.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
66	EPA	1/12/2006	<p>Section 5 -Narrative Criteria</p> <p>This section identifies narrative criteria to protect surface waters for aesthetic purposes, fish and aquatic life protection, and other designated uses. Narrative criteria are statements that describe the desired water quality goal. Narrative criteria are included in WQS to supplement the numeric criteria. Narrative criteria apply to all designated uses, at all flows. The six narrative criteria address floating solids; oils and grease; color; odor and taste; nuisance conditions; turbidity, and bottom deposits. These narrative requirements contain those recommended by EPA (Water Quality Standards Handbook, 1994) for the protection of aquatic life and in addition contain a narrative turbidity criterion. These proposed criteria are consistent with 131.11(b)(2) which directs States and Tribes to establish narrative criteria where numerical criteria cannot be established or to supplement the numeric criteria.</p>	Thank you. Comment Noted.
67	EPA	1/12/2006	<p>Section 6 - Antidegradation Policy</p> <p>The Tribe's proposed provisions for three tiers of anti-degradation protection parallel the language in the EPA regulations at 40 CFR 131.12. The Tribe's proposed provision at Section 6(1) is consistent with language in EPA's regulations at 40 CFR 131.12(a)(1), which states that "Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." This is typically referred to as a 'Tier 1' level of antidegradation.</p>	Thank you. Comment Noted.
68	EPA	1/12/2006	<p>The proposed provision in Section 6(2) in the Tribe's WQS contains the language in EPA's regulations (40 CFR 131.12(a)(2)) referred to as 'Tier 2' level of antidegradation. This subsection discusses the process that will be followed in determining whether to allow degradation where water quality exceeds levels necessary to support CWA Section 101(a) goal uses.</p>	Thank you. Comment Noted.
69	EPA	1/12/2006	<p>The language of the proposed provision in Section 6(3) provides for maintaining and protecting water quality in high quality waters, which the Tribe identifies as waters of "outstanding national or Tribal resource; documented critical habitat for populations of culturally significant, threatened or endangered species; waters of exceptional recreational, ceremonial, cultural, or ecological significance; or waters supporting priority species as determined by the Tribe." This proposed subsection is similar to the federal policy, referred to as 'Tier 3' level of antidegradation, which identifies high quality waters. The proposed Tribal criteria expands on the federal guidance, adding outstanding waters of Tribal resource, critical habitat for culturally significant and threatened and endangered species, waters of ceremonial and cultural significance, and waters supporting priority species as determined by the Tribe.</p>	Thank you. Comment Noted.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
70	EPA	1/12/2006	The Tribe's proposed Section 6(3) (or 'Tier 3') language is consistent with the EPA's regulations and the proposed language in 6(4) clarifies how the Tribe will accomplish the Tier 3 goals. The Tribe states: "To accomplish this, the Department may require water quality controls, maintenance of natural flows regimes, protection of instream habitats, and pursuit of land use practices protective of the watershed." This implementation guidance is consistent and appropriate for Tier 3, identifying the implementation methods pursuant to 40 CFR 131.12(a).	Thank you. Comment Noted.
71	EPA	1/12/2006	Section 7 - Toxic Substances The Tribe has adopted a combination of proposed provisions for toxic pollutants including: 1) a narrative toxics criterion; 2) a provision that allows bioassessment studies as well as chemical analyses as a means to determine compliance with the narrative toxics criterion; 3) a provisions that provides that criteria may be determined for toxics criteria not listed in Table 1, considering EPA's Quality Criteria for Water, as updated, and other relevant information; 4) a provision that specifies the risk level for carcinogens; 5) a provision that specifies the fish consumption rate; 6) a provision that criteria for metals shall be applied as dissolved values; 7) a provision that applies the numeric toxics criteria to all reservation TAS waters; 8) a provision that defines acute and chronic criteria; and finally 9) a provision that explains the blanks in the criteria table.	Thank you. Comment Noted.
72	EPA	1/12/2006	The Tribe has adopted numeric toxic criteria for all Section 307(a)(1) toxic pollutants for which EPA has published criteria. The proposed numeric aquatic life and human health criteria are based EPA's criteria recommendations. However, in the case of aquatic life criteria, the Tribe has proposed the National Toxics Rule value for the chronic mercury criterion and withdrawn the acute selenium criteria due to current EPA re-evaluations of the science for these two criteria. These selenium and mercury revisions are acceptable on conform to Federal promulgations in the National Toxics Rule and the California Toxics Rule. With these two exceptions, the Tribe's criteria are based on EPA's CWA Section 304(a) criteria for the protection of aquatic life (National Recommended Water Quality Criteria- 2004).	Thank you. Comment Noted.
73	EPA	1/12/2006	EPA has some criteria- specific comments and footnote comments. These concerns are discussed in the following paragraphs.	Thank you. Comment Noted.
74	EPA	1/12/2006	Metals Hardness Cap Freshwater aquatic life criteria for certain metals are expressed as a function of hardness because hardness can affect the toxicities of these metals. Generally, decreasing hardness has the effect of increasing toxicity of metals. However, EPA has had caps on these hardness based criteria. In the past, EPA recommended a low-end cap of 25 mg/l and a high end cap of 400 mg/l. EPA's latest recommendation with respect to hardness values in calculating criteria for these hardness dependent metals (cadmium, chromium III, copper, lead, nickel, silver and zinc) is to not cap the hardness at 25 mg/L (use the ambient hardness if it is lower than 25 mg/l) and to continue to cap the high end at 400 mg/l. The recommended removal of the low-end hardness cap is discussed in the 2002 compilation of National	The revised proposed WQS will include the suggested revision.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
			Recommended Water Quality Criteria (See pages 7-9 of National Recommended Water Quality Criteria: 2002, EPA-822-R-02-047). EPA recommends that the Tribe specify the low-end and high-end caps in the WQS regulations.	
75	EPA	1/12/2006	<p>Chlorine</p> <p>In the Toxic Pollutants table the human health values for chlorine are not correct. The numeric values in the table represent saltwater aquatic life numbers. The Tribe can leave the human health values blank or use the drinking water maximum contaminant level value from the Safe Drinking Water Act for the water plus organisms column in the table.</p>	The revised proposed WQS will include the suggested revision.
76	EPA	1/12/2006	<p>Lead</p> <p>Section 7(6) states that the criteria for metals shall be applied as dissolved values except for lead which is represented as total recoverable. The numeric aquatic life value in the criteria table is for the dissolved form of lead. If The Tribe chooses to implement lead as total recoverable, then the numeric value for lead on the table should be changed to 82 ug/l for acute and 3.2 ug/l for chronic. If lead is total recoverable then lead should be removed from the "conversion factors" table. The footnotes should be revised as well for the acute and chronic aquatic life criteria for lead if they are kept as total recoverable. EPA supports the application of lead in either the dissolved or total recoverable form. The Tribe needs to decide on dissolved or total recoverable for lead and make sure the numbers and footnotes accurately reflect the choice.</p>	Thank you. The Tribe has chosen to utilize total recoverable lead in the new proposed WQS.
77	EPA	1/12/2006	<p>Footnotes</p> <p>While reviewing the criteria table we found some problems with the footnotes. Footnotes J, L, and R should be changed to "this letter is not used as a footnote". Footnote U should be changed to "the organoleptic effect criterion is more stringent than the value for priority toxic pollutants". Footnote hh is only applicable to the acute aquatic life criterion for mercury. The appropriate footnote for the chronic aquatic life criterion for mercury should read "if the CCC for mercury exceeds 0.012 ug/l more than once in a 3-year period in the ambient water, the edible portion of aquatic species of concern must be analyzed to determine whether the concentration of methylmercury exceeds the FDA action level."</p>	The revised proposed WQS will include the suggested revisions.
78	EPA	1/12/2006	<p>Section-8 -Radioactive Substances</p> <p>This section contains numeric criteria for radioactive materials which are to apply to all waters of the Reservation for the protection of human health. The numeric criterion concentrations for gross alpha particle activity, gross beta particle activity, Radium, Strontium 90, and Tritium are consistent with EPA's National Primary Drinking Water Regulations (40 CFR 141), which put forth Maximum Contaminant Levels (MCL's) for these pollutants in drinking water. However, the radioactive criterion for radium needs to reflect that the numeric value applies to Radium 226/Radium 228 (combined).</p>	The revised proposed WQS will include the suggested revision.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
79	EPA	1/12/2006	EPA acknowledges that States and Tribes have the option of applying MCLs, section 304 (a)(1) human health effects criteria, modified 304(a)(1) criteria, or a more stringent contaminant level than the former three options to protect against the effects of contaminants by ingestion from drinking water. EPA believes that the use of a drinking water MCL to limit radioactive materials in surface waters is a sound scientific rationale for establishing a criterion for the protection of recreational uses.	Thank you. Comment Noted.
80	EPA	1/12/2006	Section 9 – Biological Criteria This section of the Tribe’s WQS regulations contains narrative biological criteria. The WQS regulations allow the adoption of narrative criteria (40 CFR 131.11 (b)(2)). The primary statutory basis for Tribes to develop biocriteria is found in Sections 101(a) and 202 (c)(2)(B) of the CWA. Section 101(a) of the CWA establishes as the objective of the CWA the restoration and maintenance of the chemical, physical and biological integrity of the Nation’s waters. To meet this objective, water quality criteria should address biological integrity. Section 303 (c)(2)(B) of the CWA provides that when numeric criteria are not available, Tribes shall adopt criteria based on biological monitoring or assessment methods; biocriteria can be used to meet this requirement (WQS Handbook, 1994, EPA-823-B-94-005a, pp. 3-26 to 3-28). The proposed narrative biological criteria are consistent with federal requirements at 40 CFR 131.11, the CWA, and EPA’s implementation guidance in the WQS Handbook (1994, EPA-823-B-94-005a.).	Thank you. Comment Noted.
81	EPA	1/12/2006	Section 10 – Wildlife Criteria This section specifies a narrative goal for protection of all life stages of resident and/or migratory wildlife species which live in, on, or near the surface waters of the Reservation. Section 101 (a)*2) of the CWA sets, as an interim goal of, “...whenever attainable...water quality which provides for the protection and propagation of fish, shellfish, and wildlife...” This proposed narrative criterion reflects the recommendation by EPA for the protection of wildlife in the Water Quality Standards Handbook (1994, EPA-823-B-94-005a).	Thank you. Comment Noted.
82	EPA	1/12/2006	Section 11 - Wetlands This section applies the Narrative Criteria from Section 5, Antidegradation requirements from Section 6, and the Toxics Criteria from Section 7 to all wetlands within the Reservation that are not constructed or engineered. This Section requires that wetlands not be used in lieu of stormwater treatment, unless they are intentionally created to do so; prohibit the destruction or impairment of wetlands by point and nonpoint sources of pollution except where authorized under section 404 of the CWA; and states that wetlands shall not be used as repositories or treatment systems for waste from human sources unless it is intentionally created to do so. Applying the Antidegradation requirements to wetlands is consistent with the guidance in Water Quality Standards for Wetlands (1990).	Thank you. Comment Noted.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
83	EPA	1/12/2006	The Tribe's proposed criteria for wetlands meet EPA's recommendations to States and Tribes as found in Water Quality Standards for Wetlands (1990), and meet the requirement of 40 CFR 131.11(a)(1) and (b)(2). EPA supports the inclusion of the wetland provisions in these WQS regulations.	Thank you. Comment Noted.
84	EPA	1/12/2006	Section 12 - Mixing Zones EPA's WQS regulations at 40 CFR 131.13 authorize State/Tribal mixing zone regulations as a matter of State/Tribe discretion. "States may, at their discretion adopt certain policies in their standards affecting the application and implementation of standards." Policies concerning mixing zones and critical flows may be adopted (WQS Handbook p. 5-1 and 40 CFR 131.13). Such policies are subject to EPA review pursuant to CWA §303(c). The EPA guidance for mixing zones is found in the WQS Handbook and EPA's Technical Support Document (TSD). The 1991 EPA Technical Support Document (TSD) provides technical descriptions of models to protect aquatic life from acute effects and descriptions of time and distance calculations. The TSD provides guidance on methodologies and examples of their use. We note that the TSD is cited in the Tribe's mixing zone policy.	Thank you. Comment Noted.
85	EPA	1/12/2006	EPA guidance states that allowable mixing zone characteristics should be established to ensure that mixing zones do not impair the integrity of the waterbody as a whole; there is no lethality to organisms passing through the mixing zone; and there are no significant human health risks (WQS Handbook p. 5-1).	Thank you. Comment Noted.
86	EPA	1/12/2006	The Coeur d'Alene mixing zone policy contains provisions that deal with the first and the third of these three mixing zone characteristics. Section 12(l)(f) specifies the protection of the waterbody as a whole and the protection of public health. EPA suggests the Tribe add that a mixing zone should not be granted unless the supporting information clearly indicates that it would not cause lethality to organisms passing through the mixing zone.	The revised proposed WQS will include the suggested revision.
87	EPA	1/12/2006	Water quality standards should protect water quality for designated uses in critical low flow situations. The Coeur d'Alene Tribe's proposed revisions have used the EPA recommendations for design flows (WQS Handbook section 5-2 p. 5-11).	Thank you. Comment Noted.
88	EPA	1/12/2006	The WQS handbook guidance recommends that a mixing zone policy should include a statement in the WQS regulations on whether or not mixing zones are allowed and information on the location, size, shape, outfall design, and in-zone quality of mixing zones (WQS Handbook p. 5-2). The mixing zone policy, found in Section 12, addresses these considerations.	Thank you. Comment Noted.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
89	EPA	1/12/2006	Section 12(1)(i)(B) could be difficult to implement unless the Tribe can define the pollutants in each group of compounds: carcinogens, mutagens, teratogens, and bioaccumulative or persistent pollutants. EPA has enclosed for your consideration EPA lists of persistent/bioaccumulative compounds. EPA does not have an agreed upon definition for mutagens or teratogens. Without a definition of these two terms, it is difficult to determine which pollutants to include in this prohibition. The CWA carcinogens are identified in the Tribe's proposed toxic pollutants criteria table.	Thank you. The Tribe will evaluate the list of bioaccumulative/persistent pollutants for possible inclusion in its future revisions of Tribal WQS. The Tribe has included definitions for mutagens and teratogens as follows: "mutagens" means substances or chemicals with the ability to increase the frequency or extent of a significant and basic alteration in an organism's chromosomes or genetic material as determined according to the United States Environmental Protection Agency Guidelines for Mutagenicity Risk Assessment, 51 Fed. Reg. 34006 (1986) ; "teratogens" means substances or chemicals with the ability to cause developmental malformations and monstrosities, as determined according to the United States Environmental Protection Agency Guidelines for Health Assessment of Suspect Developmental Toxicants, 51 Fed. Reg. 34028 (1986).
90	EPA	1/12/2006	Section 15 - Compliance Schedules A compliance schedule refers to an enforceable sequence of interim requirements in a permit leading to ultimate compliance with NPDES permit effluent limitations in accordance with the CWA. Compliance schedules provide a means by which dischargers are given a limited time to comply with NPDES permit limits, generally due to technological or financial inability to comply immediately. Section 303(e)(3)(F) of the CWA recognizes that Tribes may provide compliance schedules. The Tribe's proposed compliance schedule provision contains three subsections. Subsection (1) specifies final compliance in the shortest practicable time, but not to exceed five years; decisions on compliance schedules will be made on a case-by-case basis; no compliance schedule will be issued for new dischargers; and the conditions for which compliance schedules are allowed (e.g., construction of treatment, implementation of BMPs, completion of necessary studies). Subsection (2) allows the establishment of interim limitation or other conditions. Subsection (3) requires the permittee to evaluate the possibility of achieving water quality criteria via non-construction changes.	Thank you. Comment Noted.
91	EPA	1/12/2006	The WQS regulations at 40 CFR 131.13 allow Tribes to adopt policies in their standards affecting the application and implementation of standards. Although these policies are areas of Tribal discretion, EPA retains authority to review and approve or disapprove such policies (WQS Handbook 1994, EPA-823-B-94-005a, pp 5-1). The proposed compliance schedule provision is reasonable and appears to be consistent with 40 CFR 122, and the federal requirements at 40 CFR 131.13.	Thank you. Comment Noted.
92	EPA	1/12/2006	Section 16 - Short-Term Modifications In Section 16, the Tribe has adopted a short-term modification provision. This provision allows for modification for a specific waterbody on a short-term basis in order to respond to emergencies, accommodate essential activities, or to otherwise protect the public health and welfare, even though such activities may result in a temporary reduction of water quality conditions below criteria established by this water quality standards regulation. The Tribe has adopted mitigation measures that are highly protective in the event this general policy must be applied. The short-term modification provision describes the procedural steps that should be followed in situations when the policy is implemented.	Thank you. Comment Noted.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
93	EPA	1/12/2006	Federal water quality standards regulations at 40 CFR 131.13 allows tribes to include policies that generally affect how the water quality standards are applied and implemented. The adoption of the short term modification policy is consistent with the preamble to the Water Quality Standards regulation as published in 1983 at 48 FR 51403 which states that State and authorized Tribes may allow some limited activities which result in temporary and short-term changes in water quality.	Thank you. Comment Noted.
94	EPA	1/12/2006	Section 17 -Public Involvement This section repeats the statutory requirements in the CWA and briefly presents the process that will be followed when revisions are made to the WQS.	Thank you. Comment Noted.
95	EPA	1/12/2006	Sections 18 and 19 -Water Use Classification EPA supports the Tribe's efforts to establish a use-based system for tribal waters rather than a class-based system. Waterbody specific uses will allow the Tribe to adopt additional and more refined uses and to develop appropriate criteria. This effort by the Tribe conforms to EPA's national strategy to help States and Tribes develop more refined aquatic life uses.	Thank you. Comment Noted.
96	EPA	1/12/2006	EPA suggests that the Tribe submit any supporting documentation for the life history and specific locations of specific aquatic life uses when the Tribe submits the WQS to EPA for review. Biological monitoring and field studies that show the fish and life stages present in reservation waters would provide a scientifically defensible basis for the use designations and assist the EPA review process.	Comment Noted. The proposed revised WQS include the suggested documentation.
97	EPA	1/12/2006	We suggest that you specify which human health criteria apply to which designated uses. For example, the water plus organisms human health criteria could apply to the domestic water supply designated use and the organisms only human health criteria could apply to the recreation and cultural designated use. This type of clarification should be included in Section 19. Another approach would be to include a table in the WQS regulations that specifies which of the criteria (narrative, toxic pollutant criteria, radioactive criteria, biological criteria, and wildlife criteria) apply to each designated use.	Comment Noted. The proposed revised WQS include the suggested inclusions in Section 19.
98	EPA	1/12/2006	EPA Proposed Revisions to Section 4 - Site-Specific Criteria (note see appendix 1 for this information)	Comment Noted. The Tribe has analyzed EPA's proposed revisions and incorporated them in whole into Section 4 of its revised proposed WQS.
99	Forest Capital Partners LLC	12/14/2005	These comments are submitted by Forest Capital Partners, LLC ("FCP") with respect to the Coeur d'Alene Tribe's (the "Tribe") proposed water quality standards ("WQS") and draft Integrated Resource Management Plan ("IRMP"). The purpose of these comments is to inform the Tribe and interested government agencies as to items about which FCP has concern in connection with the actual application, in the context of practical use, of what the Tribe has proposed.	The Tribe appreciates the efforts Forest Capital has put forth to offer comments on both these WQS and the Integrated Resource Management Plan (IRMP). Please note, however, only comments specific to these WQS will be responded to in this document. Please refer to our IRMP response to comments for IRMP specific responses.

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100	Forest Capital Partners LLC	12/14/2005	FCP believes that if amendments to the WQS and IRMP are shown to be warranted and justified, such changes can, and ought to be, made now before adoption of either the IRMP or the WQS. These comments are submitted with respect to both administrative actions (the WQS promulgation and the IRMP adoption) because they have common issues of fact, law and application which make it convenient to address both items in one paper. This method will also make it more convenient for the Tribe and interested agencies to consider FCP's points.	Thank you. Comment Noted.
101	Forest Capital Partners LLC	12/14/2005	<p data-bbox="602 532 913 566">B. Identification Of FCP</p> <p data-bbox="602 606 1659 883">FCP is a privately held limited liability company with headquarters in Boston and Portland. It is in the business of acquiring and managing timberlands, through various legal entities owned by institutions and private investors including FCP, for sustainable, commercial timber production. (None of the legal entities or investors are members of the Tribe.) FCP actively cultivates, produces and sells timber products in the Pacific Northwest, Inland West, Southeast and northern Lake States. Since 2002, FCP has operated approximately 280,000 acres located in northern Idaho and eastern Washington.</p> <p data-bbox="602 923 1659 1199">In February 2005 FCP-affiliated entities acquired approximately 2.2 million acres of timberlands formerly owned by Boise Cascade Corporation, which are situated in various parts of the U.S., including Idaho. Even though FCP is a relatively new company, its land ownership includes parcels formerly held by companies with a long history in the region, including Plum Creek, Crown Pacific and Louisiana Pacific. In addition, some of the ownership goes back to the early days of Idaho's statehood; Diamond International, Burlington Northern and Pack River.</p> <p data-bbox="602 1239 1659 1447">FCP is a "true" timber company, owning high value timberlands with freedom to manage them for maximum returns for its investors. It does not have any ownership interest in sawmills and can therefore sell its logs to purchasers who's particular operation allows them to offer the best price. FCP sells its north Idaho-generated timber products to virtually all of the mills located in north Idaho, including those in Plummer, St.-Maries and Coeur d'Alene.</p>	Thank you. Comment Noted.
102	Forest Capital Partners LLC	12/14/2005	<p data-bbox="602 1479 1659 1687">FCP has region and other offices in various places in the U.S. Its Inland Region office is established in Coeur d'Alene, where approximately 10 foresters, other professionals and technical staff are employed. FCP, in addition, maintains offices in St. Maries (six persons) and Bonners Ferry (three persons), with respect to its Idaho operations. Many of FCP's employees have a long history in the "neighborhood with their previous employers, including knowledge of the history of the Tribe and its operations.</p> <p data-bbox="602 1727 1659 1822">FCP is managed by principals who are both professional foresters and seasoned investment managers. FCP's goal is to earn and maintain the trust and loyalty of its business partners-investors, mill customers, conservation interests- and the</p>	Thank you. Comment Noted.

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			communities in which it operates, through performance, integrity and stewardship.	
103	Forest Capital Partners LLC	12/14/2005	<p>II. FCP's Interest In These Proceedings</p> <p>A. Quantity And Location Of Fee Lands</p> <p>FCP is interested in these administrative proceedings because is owns timberlands within the external boundaries of the Tribe's reservation. In addition, it owns timberlands outside of the boundaries, but nearby them. And, some of FCP lands are located within the St. Joe River drainage basin.</p>	Thank you. Comment Noted.
104	Forest Capital Partners LLC	12/14/2005	According to EPA's Decision Document related to EPA's treatment of the Tribe as a state (August 6, 2005, p. 9), the reservation encompasses 343,000 acres within its boundaries. According to the draft IRMP, these acres exclude those encompassed by the Tribe's submerged lands. No information can be found in the draft IRMP, or elsewhere, as to the number of acres within the reservation which constitute trust lands, nor is there any information as to acres within the reservation owned by Tribe members. However, a cursory review of a land ownership map indicates that trust lands might constitute approximately 8,000- 10,000 acres.	Thank you. Comment Noted.
105	Forest Capital Partners LLC	12/14/2005	FCP fee timberlands within the reservation consist of approximately 6,474 acres. The FCP fee lands are comprised of 56 separate parcels. Almost all is managed for timber production. Some of the land adjoins Tribe trust parcels. The timberlands owned by FCP are accessed by public roads and easements granted by adjacent and nearby land owners, not by easements granted by the Tribe. The 6,474 acres are surrounded by State, federal and private lands, except where Tribe trust lands are adjacent. The use of the surrounding land varies from recreation to timber production. FCP's land is open to the public for recreation, such as hiking and hunting, but not for other use. None of the FCP land within the reservation is adjacent to Coeur D'Alene Lake or the St. Joe River.	Thank you. Comment Noted.
106	Forest Capital Partners LLC	12/14/2005	<p>B. No Commercial Dealings With Tribe</p> <p>FCP does not have, at the date of these comments, any business or commercial dealings or contracts with the Tribe related in any way to its fee lands, or of any other kind whether so related or not.</p>	Thank you. Comment Noted.

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107	Forest Capital Partners LLC	12/14/2005	<p>C. No Point Source Discharges</p> <p>FCP does not have any point source discharges into the St. Joe River or its tributaries, and does not anticipate that it will have such discharges in the future. It does not have any point source discharges into Lake Coeur d'Alene or its tributaries, and does not anticipate that it will have such discharges in the future</p>	Thank you. Comment Noted.
108	Forest Capital Partners LLC	12/14/2005	<p>D. FCP Operations Upon Its Fee Lands</p> <p>FCP does, of course, conduct timber harvest and silviculture operations upon its lands within the reservation. Therefore, FCP desires to understand the potential impact of any Tribe WQS upon its operations with respect to harvest and silviculture activities. Likewise, it needs to understand how and when the IRMP might be implemented, because the forest practices provisions set forth there, when and if implemented, could impact FCP's activities if the intent is that the Tribe will regulate these activities.</p>	Thank you. Please see the Tribe's IRMP response to comments.
109	Forest Capital Partners LLC	12/14/2005	<p>Issues Regarding Proposed WQS</p> <p>Set forth below are issues and questions which a review of the proposed WQS raise, in the context of practical application to FCP's operations upon its lands within the reservation. Comments are as follows:</p> <p>Par. 1. Introduction. The introduction to the Tribe's Water Quality Standards (WQS) states that the Tribe "hereby establishes these water quality standards covering those surface waters of Coeur D'Alene Lake and the St. Joe River within the exterior boundaries of the 1894 Coeur d'Alene Reservation. Referred to herein as "Reservation TAS Waters". This statement seems to limit applicability of the WQS to these two waterbodies. However, per Par. 2, Definitions, the definitions for "Reservation Waters", "Coeur d'Alene Reservation Waters", "Reservation TAS Waters", and "Coeur d'Alene Reservation TAS Waters" include "lakes, rivers, ponds, streams (including intermittent and ephemeral streams), wetlands, and all other surface water courses within the exterior boundaries of the 1894 Coeur d'Alene Reservation", and subsequent sections (e.g., Par. 3 (1)) of the Tribe's WQS indicate that the WQS are to apply to this broader set of waters. FCP needs to clearly understand whether the Tribe intends that these WQS will apply to all of the waters set forth in accordance with Par. 2 of the Tribe's WQS. Moreover, FCP needs to understand whether the Tribe intends for these WQS to apply to waters within FCP lands and/or waters leaving from FCP lands</p>	Please see the Response to Avista's comment # 11 above.

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110	Forest Capital Partners LLC	12/14/2005	Par. 2 Definitions. The WQS define best management practices (BMP) as “physical, structural, and/or managerial practices that, when used singularly or in combination, prevent or reduce pollution.” While FCP supports this definition, we have important questions regarding the applicability of Tribe BMPs to FCP lands within or outside the external boundaries of the 1894 Coeur d’Alene Reservation. Does the Tribe intend that its Tribal Forest Plan Standards, that FCP also comments upon, apply to FCP and other private lands either within or outside the external boundaries of the 1894 Coeur d’Alene Reservation in order to assure compliance with the Tribe’s WQS, or otherwise?	Please see the Response to FCP's Comment # 113 below.
111	Forest Capital Partners LLC	12/14/2005	Par. 2. Definitions. "Damage to the ecosystem means any demonstrated or predicted stress to aquatic or terrestrial organisms . . . which the Department concludes may interfere with the health or survival success or natural structure and functioning of such populations. This stress may be due to alteration of habitat..." This definition is incredibly broad and vague. In particular, FCP is concerned that use of "predicted" and "may interfere" and "as determined by the Department" could allow a determination of damage that is essentially arbitrary and capricious rather than as a determination that is based on rigorous science and procedures. Moreover, FCP does not understand why this definition within the WQS mentions terrestrial organisms.	As a general matter, the Tribe believes all of the definitions in its proposed WQS are scientifically reasonable, consistent with those promulgated by EPA at 40 CFR131.3 and those incorporated into EPA guidance documents, and provide information needed for application and implementation of the water quality standards (40 CFR 131.6). Additionally, the definition of "Damage to the ecosystem" is only applicable to the Tribe's standards on mixing zones in Section 12 of the proposed WQS, which, in turn, is only relevant to NPDES permits issued for point-source discharges. The Commenter may be misinterpreting this definition on the incorrect assumption that it applies for purposes of defining a violation of the Tribe's standards, not for the purposes of developing benchmarks relating to NPDES permits.
112	Forest Capital Partners LLC	12/14/2005	Par. 2. Definitions. Under "Reservation TAS Waters" the WQS mentions "Attachments 1 through 4 hereto and referred to therein as "Reservation TAS Waters". However, no such attachments accompany our copy of the Tribe's WQS. FCP requests a copy of these attachments believing that they may help FCP understand the potential reach of the WQS and BMPs (see below).	The proposed WQS and Attachments 1-4 are available online at: http://www.cdatribe-nnsn.gov/lake/p_water.shtml To the extent that the commenter is still unclear as to the geographic scope of the Tribe's TAS jurisdiction, please see the Reply to Avista's comment # 11 above.
113	Forest Capital Partners LLC	12/14/2005	Par. 2. Definitions. A definition is provided for "nonpoint source", which includes surface water runoff from forest lands. That, taken with the definition of “storm water”, and also related to par. 6, the Antidegradation Policy where reference is made to "best” management practices for nonpoint source control", along with par. 11 (5) which deals with nonpoint source pollution of wetlands, renders the standards unclear. The reason they are not clear is because no "best management practices" are set forth, or referred to, in order that FCP will know exactly what practice it must follow to comply with the standard. The remedy might be to make clear either in the WQS or in a preamble, that the standards, in this instance, are not applicable until the Tribe adopts by regulation EPA approved best management practices. Or, it might be made clear that for the time being, the Idaho Forest Practices Act controls.	EPA is the regulatory agency responsible under the CWA for protecting water quality on the Reservation, not the State of Idaho. To date, EPA has not promulgated federal WQS for the Reservation, and EPA can not authorize the State of Idaho to set WQS on the Reservation. The Tribe's standards, when approved, will apply to those lands designated "Reservation TAS Waters" (the lower third of the Lake and the those portions of the St. Joe River within the Reservation boundaries, but not including Heyburn State Park) for CWA purposes. For other waters on the Reservation, EPA will use the Tribe's standards as guidance in applying the CWA. Regardless of these WQS, however, the Tribe expects all forest lands within the reservation to be treated with BMPs sufficient to protect water quality. The Tribe's water quality standards must contain the same core three elements as any state. These include: 1) one or more designated “ uses” of each waterway consistent with the goals as articulated in § 101 of the Clean Water Act; 2) “criteria” expressed in numerical concentration levels or narrative statements specifying the amount of various pollutants that may be present and still protect the designated uses; and 3) an anti-degradation provision. Clean Water Act § 303(c)(2)(A), 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. Part 131 (1992). The Tribe's antidegradation policy under its proposed standards provides that "the Tribe shall assure that there shall be achieved ... all approved, cost-effective, and reasonable best management practices for nonpoint source control." This best

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				<p>management practice language reflects EPA's guidance policy at 40 C.F.R. 131.12(a)(2). However, absent more facts concerning the Commenter's activities, it is predecisional and impossible for the Tribe to determine within the context of this response whether the FCP's current BMP's are consistent with the Tribe's policies.</p>
114	Forest Capital Partners LLC	12/14/2005	<p>Par. 3. General Conditions, (1). Here the WQS state "All Reservation TAS Waters shall be free from pollutants in concentrations or combinations that do not protect the most sensitive use of the water body.." Once again, FCP needs to understand whether the Tribe intends for these WQS to apply to FCP or other private lands within or outside the external boundaries of the 1894 Coeur d'Alene Reservation.</p>	<p>Please see the Response to Forest Capital Partners LLC's comment # 113 above.</p>

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115	Forest Capital Partners LLC	12/14/2005	<p>Par. 6. Antidegradation Policy (2) This policy in part provides that "the Tribe shall assure that there shall be achieved ... all approved, cost-effective, and reasonable best management practices for nonpoint source control." Forest practices conducted on FCP lands within Idaho are regulated by the Idaho Forest Practices Act and its implementing rules and regulations that are recognized under Idaho water quality regulations as the designated BMPs for forest practices within Idaho. These rules and regulations are also approved under federal law by the Environmental Protection Agency as the BMPs for nonpoint forest management sources. FCP needs to understand whether the Tribe intends that its Tribal Forest Plan Standards apply to FCP and other private lands either within or outside the external boundaries of the 1894 Coeur d'Alene Reservation, and whether the Tribe intends to in any way replace or supplement Idaho's Idaho Forest Practices Act and its implementing rules and regulations with its own Standards with application to FCP lands. FCP is similarly concerned with respect to Par. 6. Antidegradation Policy (4) regarding outstanding resource waters wherein "the Department may require water quality controls, maintenance of natural flow regimes, protection of instream habitats, and pursuit of land use practices protective of the watershed".</p>	Please see the Response to Forest Capital Partners LLC's comment # 113 above.
116	Forest Capital Partners LLC	12/14/2005	<p>Par. 13. Implementation. Here the WQS state "The requirements of these water quality standards shall be met for all waters of the Coeur d'Alene Tribe with approved water quality standards. No person shall engage in any activity that violates or causes the violation of these standards . . . all activities which generate nonpoint source pollution shall be conducted so as to comply with this chapter. Compliance shall be determined by the Department." Once again, FCP needs to understand whether the Tribe intends that its Tribal Forest Plan Standards apply to FCP and other private lands either within or outside the external boundaries of the 1894 Coeur d'Alene Reservation, and whether the Tribe intends to in any way replace or supplement Idaho's Idaho Forest Practices Act and its implementing rules and regulations with its own Standards with application to FCP lands.</p>	Please see the Response to Forest Capital Partners LLC's comment # 113 above.
117	Forest Capital Partners LLC	12/14/2005	<p>If the Tribe intends for these WQS and BMP Standards to in any way apply to FCP lands, FCP needs to understand how the Department would make such determinations, including the Department's procedures, and how FCP would participate in the process. FCP requests that the Tribe provide copies of any existing procedures to FCP for review, as well as any notice to the public giving them the right to participate.</p>	Please see the Response to Forest Capital Partners LLC's comment # 113 above.
118	Forest Capital Partners LLC	12/14/2005	<p>IV. Issues Regarding Draft IRMP</p> <p>Set forth below are issues and questions which a review of the draft IRMP raise in the context of practical application to FCP's operations upon its land. It is understood that, at this point, the IRMP constitutes goals, with no implementation mechanism yet in place. Nevertheless, FCP deems it prudent, and hopefully helpful, to point out concerns which might be addressed now, on the assumption that at least parts of the IRMP will</p>	Thank you. Comment Noted.

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			be implemented by the Tribe in due course.	
119	Forest Capital Partners LLC	12/14/2005	<p>A. General Comments</p> <p>The DEIS is well-organized and very readable, for a document of its size and scope. We found the concise description of both the 100-year "desired future conditions", and the 20 year goals for achieving those conditions, to be a good framework for the analysis of alternatives and provisions of the plan.</p> <p>There are two goals of the desired future conditions for "biodiversity" (page 30 of the full DEIS) where there are clear mutual objectives-the control of noxious weeds and the need for environmental education in area schools. FCP agrees with both goals and points out that the Idaho Forest Products Commission, which we support, maintains an excellent educational program for students and teachers. We encourage the Tribe to work with the IFPC in exploring how their programs might complement the achievement of Tribe educational goals.</p> <p>Obviously, private landowners within the Reservation boundaries will view the plan's provisions in terms of any potential impacts on their lands. We are no different in this regard. However, the numerous references in the plan to clarify that its provisions are "recommendations" which should be "encouraged" on lands other than those owned by the Tribe or allotted to its members is, in our view, a sound approach. Our assumption is that, at some future point, the "recommendations" will be incorporated in various Tribal ordinances and rules. We will be interested in the Tribe's views on the legal mechanisms to build enforceability into the Plan.</p>	Thank you. Please see the Tribe's IRMP response to comments.
120	Forest Capital Partners LLC	12/14/2005	<p>B. Management of Forest Land Goals</p> <p>FCP believes that its ownership within the reservation is exclusively within the "resource management area" designated as "Forests" in the "Land Management Recommendations" for Alternative B. Therefore, we view our management goals to be quite compatible with the Tribe's desire to manage these lands for forestry activities, primarily timber production. We do note three goals related to the management of forested lands that deserve broader discussion. They are:</p> <p>1. "Establish biodiversity corridors through already-developed areas that are linked with adjacent natural areas" (page 22). We would like to know more about what is envisioned and how "already-developed areas" are defined. We would hope that prior or planned logging would not detract from the capability of commercially managed</p>	Thank you. Please see the Tribe's IRMP response to comments.

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			forest lands to help serve this function.	
121	Forest Capital Partners LLC	12/14/2005	2. "Coordinate Tribal forest management practices with private forest land owners on the reservation to provide consistent management" (page 31). Forest Capital Partners actively manages its forests under sustainable guidelines set forth by the Sustainable Forestry Initiative. The SFI process includes the establishment of a rigorous set of standards, and third-party field audits to ensure compliance. Forest Capital became an SFI licensee in early 2005. We would like the opportunity to complete a detailed comparison of the Tribe's forest management practices with those sanctioned by SFI and those required by the State of Idaho to identify any differences.	Thank you. Please see the Tribe's IRMP response to comments.
122	Forest Capital Partners LLC	12/14/2005	3. "Expand the Tribal Water Resource Program to bring Reservation streams and lakes into compliance with the Tribe's Water Quality Standards by the year 2024"(page 32). This is similar to the previous point on coordinating forest management practices. FCP is bound by Idaho's water quality standards and the forest practices deemed necessary to meet them, including regular reviews of these practices and modification to them if they are not effective. Again, the provision in the DEIS for the IRMP found on page 24, "Continue to implement the Tribal Forest Management Plan on Tribal and allotted lands," and, "Encourage use of Tribal recommendations for minimum buffers on all Reservation streams", makes a useful distinction between private land ownerships within the Reservation boundaries and how they might be managed.	Thank you. Please see the Tribe's IRMP response to comments.
123	Forest Capital Partners LLC	12/14/2005	<p>C. Specific Comments-Forest Plan Guidelines And Standards</p> <p>Specific comments regarding proposed forest practices guidelines and standards are:</p> <p>1.2.1 FCP supports the first provision of 1.2.1: "Ground based skidding shall not be used where or when it would cause rutting, deep soil disturbance, or accelerated erosion." However, we note that the provision restricts tractor and rubber tired skidder activity to slopes less than 45 and 25%, respectively and in a manner more restrictive than does the Idaho Forest Practices Act Rules (IFPA) at 030.03, unless approved by the Interdisciplinary Team. FCP requests that the Tribe provide the technical basis and need for this restriction, and does not support this restriction prior to reviewing this information. Moreover, what is the Interdisciplinary Team, and what are the qualifications of personnel that comprise it?</p>	Thank you. Please see the Tribe's IRMP response to comments.

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124	Forest Capital Partners LLC	12/14/2005	1.2.2 This provision requires that "Cable or aerial yarding shall be used on most sites with slopes exceeding 45%, those on unstable soils and on slopes exceeding 25% that are located between a road and a riparian management zone." FCP requests that the Tribe provide the technical basis and need for this restriction, and does not support this restriction prior to reviewing this information.	Thank you. Please see the Tribe's IRMP response to comments.
125	Forest Capital Partners LLC	12/14/2005	1.2.3 This provision generally requires designation of skid trails in advance of cutting to provide permanent stand access and that average spacing between trails should not exceed 100 feet between trails, whereas the IFPA only restricts trails to "minimum feasible width and number". FCP requests that the Tribe provide the technical basis and need for this restriction, and does not support this restriction prior to reviewing this information.	Thank you. Please see the Tribe's IRMP response to comments.
126	Forest Capital Partners LLC	12/14/2005	1.6 Stream Protection. This provision requires that - "Forest practice operations shall protect streambeds and streamside vegetation to leave them in the most natural condition possible to maintain water quality and aquatic habitat. Riparian management zones (RMZ) widths vary depending on stability of adjacent hillslopes, but should always encompass the 100-year floodplain." FCP supports the goal of maintaining water quality and aquatic habitat. However, FCP does not agree that it is always necessary or even desirable to leave streamside vegetation in the most natural condition possible to maintain water quality and aquatic habitat, nor does FCP believe it necessary to always encompass the 100-year floodplain within the RMZ.	Thank you. Please see the Tribe's IRMP response to comments.
127	Forest Capital Partners LLC	12/14/2005	1.6.4.1 This provision requires that "Class I riparian management zones shall range from 100 to 200 feet horizontally on both sides of the active channel. Average width should be 125 feet for streams adjacent to stable hillslopes and 150 feet for streams adjacent to moderate and unstable hillslopes." FCP does not agree that riparian zones need be this wide in order to provide for near total provision of large woody debris (LWD) stream shade and temperature control, sediment filtering and other important riparian management benefits. In fact, FCP believes that the technical literature demonstrates that well over 90% of all LWD and potential stream shade is provided within one half of site potential tree height of streams, translating in Idaho to approximately 75 feet even on the most productive riparian sites. Similarly, sediment is effectively filtered by riparian zones as long as upland sources of erosion and concentrated discharges of sediment, such as from road culverts, are effectively regulated. FCP is also unaware of technical literature that supports the Tribe's provision for average RMZ width of 125 and 150 feet based on stable vs. unstable hillslopes.	Thank you. Please see the Tribe's IRMP response to comments.
128	Forest Capital Partners LLC	12/14/2005	1.6.4.2 This provision of the Tribe's standards requires 100-foot no harvest zones adjacent to Class I streams and allows only partial overstory removal within the remainder of the RMZ. For reasons discussed above, FCP believes there is no technical justification for these restrictions. FCP would welcome the opportunity to review the Tribe's data and technical reports that they believe support these restrictions; in the absence of sound science that provides justification for these restrictions, FCP opposes them.	Thank you. Please see the Tribe's IRMP response to comments.

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129	Forest Capital Partners LLC	12/14/2005	1.6.5 Class II Streams. Similarly to our comments regarding Class I streams, FCP believes that the technical literature and data applicable to Idaho's forests does not justify the width (50 to 100 feet with an average width of 75 feet) and no harvest zone (innermost 50 feet) requirements of this section of the Tribe's Standards.	Thank you. Please see the Tribe's IRMP response to comments.
130	Forest Capital Partners LLC	12/14/2005	<u>1.7.5</u> "The Interdisciplinary Team shall consult the Tribal Cultural Committee and the Tribal Culture Program* to establish protection for any known cultural resources." Once again, FCP needs to understand whether the Tribe intends for this and many similar provisions of its Standards to in any way apply to FCP lands.	Thank you. Please see the Tribe's IRMP response to comments.
131	Forest Capital Partners LLC	12/14/2005	4.7.2 FCP believes that the Standard regarding application of pelletized fertilizer is undefined for Class I streams and requires clarification before FCP can comment with regard to its practicality and need.	Thank you. Please see the Tribe's IRMP response to comments.
132	Forest Capital Partners LLC	12/14/2005	1.1.2 Overall Objectives for the Riparian Management Zone (RMZ), and 1.1.4 Management within the Riparian Management Zone. Here we note that the Standards reference (McDade et al. 1989), asserting that McDade's results demonstrate that 90% of the large wood in the channel originated within 92 feet of the stream in old growth and mature forests. McDade's old growth data do demonstrate this relationship for western Oregon forests. However, her "mature conifer" data show that over 90% of all LWED was provided within substantially less width. Most importantly, her studies were conducted in western Oregon forests where site potential tree heights of 180 or more feet occur. These very data demonstrate that over 90% of all LWD recruitment occurs within a distance of 0.5 site potential tree heights. Rather than justify the Tribe's RMZ Standards, these very data support narrower RMZ widths. Additional data provided by Murphy and Koski, 1989; Martin et al, 1998; Andrus and Froehlich, unpublished, reported in McGreer and Andrus, 1992; and by McKinley, 1997, further support that greater than 90% of all LWD originates from within distances of less than 50% of site potential tree height.	Thank you. Please see the Tribe's IRMP response to comments.
133	Forest Capital Partners LLC	12/14/2005	1.1.2 Riparian Management Zone Boundaries by Stream Class. As indicated above, FCP believes that the Tribe's Standards require riparian zone widths and restrictions that are not supported by the technical literature. FCP does not support these provisions in the absence of data demonstrating their justification. With respect to the provision of the Standards regarding shade; '* Shade Management-No trees that provide shade to Class I or II stream channels shall be removed", FCP does not believe that this provision is necessary for adequate control of stream temperatures, particularly for Class II streams. In fact, the technical literature demonstrates that shade can be removed from many riparian zones while providing for cold temperatures that provide full support of beneficial uses of the water including cold water biota and aquatic species that require cool waters.	Thank you. Please see the Tribe's IRMP response to comments.

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134	Forest Capital Partners LLC	12/14/2005	Forest Roads Regarding the Tribe's Standards for forest roads, FCP finds these standards to be well organized and generally justified. While FCP has some specific concerns, we do not regard them as nearly as important as those that have been made regarding RMZ's and how the Tribe may intend to apply these Standards to private lands. Accordingly, FCP does not provide detailed comments on the roads portion of the Tribe's Standards at this time, but may do so at some future opportunity.	Thank you. Please see the Tribe's IRMP response to comments.
135	Forest Capital Partners LLC	12/14/2005	V. Legal Points For Consideration FCP is mindful that the Tribe desires to assert any and all jurisdiction over activities within its reservation to the full extent which is allowed by law. FCP does not criticize the Tribe's objective. However, FCP needs to obtain a clear understanding of exactly what regulatory activity is planned by the Tribe, how the Tribe's plans may impact FCP's operations, and how the Tribe's regulatory scheme fits with regulatory schemes of other government agencies. In short, FCP needs to know what is expected and what it must comply with. It is not always clear from Tribe's proposals what is intended.	Please see the Response to Forest Capital Partners LLC's comment # 113 above.
136	Forest Capital Partners LLC	12/14/2005	In addition it is important for FCP to understand the Tribe's view, and the view of interested government agencies, as to the law which applies to the WQS proceedings and to the future implementation of the IRMP. Therefore, brief legal comments in outline form are set forth below. FCP assumes that the legal points will be addressed and explained by the Tribe and other government agencies as a part of the administrative action now underway.	Thank you. Comment Noted.
137	Forest Capital Partners LLC	12/14/2005	A. Lack Of Administrative Record-WQS There is no administrative record available, so far as we know, with respect to the Tribe's promulgation of WQS. If one is available, no public notice has been given as to where it is located and how FCP may review it.	Please see the Reply to Forest Capital Partners LLC's comment # 138 below.
138	Forest Capital Partners LLC	12/14/2005	Yet, the law is clear that when a state or EPA adopts WQS they must proceed through formal rule making to develop a complete administrative record. See <i>Asarco, Inc. v. State</i> , 138 Idaho 719 (2003) and the Idaho Administrative Procedures Act as to the State of Idaho, and <i>City of Albuquerque v. Browner</i> , 97 F.3d 415, 424 fn 15 (10th Cir. 1996), and 33 U.S.C. s1313 (d) (4) as to EPA. In <i>Browner</i> , supra, the court recognized that "it is the states and tribes which conduct rulemaking proceedings." Rulemaking proceedings generate an administrative record, something which has not been done here.	There is an administrative record in this matter. The Tribe and the EPA have followed the same process and, as a corollary, built the same administrative record that any state follows when obtaining approval of its WQS, including strict adherence to the procedures set forth at 40 C.F.R. 131.6; 40 C.R.R. 131.20 and the public participation regulations at 40 C.F.R. part 25. Thus, the Tribe has applied for and received TAS status, developed its proposed standards, made them available to the public and held a public hearing regarding these proposed standards on November 28, 2005. Also as part of this process, the Tribe will evaluate these public comments, adopt revisions if appropriate, and then submit the revised WQS to EPA for review. Additionally, the Tribe and the EPA have taken measures beyond the applicable regulations and posted relevant information online. The Tribe's proposed WQS and Attachments is available at: http://www.cdatribe-nsn.gov/lake/p_water.shtml . The information offered by the EPA is available at: http://yosemite.epa.gov/r10/water.NSF/Water+Quality+Standards/CDAT-TAS . The Tribe's present proposed standards have been developed in close coordination with the state

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				of Idaho as part of addressing its comments on the Tribe's TAS application with respect to all Reservation waters.
139	Forest Capital Partners LLC	12/14/2005	There is nothing in applicable law to suggest that the Tribe should act differently from states and EPA when it is the agency adopting WQS. It can be noted in this regard that EPA, in its Decision Document of August 6, 2005 associated with the TAS proceeding, found that the Tribe is expected to be capable of carrying out its functions in accordance with Chapter 26 of Title 33 of the U.S. Code. However, the Tribe is not actually doing so with respect to completely open, with a full record, administrative procedures associated with adoption of WQS. Usually, a full and complete administrative record provides a complete explanation of purpose, and lends clarity to what is proposed.	Please see the Reply to Forest Capital Partners LLC's comment # 138 above.
140	Forest Capital Partners LLC	12/14/2005	B. The Proposed WQS Are Too Broad EPA makes clear in its TAS Decision Document (and associated materials), and the Tribe makes clear in its preamble to the proposed WQS, that the WQS apply only to Lake Coeur d'Alene and the St. Joe River within the reservation boundaries. Moreover, the EPA TAS materials speak only to use of the WQS in connection with issue of NPDES permits. And, EPA points out in its TAS Decision Document (and associated materials) that the Tribe is delegated authority only to promulgate standards, not enforce them.	As noted in prior responses, the Tribe applied for and received TAS for the lower third of the Lake and those portions of the St. Joe River within the Reservation. The Tribe's WQS are relevant for purposes of determining the impact on Reservation TAS Waters. The Tribe's WQS are applicable for all CWA purposes, including Tribal certification pursuant to CWA Section 401 permits. For lands outside the geographic scope of the Reservation TAS Waters, including off-Reservation lands, that impact Reservation TAS Waters, the Tribe will exercise its authority consistent with not only the Clean Water Act, but its inherent powers, treaty rights and agreements pursuant to federal law to manage and protect these waters. Pursuant to the Clean Water Act, the Tribe is authorized to manage and protect water resources and uses within the borders of its Reservation.

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141	Forest Capital Partners LLC	12/14/2005	<p>If EPA and the Tribe mean what they say, then provisions in the WQS which address anything else are outside the authority delegated. Examples are: Par. 2, definitions of "intermittent stream", "reservation waters", "disputed waters" and "wetlands". Par. 6, reference in the policy to "reasonable best management practices for nonpoint source control". Par. 11, reference to wetlands "which are considered Reservation TAS waters" is not applicable, because EPA has not defined such wetlands in its TAS Decision Document. Par. 13, Implementation, par. 14, Enforcement, and par. 15, Compliance Schedules, have no applicability under the circumstances, because EPA has not delegated authority to the Tribe for enforcement of the standards, and language within those sections implies that the Tribe does have enforcement authority. ("Compliance shall be determined by the Department", enforcement shall be through "all methods available to the Department".) Therefore, the WQS should be revised to delete the provisions specified above. To leave such provisions in the standards creates uncertainty surrounding the Tribe's authority and surrounding the regulatory scheme.</p>	Please see the Response to Forest Capital Partners LLC's comment # 143 below.
142	Forest Capital Partners LLC	12/14/2005	<p>D. Tribe Authority Over Fee Lands Is Not Clear</p> <p>EPA's TAS Decision Document explains (pages 19-20) applicability of the delegated authority to fee lands both within and outside of the reservation "TAS waters". On the one hand EPA states "such lands are beyond the geographic scope of this approval". But, on the other hand, EPA points out that "effluent limitations in NPDES permits must assure compliance with downstream water quality standards."</p>	Please see the Response to Forest Capital Partners LLC's comment # 143 below.

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143	Forest Capital Partners LLC	12/14/2005	This explanation is understandable with respect to NPDES permits and point source discharges. However, the explanation is not clear with respect to nonpoint source discharges, and more important, as to forest practices on fee lands within the reservation or on such lands outside the reservation. In short, what is expected by the Tribe and by EPA, given the language of the proposed WQS, regarding the Tribe's interest in nonpoint discharges to "TAS waters, and regarding forest practices on fee lands within the reservation?	<p>Pursuant to the Clean Water Act, the Tribe is authorized to manage and protect water resources and uses within the borders of its Reservation. As noted in prior responses, the Tribe applied for and received TAS for the lower third of the Lake and those portions of the St. Joe River within the Reservation. However, activities on lands adjacent to Reservation TAS Waters, which may be owned in fee by nonmembers yet still within the Reservation, and activities on lands outside of the Reservation can also be affected by the Tribe's WQS. Section 13 of the Tribe's WQS sets forth the Tribe's expectations for compliance in either situation, "[n]o person shall engage in any activity that violates or causes the violation of these standards . . . [a]ll discharges from point sources, all in-stream activities and all activities which generate nonpoint source pollution shall be conducted so as to comply with this chapter."</p> <p>The Tribe also applied for and received CWA Section 319 approval. Pursuant to Section 319(h), EPA awards grants to states and tribes with approved Nonpoint Source Assessment Reports and Nonpoint Source Management Programs. The funds are to be used to implement programs and projects designed to reduce nonpoint source pollution (i.e., to develop and implement watershed-based plans and Total Maximum Daily Loads (TMDLs) for nonpoint source problems and threats). As required by section 319(h), the Tribe's Nonpoint Source Management Program will describe the Tribe's program for nonpoint source management and serves as the basis for how funds are spent.</p> <p>For lands outside the geographic scope of the Reservation TAS Waters, including off-Reservation lands, that impact Reservation TAS Waters, the Tribe will exercise its authority consistent with not only the Clean Water Act, but also its inherent sovereignty and agreements pursuant to federal law to manage and protect these waters. Without a full presentation of the facts, it is predecisional and impossible to determine how the Tribe's WQS will impact the Commenter's lands specifically. As evidenced by the Tribe's collaboration with the City of St. Maries, however, the Tribe does intend on administering its WQS on a case-by-case basis. But it is outside of the scope and intention of the public comment / reply phase to offer hypothetical answers to hypothetical issues.</p>
144	Forest Capital Partners LLC	12/14/2005	Because of lack of clarity, and because of language in the proposed WQS which refers to best management practices without pointing to particular ones, the WQS are rendered vague and they lack required certainty. Clarification of this point by the Tribe and interested agencies is warranted.	Please see the Response to Forest Capital Partners LLC's comment # 114 above.
145	Forest Capital Partners LLC	12/14/2005	<p>E. The IRMP Raises Tribe Jurisdiction Issues</p> <p>EPA's decision to treat the Tribe as a state within the scope of EPA's Decision Document is understood by FCP, as explained by EPA in that document, to apply only to the Tribe's promulgation of WQS and certification of NPDES permits. Such decision, made pursuant to 33 U.S.C s1377 (e), is a matter different from the Tribe's right to regulate activities on fee lands within the reservation which are not based on the Clean Water Act.</p>	Please see the Response to Forest Capital Partners LLC's comment # 143 above.
146	Forest Capital Partners LLC	12/14/2005	With the Clean Water Act as a basis for Tribe regulation, EPA has concluded that a presumption exists as to the Tribe's inherent authority to regulate. Wisconsin v. EPA,	The commenter's assertions are not relevant to assessing the Tribe's proposed WQS. To the extent this comment is germane to this process, please see the Response to Forest Capital

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			266 F.3d 741, 744 (7th Cir. 2001). Without that basis, the law is the other way; a presumption of no tribal jurisdiction over nonmembers exists, subject to the two exceptions set forth in <i>Montana v. U.S.</i> , 450 U.S. 544 (1981). <i>Ford Motor Company v. Todecheene</i> , 394 F.3d 1170 (9th Cir. 2005), <i>Atkinson Trading Company v. Shirley</i> , 532 U.S. 645 (2001).	Partners LLC's comment # 143 above.
147	Forest Capital Partners LLC	12/14/2005	The burden is on the Tribe to show that an exception is applicable. Here, there are no consensual relationships between FCP and the Tribe, so that the "relationship" exception set forth in <i>Montana</i> , supra, is not applicable. As to the other exception, activities directly affecting the Tribe's health or welfare, the burden is on the Tribe to show that it is applicable, and it is a heavy burden. The impact of the activity to be regulated must be "demonstrably serious" (or "serious and substantial") and directly affect the Tribe's health or welfare. <i>Montana v. EPA</i> , 137 F.3d 1135, 1139 (9th Cir. 1998).	The commenter's assertions are not relevant to assessing the Tribe's proposed WQS. To the extent this comment is germane to this process, please see the Response to Forest Capital Partners LLC's comment # 143 above.
148	Forest Capital Partners LLC	12/14/2005	For the reasons explained, FCP requests that the Tribe take FCP's rights as a non-Tribe member operating on fee lands into account as it proceeds with its decision making process related to implementation of the IMP.	Thank you. Comment Noted.
149	Forest Capital Partners LLC	12/14/2005	F. EPA's TAS Record Is Weak FCP will make one final point, least it be said that FCP should have spoken during the administrative proceedings. EPA's record in support of its TAS Decision Document is weak. The reason FCP believes that the record is not sufficient to support the decision is that EPA has made clear in the course of adoption of its TAS regulations (40 C.F.R. 131.8) that it will evaluate on a case-by-case basis activities on fee lands within the reservation to ascertain whether the tribe has inherent authority to regulate there to protect the health or welfare of the tribe. (See <i>Wisconsin v. EPA</i> , 266 F/ 3d 741, 744 (7th Cir. 2001). In these administrative proceedings the tribe has not made any showing at all that any activities on FCP fee lands actually pollute "TAS waters", or that the activities have the potential to pollute such waters. Without such a showing, it is not possible for the Tribe to demonstrate that any FCP activities directly affect the Tribe's health or welfare, and that the Tribe is therefore legally entitled to regulate activities upon FCP fee lands.	The commenter's assertions are not relevant to assessing the Tribe's proposed WQS. To the extent this comment is germane to this process, please see the Response to Forest Capital Partners LLC's comment # 143 above.
150	Forest Capital Partners LLC	12/14/2005	VI. Conclusion FCP respectfully requests that the Tribe and interested agencies consider the proposed WQS and draft IRMP in the light of these comments. FCP believes that revisions to, and clarifications of, the proposed actions are warranted. Of equal importance, however, is FCP's desire to develop a working relationship with the Tribe. Not only is FCP a neighbor to the Tribe, but it also shares with the Tribe a long history of the property being managed as productive timberlands. FCP looks forward to the opportunity to meet with Tribal representatives to explore shared interests, and to discuss the foregoing comments.	Comment Noted. The Coeur d'Alene Tribe is willing to meet with representatives of Forest Capital Partners, LLC. to ensure that the Tribe's WQS are complied with and its goals for Reservation TAS Waters are achieved.

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151	Hecla Mining Co (part 1)	1/11/2006	In accordance with the Notice of Public Hearing, which appears on the Coeur d'Alene Tribe's Internet website, Hecla Mining Company ("Hecla") hereby submits the first of two parts of its comments on the proposed water quality standards for approved surface waters of the Coeur d'Alene Tribe. The second part will be sent from Hecla's office in Coeur d'Alene. The fact that Hecla is submitting comments on the proposed water quality standards should not be construed in any way as an admission by Hecla that the water quality standards are being properly promulgated or that the Coeur d'Alene Tribe has been correctly designated for treatment as a state under the Clean Water Act for water quality standard setting purposes. Hecla specifically reserves all of its defenses and rights to challenge either the Tribe's designation or the process under which these water quality standards are being set.	Thank you. Comment Noted.
152	Hecla Mining Co (part 1)	1/11/2006	<p>Part 1 of Hecla's comments are as follows.</p> <p>1. The public notice process followed by the Coeur d'Alene Tribe in promulgating the draft water quality standards is inadequate under the Clean Water Act. As far as Hecla knows, the only notice given by the Tribe with respect to the proposed standards, the public hearing, and the right of the public to comment on the proposed standards appears in a notice on the Coeur d'Alene Tribe's Internet website. This is clearly inadequate.</p>	Please see the Reply to Forest Capital Partners LLC's comment # 138 above.
153	Hecla Mining Co (part 1)	1/11/2006	The Tribe itself recognizes that its public notice process must be conducted in accordance with the federal regulations for public participation in programs under the Clean Water Act as set forth in 40 CFR Part 25. See Tribe's proposed water quality standards at page 25. 40 CFR Part 25 details the public process which must be followed in a water quality standard setting proceeding. Clearly, it contemplates more than simply setting forth the notice in a single Internet website, with no publicity. In particular, 40 CFR §25.4 provides, among other things, that the entity setting the water quality standards must develop and maintain a list of persons and organizations which have expressed an interest in or may be affected by, the setting of the water quality standards. This list is then used to provide notice to these companies and individuals of actions that are being contemplated. In this case, the Coeur d'Alene Tribe has been, for many years, specifically on notice of Hecla's interest in water quality standards in the Coeur d'Alene Basin. At a minimum, Hecla should have been directly informed of the development of the proposed standards and their availability for comment.	Please see the Reply to Forest Capital Partners LLC's comment # 138 above.
154	Hecla Mining Co (part 1)	1/11/2006	In addition, there are many individuals and other entities in the Coeur d'Alene Basin that have expressed interest in this subject matter. Appropriate mailings and media coverage should have been undertaken. Hecla specifically requests that, at a minimum, the Coeur d'Alene Tribe again extend the comment period on the proposed water quality standards and undertake a much-expanded public notice process in order to ensure that interested parties have an opportunity to be aware of the proposed standards and provide comments.	Please see the Reply to Forest Capital Partners LLC's comment # 138 above.

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155	Hecla Mining Co (part 1)	1/11/2006	Finally, it would appear that the Tribe has not assembled and made available to the public the administrative record which supports the proposed water quality standards. See, 40 CFR §25.4. The administrative record should be produced for public inspection and the comment period extended to allow for adequate public review.	Please see the Reply to Forest Capital Partners LLC's comment # 138 above.
156	Hecla Mining Co (part 1)	1/11/2006	2. Given the complex technical and legal issues associated with Coeur d'Alene Basin water quality, considerable more data collection and analysis should occur and technical input be had before any proposed tribal water quality standards are adopted or approved. The Tribe only received its TAS designation in August 2005. The Tribe has three years from that August 2005 date to promulgate TAS water quality standards. The Tribe therefore need not and should not rush into this exercise, given the significance of the Tribe's proposal, the need to coordinate with the State and others and the need for better data.	Thank you. Comment Noted.
157	Hecla Mining Co (part 1)	1/11/2006	3. Section 5 of the proposed water quality standards ("Narrative Criteria") purports to set a standard for "Bottom Deposits" as follows: "all Reservation TAS Waters shall be free from anthropogenic contaminants that may settle and have a deleterious effect on the aquatic biota or that will significantly alter the physical and chemical properties of the water or the bottom sediments." There are three major problems with this provision. First, it is so vague and undefined that it is impossible to determine what amount of material in the water column, or in the sediment, would violate this provision. Second, there is no scientific basis behind this general statement and the Tribe provides none. Third, this provision in fact attempts to set a sediment quality standard. There is nothing in the federal Clean Water Act that allows sediment quality standards to be set as a part of the water quality standard setting process. This provision should be deleted	The Narrative Criteria in Section 5 are included to protect Reservation TAS Waters for aesthetic purposes, fish and aquatic life protection, cultural and recreation use and other purposes and are consistent with 40 C.F.R. 131.11(b)(2). Also, the Tribe's six narrative criteria contain those recommended by EPA, including "bottom deposits." <i>See</i> EPA's Water Quality Standards Handbook, 1994. Moreover, EPA has authority to pursue the development of sediment criteria in streams, lakes and other waters of the United States under sections 104 and 304(a)(1) and (2) of the CWA as follows: section 104(n)(1) authorizes the Administrator to establish national programs that study the effects of pollution, including sedimentation, in estuaries on aquatic life; section 304(a)(1) directs the Administrator to develop and publish criteria for water quality, including information on the factors affecting rates of organic and inorganic sedimentation for varying types of receiving waters; and section 304(a)(2) directs the Administrator to develop and publish information on, among other issues, "the factors necessary for the protection and propagation of shellfish, fish, and wildlife for classes and categories of receiving waters...."
158	Hecla Mining Co (part 1)	1/11/2006	4. The proposed water quality standards purport to define "ceremonial and spiritual water use", "cultural water use", and "water quality" (to include "cultural characteristics of a waterbody"). (Proposed standards at pages 2 and 6.) Section 18 of the proposed standards then purports to establish the designated uses for Reservation TAS waters to include "ceremonial or cultural purposes." (Proposed standards at page 26.) The definition of ceremonial, spiritual, and cultural use is unreasonably vague and broad. The actual uses of the water are not defined, described or documented. In addition, it is unlikely that such water usage would involve more contact than swimming, wading, fishing, or boating, which are already included. The reference to ceremonial, spiritual, and cultural use should be deleted.	Please see the Response to Avista's comment # 31 above.
159	Hecla Mining Co (part 1)	1/11/2006	5. It is clear that the section of the Tribe's proposed water quality standards entitled, "Water Quality Criteria for Toxic Pollutants," which begins on page 9 was taken from EPA's recommended national water quality criteria. The listings for lead, both in the Tribe's table of toxic pollutants (page 10) and EPA's national recommended criteria, state that the lead standard is "expressed in terms of the dissolved metal in the water column." Yet, on page 9, in two places, the standards reference "lead which is	Please see the Response to EPA's comment # 76 above.

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			expressed as total recoverable.” These two statements are inconsistent with footnote D (page 16), which is one of the footnotes to the lead entry on page 10. This should be clarified and EPA's recommended criteria should be followed.	
160	Hecla Mining Co (part 1)	1/11/2006	6. The table entitled "Water Quality Criteria for Toxic Pollutants," which appears on page 9 of the proposed water quality standards, includes human health standards for arsenic. The standards are 0.14 ug/L to protect human health for the consumption of organisms and 0.018 ug/L to protect human health for both the consumption of organisms and water. These standards have a number of flaws and should not be adopted.	The commenter is correct that the Tribe's proposed adoption of the EPA's standards on arsenic use the same numeric criteria as suggested in EPA's National Recommended Water Quality Criteria - 2006. To the extent there are issues with the numeric criteria provided for arsenic, the Tribe noted these in footnotes C,M, and S of its water quality criteria table. When the EPA completes its assessment of the arsenic criteria, the Tribe will evaluate any modified criteria and may propose changes to this criteria during a subsequent triennial review of its WQS to ensure the standards are aligned with the best available science.
161	Hecla Mining Co (part 1)	1/11/2006	The standards are from EPA's National Toxic Rule and are the same as EPA imposed on Alaska, Idaho and Washington in 1992. Since then, Alaska and Idaho changed their standards to the drinking water maximum contaminant level (MCL) and the changes were approved by EPA. Following a petition to revise the arsenic human health standards in 1997, Washington declared that they will not implement the arsenic human health standards in permits because of the issues that still need to be resolved by EPA.	Please see the Reply to Hecla's comment # 160 above.
162	Hecla Mining Co (part 1)	1/11/2006	The part of the standard that is based on protecting human health from the consumption of organisms has several flaws. The first flaw is that it assumes all the arsenic in fish tissue is inorganic arsenic. In freshwater species, inorganic arsenic is generally less than 10% of the total arsenic. The second flaw is that the standard is based on a bioconcentration factor of 44, which is in turn based on a weighted average of fish consumption (with a bioconcentration factor of 1) and shellfish consumption (with a bioconcentration factor of 350, based on an east coast, marine oyster). It is appropriate for freshwater environments to not include a marine shellfish in the derivation of the bioconcentration factor, and that changes the bioconcentration factor to 1.	Please see the Reply to Hecla's comment # 160 above.
163	Hecla Mining Co (part 1)	1/11/2006	EPA Region VII adjusted the bioconcentration factor to 1 and conservatively allowed for 30% of the total arsenic in tissue to be inorganic arsenic. The approach results in an organism only standard of 20.5 ug/L.	Please see the Reply to Hecla's comment # 160 above.
164	Hecla Mining Co (part 1)	1/11/2006	The proposed standard that also considers drinking the water is 0.018 ug/L. That is considerably lower than natural background surface waters throughout the western United States, and groundwater throughout the region is typically higher in arsenic than surface waters ² . Having a standard that is lower than background does not make sense.	Please see the Reply to Hecla's comment # 160 above.
165	Hecla Mining Co (part 1)	1/11/2006	7. Section 4—Site Specific Criteria. As currently written, the Tribe's proposed water quality standards provisions for setting site-specific standards are confusing. When, where and under what circumstances a site-specific criterion may be developed and implemented are not clearly defined. Secondly, there are two sets of subsections (3) - (5) each with different language but both under the same heading of "Site-Specific Criteria". Item (1) appears to be specific to a limited suite of water quality parameters that are used to define the designated uses set forth in section 19. The First item (3) indicates that "Any modifications to the criteria in the Table 3 will be adopted in regulation." Where is Table 3? The second item (3) (after Item (5)) is again specific to	The Tribe has incorporated the EPA's suggested rewrite of Section 4 into its revised proposed WQS. <i>See</i> EPA Comment # 98, above. While adding no substantive changes, the duplicative subsections and reference to Table 3 have been removed and clarity improved throughout the section.

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			designated uses and the limited suite of water quality parameters defined for those uses. This needs to be revised and clarified	
166	Hecla Mining Co (part 1)	1/11/2006	<p>We suggest that the Tribe adopt the State of Idaho's language for site-specific criteria to clear up inconsistencies and provide a more defined rationale, which is consistent with the CWA, for when and under what circumstances site-specific criteria are applicable. Allowances for the derivation of site-specific standards are provided in the Federal guidance to adjust water quality standards to locally present conditions, such as specific water quality attributes and/or species tolerances, among others. Recognition of these factors prompted the development and derivation of site-specific criteria for the South Fork Coeur d'Alene River, where it has been demonstrated that the cold water fishery goals can be achieved at concentrations above the existing aquatic life criteria. As such, Idaho DEQ has adopted site-specific criteria for cadmium, lead and zinc for the South Fork as protective even though these values are higher than the State or Federal water quality criteria. Because this process has been demonstrated to be protective not only in the South Fork Coeur d'Alene River, but at many locations across the country, it is important that the Tribe's proposed standards utilize consistent language to that of IDEQ's water quality standards concerning the development of site-specific criteria. In addition, the Tribe's water quality standards should provide for recognition and incorporation of site-specific standards set in upstream areas by other agencies, when that site-specific setting process has been demonstrated to have been accomplished in accordance with accepted scientific standards. In this way, water quality standards across jurisdictional lines will be consistent and duplicative site-specific studies avoided.</p>	<p>The Tribe has incorporated the EPA's suggested rewrite of Section 4 into its revised proposed WQS. See EPA Comment # 98, above. The Tribe believes the Section as amended clearly describes the Site-Specific criterion process. The Tribe is one of three sovereign governments with regulatory authority over portions of the Lake and its tributaries and has always attempted to craft intergovernmental agreements that achieve common goals. The Tribe has worked extensively with the State and EPA to consider implementation issues that could arise from having different standards in effect in shared waters. With that in mind, the Tribe, to the extent possible, attempted to develop water quality standards similar to Idaho to address water quality issues such as phosphorous levels, dissolved oxygen, chlorophyll A, cyanobacteria blooms, Eurasian milfoil, water clarity, dissolved metals and water temperature, among others. The Tribe's ultimate responsibility, however, is to protect its TAS Reservation Waters. To accomplish this required more than crafting WQS that were mirror-images of Idaho's standards and often the Tribe looked to the appropriate Federal standard when applicable. As a sovereign government, the Tribe may set water quality standards more stringent than federal or state standards. <i>Albuquerque v. Browner</i>, 97 F.3d 415 (10th Cir. 1996). Moreover, it is not uncommon for adjacent entities to have different standards. There is no requirement that the Tribe's standards be identical to Idaho's nor is Idaho required to have the same standards as Washington. When a boundary is shared, however, the upstream entity is required to ensure that downstream standards are met when designating and setting criteria for waters. For example, Idaho is required to ensure that its water quality standards and activities impacting waters within its jurisdiction can attain and maintain the standards of the downstream Reservation TAS Waters. In turn, if those Reservation TAS Waters flow into waters where Idaho has jurisdiction, the Tribe is subject to the same requirement. See 40 CFR 131.10(b); EPA Handbook Sec. 2.2. The EPA will have the final review of the revised proposed WQS and the Tribe may amend the WQS during a triennial review of its standards.</p>
167	Hecla Mining Co (part 1)	1/11/2006	<p>8. Section 6 - Antidegradation Policy. Under the currently proposed Tribal standards, if a water body is designated as an Outstanding Resource Water (ORW), "the water quality and uses shall be maintained and protected and pollutants that will reduce the existing quality thereof shall not be allowed to enter such waters." As written, no new discharges would be allowed to ORWs. This affects not only direct discharges to the ORW but upstream discharges to tributaries. As stated in USEPA's Water Quality Standards Handbook, (excerpt cited below) this limitation can have unintended consequences: "As the States began to focus more attention on implementing their antidegradation policies, an additional concept was developed by the States, which EPA has accepted even though not directly mentioned in previous EPA guidance or in the regulation. This concept, commonly known as "Tier 2 ½." is an application of the antidegradation policy that has implementation requirements that are more stringent than for "Tier 2" (high-quality waters), but somewhat less stringent than the prohibition against any lowering of water quality in "Tier 3" (ONRWs). EPA accepts this</p>	<p>Please see the Response to Avista's comment # 15 above.</p>

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			<p>additional tier in State antidegradation policies because it is clearly a more stringent application of the Tier 2 provisions of the antidegradation policy and, therefore, permissible under section 510 of the CWA."The supporting rationale that led to the development of the Tier 2 ½ concept was a concern by the States that the Tier 3 ONRW provision was so stringent that its application would likely prevent States from taking actions in the future that were consistent with important social and economic development on, or upstream of, ONRWs. This concern is a major reason that relatively few water bodies are designated as ONRWs. The Tier 2 ½ approach allows States to provide a very high level of water quality protection without precluding unforeseen future economic and social development considerations. That approach should be included in the Tribe's water quality standards.</p>	
168	Hecla Mining Co (part 1)	1/11/2006	<p>9. Section 9 -Biological Criteria. The proposed Tribal standards for biological criteria are inadequate in terms of how these criteria would relate to the process of use attainment. The State of Idaho currently does not include biological criteria as part of its water quality standards. Instead it uses biological quality as a means for determining use attainment which is consistent with the Federal CWA. How would Tribe's narrative for biological criteria be implemented in the context of the standards process? Furthermore, how would biological criteria, as defined in the proposed standards, be used relative to numeric water quality standards? We suggest that this section be revised or eliminated until such time these issues can be resolved.</p>	<p>Please see the Response to Avista's comment # 33 above.</p>
169	Hecla Mining Co (part 1)	1/11/2006	<p>10. Section 13 of the proposed water quality standards ("Implementation") states that all permits issued or reissued and all activities undertaken by the Tribe and federal or state agencies "shall be conditioned in such a manner as to authorize only activities that will not cause violations of this chapter." It is beyond the authority of the Tribe, even with treatment as a state designation under the Clean Water Act, to attempt to regulate the activities of either federal or state agencies, particularly as they relate to activities not directly related to TAS waters. This provision should be deleted from the proposed standards.</p>	<p>The Tribe disagrees and believes the language is reasonable given its authority to establish WQS and issue water quality certifications (under CWA Sections 303(c) and 401 respectively). For example, the Tribe's 401 authority would authorize it to be the certifying agency to prepare water quality certifications for federal permits and licenses of activities that cause a discharge to the Reservation TAS Waters. Additionally, when a boundary is shared, the upstream entity is required to ensure that downstream standards are met when designating and setting criteria for waters. For example, Idaho is required to ensure that its water quality standards and activities impacting waters within its jurisdiction can attain and maintain the standards of the downstream Reservation TAS Waters. In turn, if those Reservation TAS Waters flow into waters where Idaho has jurisdiction, the Tribe is subject to the same requirement. See 40 CFR 131.10(b); EPA Handbook Sec. 2.2.</p>
170	Hecla Mining Co (part 1)	1/11/2006	<p>11. The Tribe's proposed water quality standards differ from those of the State of Idaho in a number of respects. At the same time, the Coeur d'Alene Basin rivers and lakes are an integrated system. The State and the Tribe should work together to insure that their respective standards are in harmony. Otherwise, it becomes an impossible task for a discharger to know what standards apply and what constitutes compliance.</p>	<p>Thank you. Comment Noted.</p>
171	Hecla Mining Co (part 1)	1/11/2006	<p>12. We have several comments with respect to Section 12 of the proposed standards (Mixing Zones). First, Section 12(l)(g) states that "mixing zones will not be granted for discharges to outstanding resource waters..." However, no waters are designated as outstanding resource waters in this proposed rule. Because of how the mixing zone regulations relate to outstanding resource waters, there is a concern that an overly broad application to the outstanding resource waters designation in the future could</p>	<p>The Tribe may at some time designate an outstanding resource water in the future and the Tribe is within its authority under the CWA to provide for definitions regarding mixing zones that will account for treatment of such waters upon designation.</p>

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			render the mixing zone provision meaningless. There is no compelling justification for a total ban on mixing zones in outstanding resource waters. This provision should be deleted.	
172	Hecla Mining Co (part 1)	1/11/2006	Second, Section 12(1)(i) lists circumstances when the Tribe shall consider prohibiting mixing zones. A number of these circumstances are of concern. For example, one circumstance is when there are "known or suspected carcinogens, mutagens, teratogens, or bioaccumulative or persistent pollutants". This is an overly broad list. Instead, the Tribe should consider replacing this language with the following: "for pollutants that bioaccumulate, bioconcentrate or persist above natural levels in sediments, water or biota to significantly adverse levels, based on consideration of bioaccumulation, bioconcentration factors, toxicity and exposure."	Comment Noted. The Tribe intends to retain Section 12(1)(i) but is evaluating EPA's list of bioaccumulative/persistent pollutants for possible inclusion in its revised WQS. <i>See</i> EPA Comment # 89 above. The Tribe has included definitions for mutagens and teratogens as follows: "mutagens" means substances or chemicals with the ability to increase the frequency or extent of a significant and basic alteration in an organism's chromosomes or genetic material as determined according to the United States Environmental Protection Agency Guidelines for Mutagenicity Risk Assessment, 51 Fed. Reg. 34006 (1986) ; "teratogens" means substances or chemicals with the ability to cause developmental malformations and monstrosities, as determined according to the United States Environmental Protection Agency Guidelines for Health Assessment of Suspect Developmental Toxicants, 51 Fed. Reg. 34028 (1986).
173	Hecla Mining Co (part 1)	1/11/2006	Another circumstance of concern is the provision which states that mixing zones can be prohibited where discharges can cause an exceedance of the chronic criteria (WET or chemical specific) in the surface microlayer outside of the mixing zone boundary. This provision should be removed. The aquatic life criteria and the WET test methods were never developed with the surface microlayer in mind and it would be an inappropriate application. While studies of microlayer phenomenon have been conducted over the last several decades, neither states nor EPA have implemented chronic criteria in the microlayer. This area needs more research and additional analysis, perhaps requires the development of different types of standards, before the surface microlayer becomes a mixing zone consideration.	The Tribe's revised WQS deleted reference to both WET and to the "surface microlayer." This subsection now reads, "where discharges could cause an exceedance of the chronic criteria outside of the mixing zone boundary."
174	Hecla Mining Co (part 1)	1/11/2006	13. The Tribe has proposed both unattainable standards and standards which do not fail to account natural conditions. Setting a standard more stringent than natural conditions or one which is unattainable, is a bad policy and bad science.	Please see the Response to IDEQ comment # 272 below.
175	Hecla Mining Co (part 1)	1/11/2006	To remedy this situation, Idaho has adopted EPA-approved rules, which provide that when natural background conditions exceed any numeric water quality standards, those numeric criteria do not apply, but actual natural background conditions replace the criteria. The Tribe has failed to make any provision in its proposed rules for consideration of the circumstances when natural conditions exceed the proposed numeric standards. Here this is particularly troublesome, because the water quality data available to the public demonstrates that the natural conditions in the Lake do exceed at least certain of the proposed standards.	Please see the Response to IDEQ comment # 272 below.

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176	Hecla Mining Co (part 1)	1/11/2006	For example, the Tribe has proposed water temperature standards for areas like the Lake designated for bull trout of 12°C from June to September. Lake Coeur d'Alene's natural temperatures greatly exceed the Tribe's 12°C proposed temperature standard during the summer months. There is no evidence that this proposed temperature standard is achievable and certainly the Tribe has provided no such evidence to the public for evaluation.	Please see the Response to IDEQ comment # 272 below.
177	Hecla Mining Co (part 1)	1/11/2006	Similarly, the Tribe's proposed DO standards for bull trout and cutthroat in the Lake at 8.0 mg/L and a 9.5 mg/L are more stringent than the State's. These proposed DO standards likewise are regularly exceeded by current conditions in the Lake. The Tribe does not explain how these proposed DO standards are achievable, enforceable or even necessary.	Please see the Response to IDEQ comment # 272 below.
178	Hecla Mining Co (part 2)	1/11/2006	1) As an introductory comment, it seems that EPA Region 10's "Approval of TAS for Water Quality Standards" is a major federal action subject to the requirements of the National Environmental Policy Act. We are not aware of any exclusion from NEPA for EPA Region 10's approval, which is indeed a major federal action. Finalization of any water quality standards must await resolution of this issue.	The Tribe disagrees. While the CWA expressly provides that issuance of an NPDES permit to a new source is a "major Federal action" subject to NEPA review, 33 U.S.C. § 1371(c)(1) (1982), the EPA's approval of the Tribe's WQS are not subject to the strictures of NEPA. <i>See NRPD v. EPA</i> , 822 F.2d 104 (D.C. Cir. 1987).
179	Hecla Mining Co (part 2)	1/11/2006	2) INTRODUCTION Subsection (1) -The extent of application of the proposed water quality standards is limited by the definition of "Federal Indian reservation" found at 33 USC §1377(h)(1). The USC citation to 33 USC §1377 will be referred to as Clean Water Act (CWA) Section 518 for the remainder of these comments. Implementation must be limited accordingly.	The Tribe disagrees that its TAS jurisdiction is limited in this manner. Section 518 of the CWA provides the authority and the requirements for a tribe to obtain TAS status but is not the source of the applicable scope of that status once approved. As the term implies, TAS status grants a tribe the same treatment as that of a state government and, for CWA purposes, this implies an array of applicable rules, regulations and appropriate legal precedent. As noted in prior responses, the Tribe applied for and received TAS for the lower third of the Lake and those portions of the St. Joe River within the Reservation. This authorized the Tribe to develop water quality standards to protect public health and welfare, enhance the quality of its Reservation TAS Waters, serve the purposes of the Clean Water Act and also gave the Tribe certification authority pursuant to CWA Section 401. However, activities on lands adjacent to Reservation TAS Waters, which may be owned in fee by nonmembers yet still within the Reservation, and activities on lands outside of the Reservation can also be affected by the Tribe's WQS. There is no requirement that the Tribe's standards be identical to Idaho's nor is Idaho required to have the same standards as Washington. When a boundary is shared, however, the upstream entity is required to ensure that downstream standards are met when designating and setting criteria for waters. For example, Idaho is required to ensure that its water quality standards and activities impacting waters within its jurisdiction can attain and maintain the standards of the downstream Reservation TAS Waters. In turn, if those Reservation TAS Waters flow into waters where Idaho has jurisdiction, the Tribe is subject to the same requirement. See 40 CFR 131.10(b); EPA Handbook Sec. 2.2. Accordingly, Section 13 of the Tribe's WQS sets forth the Tribe's expectations for compliance, "[n]o person shall engage in any activity that violates or causes the violation of these standards . . . [a]ll discharges from point sources, all in-stream activities and all activities which generate nonpoint source pollution shall be conducted so as to comply with this chapter." For lands outside the geographic scope of the Reservation TAS Waters,

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				including off-Reservation lands, that impact Reservation TAS Waters, the Tribe will exercise its authority consistent with not only the Clean Water Act, but its inherent powers, treaty rights and agreements pursuant to federal law to manage and protect these waters. As evidenced by the Tribe's collaboration with the City of St. Maries, the Tribe does intend on administering its WQS on a case-by-case basis.
180	Hecla Mining Co (part 2)	1/11/2006	Subsection (2) - It is important to note the limitations to delegation found at CWA Section 518(e). This will be addressed as appropriate in following comments.	Comment Noted. Alternatively, please see the Response to Hecla Mining Co.'s comment # 179 above.
181	Hecla Mining Co (part 2)	1/11/2006	Subsection (3) -It is important to note the TAS provisions of CWA Section 518(e) do not allow an expansion of the Congressional goals of the CWA found at Section 101(a). Accordingly, "cultural uses" related to tribal religious or spiritual activities are not allowed for any more than a "mining culture" use would be. Congress set out a clear and unambiguous goal in the CWA for water quality "which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water" - EPA has no authority under the CWA to approve any religious use or goal. Further, when EPA headquarters developed the rulemaking for TAS, they clearly limited the scope of criteria to those necessary to meet the fishable/swimmable goal of the CWA (56 FR 64886, c.3).	Please see the Response to Avista comment # 31 above.
182	Hecla Mining Co (part 2)	1/11/2006	In addition, in the same Federal Register notice referenced above, EPA headquarters clearly requires "that criteria be developed based on scientifically defensible methods" (56 FR 64886, c.3) as required by the CWA. Any criteria being proposed by the tribe that does not duplicate either federal or state criteria must be subjected to both peer review and public comment. Further, any "new" tribal criteria do not need to be in place for three years from the date of TAS approval (56 FR 64889, c.3), thus adequate time to justify the scientific basis of "new" criteria, as well as to satisfy public input requirements, exists for the tribe.	The Tribe's water quality standards must contain the same core three elements as any state. These include: 1) one or more designated "uses" of each waterway consistent with the goals as articulated in § 101 of the Clean Water Act; 2) "criteria" expressed in numerical concentration levels or narrative statements specifying the amount of various pollutants that may be present and still protect the designated uses; and 3) an anti-degradation provision. Clean Water Act § 303(c)(2)(A), 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. Part 131 (1992). The Tribe had four options when adopting water quality criteria for which EPA has published Clean Water Act section 304(a) criteria; It could: 1) establish numerical values based on EPA recommended section 304(a) criteria; 2) adopt section 304(a) criteria modified to reflect site specific conditions; 3) adopt criteria derived from using other scientifically defensible conditions; or 4) establish narrative criteria where numerical criteria cannot be determined (40 CFR 131.11). The Tribe chose to adopt EPA science (the first option) for the majority of its criteria and to establish narrative criteria where EPA's recommended numerical criteria could not be determined. To the extent the Tribe adopts standards different than federal or state criteria, these criteria are not subject to peer review provided EPA determines they are based on a "sound scientific rationale." See EPA Revision of National Recommended Water Quality Criteria (2002). The Tribe has followed, however, the same process and, as a corollary, built the same administrative record that any state follows when obtaining approval of its WQS, including strict adherence to the procedures set forth at 40 C.F.R. 131.20 and the public participation regulations at 40 C.F.R. part 25. Thus, the Tribe has applied for and received TAS status, developed its proposed standards, made them available to the public and held a public hearing regarding these proposed standards on November 28, 2005. Also, to the extent the

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				<p>Commenter addresses the Tribe's WQS differing from Idaho, the EPA's position is that "there are strong policy reasons to allow Tribes to set any water quality standards consistent with 40 C.F.R. 131.10" noting that this puts Tribes and States "on an equal footing . . . [t]here is no indication that Congress intended to treat Tribes as 'second class' States under the CWA." 56 FR 64886.</p>
183	Hecla Mining Co (part 2)	1/11/2006	<p>3) DEFINITIONS</p> <p>The definition of "Ceremonial and spiritual water use" is not allowed for in the CWA. The consumption of untreated surface anywhere, whether in an untouched wilderness area or urban/rural setting, is unsafe due to natural pathogens that may be present.</p>	<p>Please see the Response to Avista comment # 31 above.</p>
184	Hecla Mining Co (part 2)	1/11/2006	<p>The definition of "Cultural water use" is not allowed for in the CWA. Further, "instream flow" and "habitat" are not addressed by CWA water quality standards of CWA Section 308. Indeed, to the extent instream flow is affected by the application of water rights, such conditions are expressly exempted from CWA Section 518 at (a).</p>	<p>Please see the Response to Avista comment # 31 above regarding "cultural water use" and "instream flow." Moreover, addressing habitat in Tribal WQS is entirely consistent with the EPA's recommendations. The EPA notes in its Water Quality Handbook (2nd ed.) that, "[t]he Agency believes that congressional enactment of the Clean Water Act establishes a strong Federal interest in effective management of water quality. Indeed, the primary objective of the CWA "is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (section 101(a)), and to achieve that objective, the Act establishes the goal of eliminating all discharges of pollutants into the navigable waters of the United States and attaining a level of water quality that is fishable and swimmable (sections 101(a)(1) and (2)). Thus the statute itself constitutes, in effect, a legislative determination that activities affecting surface water and critical habitat quality may have serious and substantial impacts."</p>

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185	Hecla Mining Co (part 2)	1/11/2006	The definition of "Damage to the ecosystem" is far too vague to be approved by EPA. The concept of "predicted stress" has no scientific instream basis and the CWA requires water quality standards to be based upon the best available science. The CWA goals are to be met "in and on the water", not in some computer simulation or hypothetical laboratory experiment that does not represent real world conditions.	As a general matter, the Tribe believes all of the definitions in its proposed WQS are scientifically reasonable, consistent with those promulgated by EPA at 40 CFR131.3 and those incorporated into EPA guidance documents, and provide information needed for application and implementation of the water quality standards (40 CFR 131.6). Additionally, the definition of "Damage to the ecosystem" is only applicable to the Tribe's standards on mixing zones in Section 12 of the proposed WQS, which, in turn, is only relevant to NPDES permits issued for point-source discharges. The Commenter may be misinterpreting this definition on the incorrect assumption that it applies for purposes of defining a violation of the Tribe's standards, not for the purposes of developing benchmarks relating to NPDES permits.
186	Hecla Mining Co (part 2)	1/11/2006	The definition of "Hardness" must clarify the application to "surface" waters. The concept of hardness must also recognize the critical concept of the calcium/ magnesium ratios. Any use of hardness in any test must mirror the appropriate ratios found in applicable natural surface waters.	As a general matter, the Tribe believes all of the definitions in its proposed WQS are scientifically reasonable, consistent with those promulgated by EPA at 40 CFR131.3 and those incorporated into EPA guidance documents, and provide information needed for application and implementation of the water quality standards (40 CFR 131.6). Furthermore, the Tribe's definition of hardness is consistent with the federal guidelines. <i>See</i> National Recommended Water Quality Criteria: 2002, EPA-822-R-02-047; EPA Goldbook.
187	Hecla Mining Co (part 2)	1/11/2006	The definition of "Nonpoint source" includes the phrase "atmospheric deposition". We are not aware of any CWA provision allowing for the control of "atmospheric deposition" under CWA Section 308 and EPA has no authority to approve this definition under the CWA. This phrase must be deleted.	As a general matter, the Tribe believes all of the definitions in its proposed WQS are scientifically reasonable, consistent with those promulgated by EPA at 40 CFR131.3 and those incorporated into EPA guidance documents, and provide information needed for application and implementation of the water quality standards (40 CFR 131.6). The Tribe's definition of "nonpoint source" is no different. There is no doubt that as rainfall and snowmelt move over the land, they pick up pollutants, carry them, and deposit them into ground water and waterbodies such as lakes and river, and that "atmospheric deposition" is a well established source of nonpoint source pollution.
188	Hecla Mining Co (part 2)	1/11/2006	Further, as mentioned above, the provisions of CWA Section 518 contain limitations. One of the provisions not allowed for in the TAS law at CWA Section 518(e) is CWA Section 312, which deals with marine sanitation devices. This is separate and distinct from CWA Section 402, thus the definition phrase "discharges from boats or marine vessels" must be clarified per the statutory limitations.	The Tribe believes all of the definitions in its proposed WQS are scientifically reasonable, consistent with those promulgated by EPA at 40 CFR131.3 and those incorporated into EPA guidance documents, and provide information needed for application and implementation of the water quality standards (40 CFR 131.6). Additionally, the phrase in question "discharges from boats or marine vessels" is conditioned by the fact that it not otherwise be subject to a NPDES permit. The Commenter may be misinterpreting this definition on the incorrect assumption that it applies for purposes of CWA Section 312, not for purposes of defining nonpoint source pollution.
189	Hecla Mining Co (part 2)	1/11/2006	The definitions of "Reservation Waters" or "Coeur d'Alene Reservation Waters"; "Reservation TAS Waters" or "Coeur d'Alene Reservation TAS Waters"; and "Disputed Waters" must all be revised to reflect the legal limitations contained at CWA Section 518. Any portion of the proposed water quality standards alleged to extend beyond the limits of the express definition of "Federal Indian reservation" found at CWA Section 518(h) must be disapproved by EPA as not authorized by law. Further, EPA's TAS approval clearly limited the scope to applicable portions of the St. Joe River and Coeur d'Alene Lake - the regulations must clearly express this limitations in all definitions and sections of the proposed water quality standards.	Please see the Response to Avista comment # 11 above.

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190	Hecla Mining Co (part 2)	1/11/2006	The definition of "Water quality" must delete the term "cultural" per the above comments.	Please see the Response to Avista comment # 31 above.
191	Hecla Mining Co (part 2)	1/11/2006	4) GENERAL CONDITIONS q Subsection (3) -includes "groundwater, or sediments". The CWA does not address these topics; therefore they must be removed because they are not a component of CWA Section 518. Further, Congress has expressly addressed sediments under other legislative vehicles, such as the Water Resources Development Act and very specific sections of the CWA (i.e., Section 116 and Section 118(e)). Where Congress has expressly addressed an issue in one piece of legislation, the issue cannot be addressed by inference to some other non-specific section of law. In addition, EPA Great Lakes Water Quality Standards at 40 CFR Part 132 do not appear to address sediment criteria in the standards. In fact, when EPA considered methodologies for deriving bioaccumulation factors they made it clear that it only applied to exposure of aquatic organisms "in the water" (see 40 CFR Part 132, App. B, 1.B).	The Tribe disagrees that Section 518 of the CWA limits the Tribe's Narrative Criteria as alleged in this comment. Section 518 provides the authority and the requirements for a tribe to obtain TAS status but is not the source of the applicable scope of that status once approved. As the term implies, TAS status grants a tribe the same treatment as that of a state government, for CWA purposes, this implies an array of applicable rules, regulations and appropriate legal precedent. The Narrative Criteria in Section 5 are included to protect Reservation TAS Waters for aesthetic purposes, fish and aquatic life protection, cultural and recreation use and other purposes and are consistent with 40 C.F.R. 131.11(b)(2). To the extent "groundwater" flows into Reservation TAS Waters, there exists a sufficient nexus for that term to be included in the Tribe's WQS. Also, the Tribe's six narrative criteria contain those recommended by EPA, including "bottom deposits." See Water Quality Standards Handbook, 1994. Moreover, EPA has authority to pursue the development of sediment criteria in streams, lakes and other waters of the United States under sections 104 and 304(a)(1) and (2) of the CWA as follows: section 104(n)(1) authorizes the Administrator to establish national programs that study the effects of pollution, including sedimentation, in estuaries on aquatic life; section 304(a)(1) directs the Administrator to develop and publish criteria for water quality, including information on the factors affecting rates of organic and inorganic sedimentation for varying types of receiving waters; section 304(a)(2) directs the Administrator to develop and publish information on, among other issues, "the factors necessary for the protection and propagation of shellfish, fish, and wildlife for classes and categories of receiving waters...."
192	Hecla Mining Co (part 2)	1/11/2006	Subsection (4) -refers to "technical accuracy". The CWA requires water quality standards be based upon science, thus the phrase "scientific accuracy" should be used.	While the Tribe believes its WQS are rooted in the best available science, the inclusion of the phrase "technical accuracy" is unlikely to diminish that fact, it will consider revising Section (4) as noted.
193	Hecla Mining Co (part 2)	1/11/2006	5) SITE –SPECIFIC CRITERIA Subsection (2) - refers to "technical accuracy". The CWA requires water quality standards be based upon science, thus the phrase "scientific accuracy" should be used.	While the Tribe believes its WQS are rooted in the best available science, the inclusion of the phrase "technical accuracy" is unlikely to diminish that fact, it will consider revising Section (5) as noted.
194	Hecla Mining Co (part 2)	1/11/2006	Subsection (2)(a)(B) - the wording here does not make sense.	The Tribe has incorporated the EPA's suggested rewrite of Section 4 into its revised proposed WQS. See EPA Comment # 98, above. While adding no substantive changes, the Tribe believes the clarity has improved throughout Section 4. In particular, the former Subsection 2(a)(B), now states, "[t]he Tribe may, at its discretion determine a natural condition for one or more seasonal or shorter time period to reflect variable ambient conditions."

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195	Hecla Mining Co (part 2)	1/11/2006	Subsection (4)(a) -mentions "habitats". "Habitat" is not regulated under the CWA, thus not a part of the TAS CWA Section 518 process.	The Tribe disagrees that Section 518 of the CWA limits the Tribe's ability to mention "habitat" in WQS as alleged in this comment. Section 518 provides the authority and the requirements for a tribe to obtain TAS status but is not the source of the applicable scope of that status once approved. Moreover, addressing habitat in Tribal WQS is entirely consistent with the EPA's recommendations. The EPA notes in its Water Quality Handbook (2nd ed.) that, "[t]he Agency believes that congressional enactment of the Clean Water Act establishes a strong Federal interest in effective management of water quality. Indeed, the primary objective of the CWA "is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (section 101(a)), and to achieve that objective, the Act establishes the goal of eliminating all discharges of pollutants into the navigable waters of the United States and attaining a level of water quality that is fishable and swimmable (sections 101(a)(1) and (2)). Thus the statute itself constitutes, in effect, a legislative determination that activities affecting surface water and critical habitat quality may have serious and substantial impacts."
196	Hecla Mining Co (part 2)	1/11/2006	6) NARRATIVE CRITERIA The introductory sentence mentions "instream activities". The CWA, thus CWA Section 518, does not regulate "instream activities". Further, the CWA goal expressly provides for "recreation in and on the water".	The introductory sentence of Section 5, states, "[a]ll Reservation TAS Waters, including those within designated mixing zones, shall be free from substances attributable to point source discharges, non-point sources, or instream activities in accordance with the following." The Tribe believes it is reasonable to distinguish between point sources, non-point sources and a general, broader, category of "instream activities" that may impact the Tribe's Reservation TAS Waters and will retain this sentence in its entirety in its revised proposed WQS.
197	Hecla Mining Co (part 2)	1/11/2006	Subsection (2) mentions "...nor should color inhibit photosynthesis or otherwise impair the existing and designated uses of the water." The "or" should be changed to an "and" because there may be some hypothetical or measurable inhibition of photosynthesis but the use is not impaired, thus the CWA goals are met. The Tribe should not be tying themselves up with unworkable standards.	The Tribe intends to retain Section 5(2) in its entirety and believes it is a straightforward, reasonable and workable narrative criteria that is consistent with the EPA's recommendations in its Water Quality Standards Handbook (1994), and 40 C.F.R 131.11(b)(2).
198	Hecla Mining Co (part 2)	1/11/2006	Subsection (5) - criteria are meant to protect a designated use. The phrase "potentially impair" is too vague to be of any scientific use.	The Tribe's Narrative Criteria in Section 5 are included to protect Reservation TAS Waters for aesthetic purposes, fish and aquatic life protection, cultural and recreation use and other purposes. The Narrative Criteria are not meant to contain scientific absolutes. The Narrative Criteria supplement the numeric criteria and describe the Tribe's water quality goals as applicable to all of the Tribe's designated uses. This is consistent with 40 C.F.R. 131.11(b)(2). The Tribe believes the word "potentially" provides for a more stringent standard than if it was not included, the Tribe had to wait until turbidity was at a level where it would "impair" a designated use or aquatic biota.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
199	Hecla Mining Co (part 2)	1/11/2006	Subsection (6) -the term "bottom sediments" is not a CWA water quality consideration, thus not a component of CWA Section 518. Further, designated uses, thus the CWA goal, may not actually be impaired by physical and chemical properties of certain substances.	<p>The Tribe disagrees that Section 518 of the CWA limits the Tribe's Narrative Criteria as alleged in this comment. Section 518 provides the authority and the requirements for a tribe to obtain TAS status but is not the source of the applicable scope of that status once approved. As the term implies, TAS status grants a tribe the same treatment as that of a state government, for CWA purposes, this implies an array of applicable rules, regulations and appropriate legal precedent. The Narrative Criteria in Section 5 are included to protect Reservation TAS Waters for aesthetic purposes, fish and aquatic life protection, cultural and recreation use and other purposes and are consistent with 40 C.F.R. 131.11(b)(2). Also, the Tribe's six narrative criteria contain those recommended by EPA, including "bottom deposits." <i>See Water Quality Standards Handbook, 1994.</i></p> <p>Moreover, EPA has authority to pursue the development of sediment criteria in streams, lakes and other waters of the United States under sections 104 and 304(a)(1) and (2) of the CWA as follows: section 104(n)(1) authorizes the Administrator to establish national programs that study the effects of pollution, including sedimentation, in estuaries on aquatic life; section 304(a)(1) directs the Administrator to develop and publish criteria for water quality, including information on the factors affecting rates of organic and inorganic sedimentation for varying types of receiving waters; section 304(a)(2) directs the Administrator to develop and publish information on, among other issues, "the factors necessary for the protection and propagation of shellfish, fish, and wildlife for classes and categories of receiving waters...."</p>
200	Hecla Mining Co (part 2)	1/11/2006	<p>7) ANTIDEGRADATION POLICY</p> <p>Subsection (1) -the term "no calculable lowering" should be replaced with "no measurable lowering". Here again, the CWA standards must be based on real science, not hypothetical mathematical manipulations. Theoretically, you can "calculate" a lowering on an atomic level. Here again, there is no sense in the Tribe tying themselves up with their own standards.</p>	<p>Please see the Response to Avista's comment # 15 above.</p>
201	Hecla Mining Co (part 2)	1/11/2006	<p>Subsection (4) -the terms "...maintenance of natural flow regimes, protection of instream habitats, and pursuit of land use practices ..." are all beyond the scope of the CWA. Flow issues and habitat issues were addressed in above comments. Land use restrictions are not part of the water quality standards established by Congress under the CWA.</p>	<p>The Tribe's use of "instream flows" as a measure of attaining Tribal beneficial uses, compliments the protection of those beneficial uses identified by the State of Idaho within its own water quality standards respecting waters without Reservation boundaries. The Tribe is required to develop, adopt, and retain an antidegradation policy regarding water quality standards and establish procedures for its implementation through the water quality management process. The Tribe's antidegradation policy and implementation procedures are consistent with the requirements contained in 40 CFR 131.12. The Section 131.12(a)(1), or "Tier 1," protects "existing uses," requires that "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." Section 131.12(a)(2), or "Tier 2," applies to waters whose quality exceeds that necessary to protect the section 101(a)(2) goals of the Act. In this case, water quality may not be lowered to less than the level necessary to fully protect the "fishable/swimmable" uses and other existing uses and may be lowered even to those levels only after following all the provisions described in section 131.12(a)(2). The antidegradation policy will be applied on a case-by-case basis using the best available science and after a full analysis of the facts.</p>

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
202	Hecla Mining Co (part 2)	1/11/2006	Subsection (5) - as mentioned in comments above, TAS CWA Section 518 contains limitations. CWA Section 316, mentioned in this proposed standard, is not included in the TAS CWA Sections specified at CWA Section 518(e).	<p>While Section 518 of the CWA provides the authority and the requirements for a tribe to obtain TAS status it is not the source of the applicable scope of that status once approved. The Tribe's water quality standards must contain the same core three elements as any state. These include: 1) one or more designated "uses" of each waterway consistent with the goals as articulated in § 101 of the Clean Water Act; 2) "criteria" expressed in numerical concentration levels or narrative statements specifying the amount of various pollutants that may be present and still protect the designated uses; and 3) an anti-degradation provision. Clean Water Act § 303(c)(2)(A), 33 U.S.C. § 1313(c)(2)(A); 40 C.F.R. Part 131 (1992).</p> <p>Lastly, the particular subsection in the Tribe's WQS referenced by the Commenter is consistent with the requirements contained in 40 CFR 131.12.(4), which states, "[i]n those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Act."</p>
203	Hecla Mining Co (part 2)	1/11/2006	8) TOXIC SUBSTANCES Subsection (1) -the CWA goal is not intended to protect, at a microscopic level, any bacteria or virus. Again, the Tribe should not be developing standards that are not implementable. The focus should be on maintaining a use.	<p>The Tribe believes this comment mischaracterizes both the CWA and the Tribe's proposed WQS. The Tribe adopted its water quality standards to protect public health and welfare, enhance the quality of its Reservation TAS Waters, and serve the purposes of the Clean Water Act. It's intent is to promulgate standards that, wherever attainable, achieve a level of water quality that provides for the protection and propagation of the Tribe's cultural resources, fish, shellfish, and wildlife, and for recreation in and on the water, and take into consideration the use and value of public water supplies, and agricultural, industrial, and other purposes, including navigation (sections 101(a)(2) and 303(c) of the Act); and restore and maintain the chemical, physical, and biological integrity of the Nation's waters (section 101(a)).</p>
204	Hecla Mining Co (part 2)	1/11/2006	Subsection (6) - there is no valid science indicating that lead should be treated any differently than other metals, i.e. lead should be based upon "dissolved" lead also. The pH of the sample prepared for total recoverable metals is subjected to a pH of approximately 0.1 s.u. This is an extremely strong acid. A pH value is based upon a logarithmic scale, thus a biota protection standard for pH of up to 9 s.u. instream vs. the pH of the analysis procedure, is over eight orders of magnitude more acidic, thus in no way reflects reality. Further, the sample is subjected to temperatures (in excess of 50 degrees Centigrade), which would also kill all aquatic life, prior to filtration and analysis.	<p>The Tribe believes the EPA supports the application of lead standards in either the dissolved or total recoverable form. <i>See, e.g., USEPA National Recommended Water Quality Criteria:2002.</i></p> <p>Moreover, the Tribe's water quality criteria for lead is based on a CWA Section 304(a) aquatic life criteria that was derived using the 1985 Guidelines (Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, PB85-227049, January 1985) and was issued in the following criteria document: Lead (EPA 440/5-84-027).</p>

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
205	Hecla Mining Co (part 2)	1/11/2006	<p>EPA criteria also have margins of safety due to the conservative nature on how criteria are derived (i.e. unrealistic laboratory conditions, exposure frequencies lacking any scientific basis, mathematical derivation calculations, etc.) plus the utilization of "dissolved" metals analysis also has a margin of safety. The "dissolved" metals analysis procedure measures more than true dissolved metals. The term "dissolved" is an operational definition of "dissolved", i.e.; it is based upon a filtration method rather than the science of what truly constitutes dissolved metals. The operational "dissolved" method includes all matter passing a 0.45 micron filter. The scientific fact is that nontoxic colloidal particles also pass through a 0.45 micron filter and are equated with toxic forms of the metal. EPA's own guidance document for deriving national criteria states "Criteria must be used in a manner that is consistent with the way in which they were derived." EPA's lead criteria document shows use of lead solutions of lead chloride, lead nitrate, and lead acetate. Lead nitrate, for example, is several orders of magnitude more soluble than lead sulfide (found in Coeur d'Alene basin sediments), which is highly insoluble.</p> <p>Water quality standards under the CWA must be based upon the best available science. The manner in which EPA develops water quality criteria is clear in that dissolved forms of lead are used and this is an undisputable scientific fact already well established. Further, EPA documents on the utilization of developed criteria specify that criteria be applied in the manner in which they were developed. Lead must be based upon the dissolved form to be scientifically valid.</p>	<p>The Tribe believes the EPA supports the application of lead standards in either the dissolved or total recoverable form. <i>See, e.g., USEPA National Recommended Water Quality Criteria:2002.</i></p> <p>Moreover, the Tribe's water quality criteria for lead is based on a 304(a) aquatic life criteria that was derived using the 1985 Guidelines (Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses, PB85-227049, January 1985) and was issued in the following criteria document: Lead (EPA 440/5-84-027).</p>
206	Hecla Mining Co (part 2)	1/11/2006	<p>EPA, the Tribe and the State of Idaho collaborated to provide an information document, "QUESTIONS AND ANSWER (sic) Coeur d'Alene Tribe, Treatment in the Same Manner as a State (TAS)". The following is from Question 6:</p> <p>"Are State and Tribal water quality standards (WQS) expected to be compatible?" - "Answer: Yes. While there are differences between the Tribe's and State's use designations, the water quality criteria used by each jurisdiction to protect those uses are largely the same. Because the Tribe's standards are new, its criteria are consistent with EPA's latest recommendations in National Recommended Water Quality Criteria: 2002 (EPA-822-R-02-47)" (NRWQC).</p>	<p>Please see the Response to Avista's comment # 12 above.</p>
207	Hecla Mining Co (part 2)	1/11/2006	<p>The following table identifies certain water quality standards proposed by the Tribe that are not consistent with EPA NRWQC, thus require both scientific justification and public input requirements to be valid.</p>	<p>Please see the Response to Hecla's comment # 182 above.</p>
208	Hecla Mining Co (part 2)	1/11/2006		<p>This comment number left blank to preserve overall table formatting.</p>

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
209	Hecla Mining Co (part 2)	1/11/2006	<p>Values in this table are criteria from EPA National Recommended Water Quality Criteria: 2002 (EPA-822-R-02-47) (NRWQC) and are also Idaho's approved numerical criteria IDAPA 58.01.02.210. Proposed water quality standards different than those of EPA or Idaho are not supported with scientifically defensible data and need to be changed to mirror current Idaho standards.</p>	<p>The Tribe recognizes that jurisdictional differences are present in the standards. As noted in prior responses, The Tribe has applied for and received TAS designation and is authorized to promulgate WQS that will remediate and protect its waters. The divergence of the two sovereigns' standards (Idaho and the Tribe), in large part, is due to differing concepts of beneficial uses of the Lake and the required standards to protect those uses. The State's standards were adopted to encompass a broad array of Idaho waters and do not fully address beneficial uses or critical concerns of particular water bodies such as Coeur d'Alene Lake. The Tribe's standards, however, reflect its goal of protecting beneficial uses specific to Tribal TAS Waters within the Lake. The Tribe's standards also reflect the latest science considered by EPA when establishing and updating the water quality criteria. The Tribe is one of three sovereign governments with regulatory authority over portions of the Lake and its tributaries and has always attempted to craft intergovernmental agreements that achieve common goals.</p> <p>Also, the Tribe has worked extensively with the State and EPA to consider implementation issues that could arise from having different standards in effect in shared waters. With that in mind, the Tribe, to the extent possible, attempted to develop water quality standards similar to Idaho to address water quality issues such as phosphorous levels, dissolved oxygen, chlorophyll A, cyanobacteria blooms, eurasian milfoil, water clarity, dissolved metals and water temperature, among others. The Tribe's ultimate responsibility, however, is to protect its TAS Reservation Waters. To accomplish this required more than crafting WQS that were mirror-images of Idaho's standards and often the Tribe looked to the appropriate Federal standard when applicable. It is not uncommon for adjacent entities to have different standards. There is no requirement that the Tribe's standards be identical to Idaho's nor is Idaho required to have the same standards as Washington. When a boundary is shared, however, the upstream entity is required to ensure that downstream standards are met when designating and setting criteria for waters. For example, Idaho is required to ensure that its water quality standards and activities impacting waters within its jurisdiction can attain and maintain the standards of the downstream Reservation TAS Waters. In turn, if those Reservation TAS Waters flow into waters where Idaho has jurisdiction, the Tribe is subject to the same requirement. See 40 CFR 131.10(b); EPA Handbook Sec. 2.2.</p> <p>The Tribe has adopted numeric toxic criteria for all Section 307(a)(1) toxic pollutants for which EPA has published criteria. The proposed numeric aquatic life and human health criteria are based EPA's criteria recommendations. As a sovereign government, the Tribe may set water quality standards more stringent than federal or state standards. <i>Albuquerque v. Browner</i>, 97 F.3d 415 (10th Cir. 1996). The EPA will have the final review of the revised proposed WQS and the Tribe may amend the WQS during a triennial review of its standards.</p>

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
210	Hecla Mining Co (part 2)	3/8/2006	Mercury is also a parameter where the proposed criteria do not reflect the latest science.	As a sovereign government, the Tribe may set water quality standards more stringent than federal or state standards. <i>Albuquerque v. Browner</i> , 97 F.3d 415 (10th Cir. 1996). The Tribe has proposed the National Toxics Rule value for the chronic mercury criterion due to current EPA re-evaluations of the science of this criteria. The Tribe's mercury revision is acceptable and conforms to Federal promulgations in the National Toxics Rule and the California Toxics Rule. See Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance Final Rule, 40 CFR 131.36, as amended May 4, 1995; Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California, Final Rule, 65 FR 31681, May 18, 2000. The Tribe will consider revising this criteria once EPA has issued the revised methylmercury implementation guidance.
211	Hecla Mining Co (part 2)	1/11/2006		This comment number left blank to preserve overall table formatting.
212	Hecla Mining Co (part 2)	1/11/2006	*Mercury criterion for freshwater CCC is from EPA NRWQC and is back calculated from a methylmercury human health criterion without defensible scientific support. Idaho has approved removing the numerical criteria for freshwater CMC/CCC and replacing it with a fish tissue criterion that is protective of the aquatic community and human health and developed implementation guidance for assistance in applying the fish-tissue criterion.	As a sovereign government, the Tribe may set water quality standards more stringent than federal or state standards. <i>Albuquerque v. Browner</i> , 97 F.3d 415 (10th Cir. 1996). The Tribe has proposed the National Toxics Rule value for the chronic mercury criterion due to current EPA re-evaluations of the science of this criteria. The Tribe's mercury revision is acceptable and conforms to Federal promulgations in the National Toxics Rule and the California Toxics Rule. See Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance Final Rule, 40 CFR 131.36, as amended May 4, 1995; Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California, Final Rule, 65 FR 31681, May 18, 2000. The Tribe will consider revising this criteria once EPA has issued the revised methylmercury implementation guidance.
213	Hecla Mining Co (part 2)	1/11/2006	EPA states in their guidance document National Recommended Water Quality Criteria: 2002 (EPA-822-R-02-47) under the heading Guidance of the Calculation of Hardness-Dependent Metals Criteria: "In the past, EPA recommended that when the hardness of fresh surface water is less than 25 mg/L, 304(a) criteria concentrations be calculated as if the hardness is 25 mg/L. Available toxicity data in this range for copper, zinc and cadmium (EPA 440/5-84-031, EPA 440/5-87-003, and EPA 822- R-01-001) are somewhat limited and are quite limited for silver lead chromium III and nickel (EPA 440/5-80-071, EPA 440/5-84-027, EPA 440/5-84-029, and EPA 440/5-86-004). Even fewer data are available below 20 mg/L- hardness for copper, zinc and cadmium and none are available for silver, lead, chromium III, and nickel. EPA evaluated these limited data, available in the current metals' criteria documents, and determined that they are inconclusive." (emphasis added)	Comment Noted. Alternatively, please see the Response to Hecla Mining Co.'s comment # 214 below.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
214	Hecla Mining Co (part 2)	1/11/2006	EPA has not presented scientifically defensible data as justification to remove Idaho's current low-hardness limit of 25 mg/L for calculating hardness-based metal criteria. A low-hardness cap of 25 mg/L is appropriate for hardness-dependent metal criteria and part of Idaho's water quality standards 58.01.02.210.	The Tribe's criteria fully conforms to what EPA recommends. In the past, EPA recommended a default low-end cap of 25 mg/l be used when the ambient hardness value is below 25 mg/l and to use a high end cap of 400 mg/l. However, the Commenter is mistaken that this is still the case. The EPA found that the use of the default low end cap may not be fully protective when the ambient hardness was below 25 mg/l. EPA's latest recommendation with respect to hardness values in calculating criteria for hardness dependent metals (cadmium, chromium III, copper, lead, nickel, silver and zinc) is to not cap the hardness at 25 mg/L (and for water with hardness of less than 25 mg/l, criteria should be calculated using the actual ambient hardness) and to continue to cap the high end at 400 mg/l. The justification for removal of the low-end hardness cap is provided in the 2002 compilation of National Recommended Water Quality Criteria (See pages 7-9 of National Recommended Water Quality Criteria: 2002, EPA-822-R-02-047); <i>See also</i> , 65 FR 31682. As a sovereign government, the Tribe may set water quality standards more stringent than federal or state standards. <i>Albuquerque v. Browner</i> , 97 F.3d 415 (10th Cir. 1996).
215	Hecla Mining Co (part 2)	1/11/2006	9) BIOLOGICAL COMMUNITY Subsection (2) -the term "instream activities" are included, and this concept was addressed in above comments.	Thank you. Comment Noted.
216	Hecla Mining Co (part 2)	1/11/2006	10) WILDLIFE CRITERIA It is not clear what is meant by wildlife "near" waters. If the wildlife does not actually use the applicable waters, you can't protect for something that doesn't happen. The wording should be clarified.	While The Tribe believes that Section 10 of its QWS is reflective of and consistent with the recommendation by EPA for the protection of wildlife in the Water Quality Standards Handbook (1994, EPA-823-B-94-005a), it has deleted the term "near." The revised WQS now read, " Reservation TAS Waters shall be of sufficient quality to protect and support all life stages of resident and/or migratory wildlife species which live in, on, or drink from Reservation TAS Waters."
217	Hecla Mining Co (part 2)	1/11/2006	12) MIXING ZONES The CWA allows for States and Tribes to implement mixing zones where wastewater and receiving water are thoroughly mixed. Idaho currently authorizes mixing zones with supporting justification in all beneficial use designations. It is inappropriate for the Tribe to explicitly deny mixing zones in use designations without justifying that mixing zones will impact the aquatic community.	The Tribe is not required to follow Idaho's mixing zone standards. Pursuant to 40 CFR 131.13, Tribal mixing zone regulations are a matter of Tribal discretion, "[Tribes] may, at their discretion adopt certain policies in their standards affecting the application and implementation of standards." Moreover, the Tribe's mixing zone policies are consistent with applicable federal policies (WQS Handbook p. 5-1 and 40 CFR 131.13) and are subject to EPA review pursuant to CWA §303(c).
218	Hecla Mining Co (part 2)	1/11/2006	Mixing zones by definition are areas where the aquatic life criteria are exceeded for short distances while effluent and receiving water commingle. These mixing zones minimally impact the discharge area and yet beneficial use designations for the water body are not impaired.	Thank you. Comment Noted.
219	Hecla Mining Co (part 2)	1/11/2006	The Tribe is encouraged to support mixing zones for all beneficial use designations to align with current Idaho standards and provide support to dischargers while protecting the designated uses of the water body.	Thank you. Comment Noted.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
220	Hecla Mining Co (part 2)	1/11/2006	Subsection (2)(B) -the acute criteria is limited to the "point of discharge". The CWA goal is to be met instream, not in 100% effluent.	The Tribe disagrees that the CWA limits the Tribe's Mixing Zone authority as alleged by the Commenter and believes its Critical Design Flows Section (Subsection 2(B)) is consistent with applicable federal policies (WQS Handbook p. 5-1 and 40 CFR 131.13). Pursuant to 40 CFR 131.13, Tribal mixing zone regulations are a matter of Tribal discretion, "[Tribes] may, at their discretion adopt certain policies in their standards affecting the application and implementation of standards." Additionally, EPA has previously proposed restrictions on mixing zones for certain contaminants impacting designated uses. <i>See</i> Final Water Quality Guidance for the Great Lakes System, 60 FR 15365 March 23, 1995.
221	Hecla Mining Co (part 2)	1/11/2006	13) IMPLEMENTATION Subsection (2) -it is presumed that implementation is limited to those activities within reservation boundaries as mandated by CWA Section 518.	Pursuant to the Clean Water Act, the Tribe is authorized to manage and protect water resources within the borders of its Reservation. As noted in prior responses, the Tribe applied for and received TAS for the lower third of the Lake and those portions of the St. Joe River within the Reservation. The Tribe's WQS are applicable for all CWA purposes, including Tribal certification pursuant to CWA Section 401. The Tribe will evaluate upstream federal permits on a case-by-case basis to ensure that these actions protect Reservation TAS Waters.
222	Hecla Mining Co (part 2)	1/11/2006	14) SPECIFIC WATER QUALITY CRITERIA FOR USE CLASSIFICATIONS We are not sure what the scientific basis is for many of the criteria. We expect EPA to be as rigorous in their review of tribal water quality standards as they are for the states. For example, site-specific criteria for the South Fork of the Coeur D'Alene River developed by the state of Idaho, took 8 years and well over \$1 million in effort. The CWA requires a public process, based upon science, to develop criteria and the tribe has presented no evidence that the law has been complied with in the development of the tribe's criteria. EPA cannot approve criteria both unsupported by science and not in compliance with applicable legal due process.	The Tribe's has adopted, in large part, EPA's criteria and used the same available EPA science it used to develop those criteria. After adopting any appropriate revisions to its proposed WQS, the Tribe will resubmit its WQS to the EPA for review. EPA will extensively review the Tribe's standards following the same scientific regiment used to assess WQS submitted by a state.
223	Hecla Mining Co (part 2)	1/11/2006	Subsection (1) - it is not appropriate to apply any drinking water criteria to untreated surface water. Surface water requires treatment prior to use and drinking water standards developed under the Safe Drinking Water Act (SDWA) apply at the tap, not in untreated surface water. As commented above, it is never safe to drink untreated surface water and the public should not be mislead to think any differently.	All of the Tribe's use classifications are reasonable and supported by federal law and policy. The Tribe adopted its water quality standards to protect public health and welfare, enhance the quality of its Reservation TAS Waters, and serve the purposes of the Clean Water Act. As part of serving the purposes of the CWA (as defined in Sections 101(a)(2), and 303(c) of the Act), and specific to the Commenter's concerns, the Tribe is correct to consider the use and value of its Reservation TAS Waters for public water supplies. The Tribe's designation of "surface waters . . . suitable or intended to become suitable for drinking water" simply defines the water quality goals of a portion of its Reservation TAS Waters. One of the Tribe's goals is to protect Reservation TAS Waters so that extraordinary treatment techniques are not necessary. The Tribe agrees, however, that the WQS should point out that this does not necessarily mean ingesting water in its natural state. The Tribe has added the following definition of "water supply" to its WQS to clarify this point: "water supply" means any of the TAS approved waters that are designated to be protected for fresh water uses; A water supply includes waters used for drinking, culinary, food processing, purposes; "water supply" does not necessarily mean that water in a waterbody that is protected as a supply for the uses listed in this paragraph is safe to drink in its natural state.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
224	Hecla Mining Co (part 2)	1/11/2006	Subsection (2) -the scientific basis for "Electrical Conductivity", "Total Suspended Solids", and "pH" is not at all clear. For example, EPA's Gold Book (Quality Criteria for Water) values for pH for agricultural purposes is 4.5-9.0 standard units, while the proposed criteria is "within the range of 6.5-8.5" (we are assuming the units applicable to the proposed criteria are "standard units"). Where proposed criteria are not referenced from EPA-approved sources, the scientific basis must be subjected to the public review process required by the CWA and subjected to peer review. Criteria cannot be approved "just because".	As a sovereign government, the Tribe may set water quality standards more stringent than federal or state standards. <i>Albuquerque v. Browner</i> , 97 F.3d 415 (10th Cir. 1996). Moreover, Section 3(3) of the Tribe's WQS requires that "the more stringent water quality criteria shall prevail" at the boundary of waters comprised of different classifications. Therefore, the criteria in subsection (2); electrical conductivity, total suspended solids and pH must be similar to the more stringent criteria necessary for aquatic life uses such as bull trout. After adopting any appropriate revisions to its proposed WQS, the Tribe will resubmit its WQS to the EPA for extensive review. EPA will review the Tribe's standards following the same scientific regiment used to review WQS submitted by a state.
225	Hecla Mining Co (part 2)	1/11/2006	Subsection (3) -neither "cultural" nor "ceremonial" uses are approvable under the CWA.	Please see the Response to Avista's comment # 31 above.
226	Hecla Mining Co (part 2)	1/11/2006	Subsection (4) -as commented above, criteria for both bull trout and cutthroat trout must be based upon sound science that has been both peer reviewed and subjected to the public comment requirements of the CWA.	The Tribe's criteria were taken from the EPA Region 10 Guidance for Pacific Northwest State and Tribal Temperature Water Quality Standards. EPA 910-B-03-002 (2003). The guidance document was produced following a three year interagency effort involving the Idaho Department of Environmental Quality, Oregon Department of Environmental Quality, Washington Department of Ecology, National Marine Fisheries Service, U.S. Fish and Wildlife Service, Nez Perce Tribe, Columbia River Inter-Tribal Fish Commission (representing its four governing tribes: the Nez Perce Tribe, Confederated Tribes of the Umatilla Indian Reservation, Confederated Tribes and Bands of the Yakima Nation, and the Confederated Tribes of the Warm Springs Reservation of Oregon), and EPA Region 10. The guidance document also was subject to two independent scientific peer review panels. Moreover, EPA issued two public review drafts, the first in October, 2001, followed by the second in October, 2002.
227	Hecla Mining Co (part 2)	1/11/2006	15) GENERAL CLASSIFICATIONS Cultural use is not an approvable use under the CWA.	Please see the Response to Avista's comment # 31 above.
228	Hecla Mining Co (part 2)	1/11/2006	16) SPECIFIC CLASSIFICATIONS It is not clear why Lake Coeur d'Alene is not suitable as an "Agricultural Water Supply".	The Tribe did not believe it was necessary to include this use category within the Specific Classifications in Section 21 of its WQS. The Tribe's "Agricultural Water Supply" pertains to "[s]urface waters which are suitable or intended to become suitable for the irrigation of crops or as drinking water for livestock." Pursuant to Section 20 of the proposed WQS, the minimum protection for all Reservation TAS Waters is for the protection of "Bull Trout, and Cutthroat Trout and for recreational and cultural uses," which the Tribe believes contain criteria sufficiently stringent to protect the uses contemplated within "Agricultural Water Supply."
229	Hecla Mining Co (part 2)	1/11/2006	The proposed criteria should make clear to the public that even though a "Domestic Use" is assigned to Lake Coeur d'Alene and the St. Joe River, it is never safe to drink untreated surface water. Domestic sources should be treated as required by the SDWA.	Please see the Response to Hecla's comment # 223 above.
230	Hecla Mining Co (part 2)	1/11/2006	"Cultural Use" is not an approvable use under the CWA.	Please see the Response to Avista's comment # 31 above.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
231	Hecla Mining Co (part 2)	1/11/2006	<p>In conclusion, the draft proposed water quality standards both go beyond the authorization limitations of CWA Section 518 and may fail to meet the scientific and public review processes for certain criteria. As stated in comments above, the regulations established by EPA headquarters require criteria be based upon scientifically defensible methods and limited to the fishable/swimmable goal of the CWA. Any efforts by EPA to assert approval authority for criteria beyond those clearly identified in the rulemaking are a violation of the administrative procedures act (APA). The tribe clearly has a time period of almost three years to justify any currently proposed criteria that are more stringent than either approved state or federal recommended criteria. We expect EPA to review the proposed water quality standards with the same rigor as given to the state of Idaho during similar proceedings.</p>	<p>Section 518 of the CWA provides the authority and the requirements for a tribe to obtain TAS status but is not the source of the applicable scope of that status once approved. The Tribe's proposed WQS are consistent with the applicable rules, regulations, recommendations and policy that comprise the broad source of the scope of its CWA authority.</p> <p>Also, as a sovereign government, the Tribe may set water quality standards more stringent than federal or state standards. <i>Albuquerque v. Browner</i>, 97 F.3d 415 (10th Cir. 1996). The Tribe believes it used the best available science when adopting its water quality standards to protect public health and welfare, enhance the quality of its Reservation TAS Waters, and serve the purposes of the Clean Water Act (as defined in Sections 101(a)(2), and 303(c) of the Act).</p> <p>Furthermore, there is an administrative record in this matter. The Tribe and the EPA have followed the same process and, as a corollary, built the same administrative record that any state follows when obtaining approval of its WQS, including strict adherence to the procedures set forth at 40 C.F.R. 131.6; 40 C.R.R. 131.20 and the public participation regulations at 40 C.F.R. part 25. Thus, the Tribe has applied for and received TAS status, developed its proposed standards, made them available to the public and held a public hearing regarding these proposed standards on November 28, 2005.</p> <p>Also as part of this process, the Tribe will evaluate these public comments, adopt revisions if appropriate, and then submit the revised WQS to EPA for review. Additionally, the Tribe and the EPA have taken measures beyond the applicable regulations and posted relevant information online. The Tribe's proposed WQS and Attachments is available at: http://www.cdatribe-nsn.gov/lake/p_water.shtml.</p> <p>The information offered by the EPA is available at: http://yosemite.epa.gov/r10/water.NSF/Water+Quality+Standards/CDAT-TAS. The Tribe's present proposed standards have been developed in close coordination with the state of Idaho as part of addressing its comments on the Tribe's TAS application with respect to all Reservation waters.</p>
232	IDEQ	11/21/2005	<p>The State of Idaho respectfully requests an additional 45 day time period in which to provide public comments on the Coeur d'Alene Tribe's proposed Water Quality Standards (WQS).</p>	<p>The comment period was extended to January 13, 2006.</p>
233	IDEQ	1/11/2006	<p>The State of Idaho appreciates the opportunity to comment on the proposed Water Quality Standards For Approved Surface Waters Of The Coeur d'Alene Tribe dated September 2005 (WQS). The State focused its review on a comparison of the Coeur d'Alene Tribe's WQS and the State's WQS for the purpose of ascertaining compatibility and avoiding potentially unreasonable consequences.</p>	<p>Thank you. Comment Noted.</p>
234	IDEQ	1/11/2006	<p>The main differences between the Tribe's WQS and those of the State lay with temperature and dissolved oxygen criteria. The State's WQS are protective of beneficial uses and have already been approved by EPA and as such, the Tribe should, at least initially, adopt the State's WQS. This will result in the greatest compatibility.</p>	<p>Please see the Response to Avista comment # 12 above and IDEQ comment # 272 below.</p>

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
235	IDEQ	1/11/2006	The State believes the Tribe's proposed temperature criteria for Bull Trout and Cutthroat Trout, Section 19(4)(a)(iii) and (b)(iii), are naturally not attainable in the summer epilimnion and middle metalimnion of Coeur D'Alene Lake (and even deeper in southern shallows of the lake). Similarly, the 7-day average of 9.5 mg/L DO cannot be met naturally within the epilimnion and upper metalimnion during summer warm temperatures. The State questions why the Tribe would set criteria that cannot be naturally met. The State suggests that the Tribe adopt a standard that clearly recognizes natural background conditions.	Please see the Response to IDEQ comment # 272 below.
236	IDEQ	1/11/2006	The State understands the Tribes' desire to protect bull trout and cutthroat trout, and that the intent of the proposed WQS is to assure there is an adequate volume of suitable temperature and DO conditions in Lake Coeur d'Alene to support healthy populations of these fish. The State is concerned however, that the proposed criteria are unattainable, and that this possibly sets up unreasonable consequences and a future workload to rectify unattainable criteria. The State urges the Tribe to deal with this situation now in the development of the standards rather than later.	Please see the Response to IDEQ comment # 272 below.
237	IDEQ	1/11/2006	The State suggests the Tribe consider site-specific criteria, or more flexible formulation of the criteria, e.g., depths or volumes for which they need to apply, so as to avoid likely application issues. Incorporation of a variance process in the Tribe's WQS is one way in which necessary flexibility may be added so as to avoid unreasonable consequences. Other important differences from Idaho WQS presented by the Tribe's proposal that may lead to unreasonable consequences include the Tribe's bottom sediment narrative criterion, and the numeric turbidity criteria contained in Section 19. Please refer to bulleted comments below for more detail.	Thank you. Comment Noted.
238	IDEQ	1/11/2006	It is the State's understanding that the Tribe's WQS only apply to Reservation TAS Waters, i.e. the lower third of Coeur d'Alene Lake and that portion of the St. Joe River within the exterior boundaries of the Reservation. In reviewing the Tribe's WQS the State finds that the proposed language covers far more than Reservation TAS Waters. The State believes this broad coverage is beyond the authority of TAS status granted by EPA.	Comment Noted. The revised WQS will be revised to consistently apply the term "Reservation TAS Waters" to those waters where the Tribe has TAS jurisdiction.
239	IDEQ	1/11/2006	In Section 2 (Definitions) there are several issues: The WQS refer to "Reservation Waters" and "Disputed Waters"; the later term is not used beyond the definition section. Why are these terms needed if the WQS only apply to Reservation TAS Waters? Also, the WQS refer to "waters of the Tribe" (Section 7(1), Toxic Substances), "all waters of the Coeur d'Alene Tribe with approved water quality standards" (Section 13(1), Implementation) and "all surface waters not specifically classified in Section 21" and "Unclassified waters" (Section 20, General Classifications). The State contends that the Tribe's WQS should only refer to Reservation TAS Waters and the term should be used consistently throughout the document	Thank you. Please the Response to Avista's comment # 11 above.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
240	IDEQ	1/11/2006	In defining "Acute Toxicity" the second sentence says "When referring to aquatic toxicology or human health, an acute effect is not always measured in terms of lethality." While true of human health, the State knows of no acute toxicological test methods that do not use lethality as an endpoint.	The Tribe believes that while lethality is the most common endpoint, recognition should be given to the fact that it may not be the exclusive indicator. The Tribe is not promulgating a single testing methodology or test organism through its WQS definitions. Also, an example of acute toxicity study without a lethality endpoint can be found in plant toxicity studies where one might assign growth limitation endpoints rather than lethality endpoints.
241	IDEQ	1/11/2006	The term "Ceremonial and spiritual water use" is defined yet not given any criteria nor are any Reservation TAS Waters designated for this use.	Thank you. The Tribe has made this adjustment and added cultural uses as a classification in Section 18(3) and designated specific criteria for this use in Section 19(3).
242	IDEQ	1/11/2006	The term "Cultural water use" is defined but in Section 18(3) (Water Use Classification), the use is called "Recreational and Cultural Use." Are these the same use? If so, the definition should clarify this.	They are the same use. The Tribe has added "ceremonial water use" as a water use classification in Section 18(3) and designated specific criteria for this use in Section 19(3) to further clarify its intentions.
243	IDEQ	1/11/2006	The Tribe's definition of "Mean detention time" departs from what is widely known as a mean detention time. If the Tribe is defining a limiting or nearly worse case detention time, then that is what it should be called	As a general matter, the Tribe believes all of the definitions in its proposed WQS are scientifically reasonable and provide information needed for application and implementation of the water quality standards (40 CFR 131.6). This particular definition provides a protective approach which allows for inherent margins of safety in the evaluation of proposed discharges and the development of 401 certifications.
244	IDEQ	1/11/2006	In Section 3 (General-Conditions), paragraphs (3) and (5) appear to be largely the same if not redundant and could be simplified into one paragraph.	Thank you. Comment Noted. Paragraph (3) will remain as stated in the revised WQS. Paragraph (5), however, was amended and now reads, "[i]n aquatic habitats where more than one designated use exists, the most stringent use standards will apply."
245	IDEQ	1/11/2006	In Section 4 (Site-Specific Criteria) there are several issues: Paragraph (2)(a) speaks to natural conditions that the Tribe may determine shall constitute water quality criteria. This implies that Tribe may not, under some circumstances, make this determination. Under what circumstances would the Tribe not determine natural conditions to be the appropriate water quality criteria?	The Tribe has incorporated the EPA's suggested rewrite of Section 4 into its revised proposed WQS. See EPA Comment # 98, above. Former paragraph (2)(a) is now proposed as paragraph (3) and states, "Whenever the natural condition of the surface reservation TAS waters are demonstrated to be of lower quality than the criteria assigned, the Tribe may determine that the natural conditions shall constitute the water quality criteria, (a) If the natural condition varies with time, the natural condition will be determined as the natural condition measured during an annual, seasonal, or shorter period of time prior to human caused influence. (b) The Tribe may, at its discretion determine a natural condition for one or more seasonal or shorter time period to reflect variable ambient conditions. (c) Historical data or data from an appropriate reference site, that represents natural condition may be used to determine the criterion. The Commenter is correct that the Tribe has the discretion pursuant to Section 4 of its WQS to make the natural conditions the water quality criteria. However, it is impossible to provide the Commenter with hypothetical "circumstances" where the Tribe would not make this determination. Site-specific criteria will be designated by the Tribe's Lake Management Department pursuant to and conditioned by WQS Section 4 and will be determined on a case-by-case basis after full consideration of the salient facts.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
246	IDEQ	1/11/2006	<p>Paragraph (2)(a)(A) and (B) speak to dealing with natural variability. While it is understandable to seek the best possible water quality, the State believes the language used fails to adequately recognize that the best that may be measured at one time or place, is not usually a condition, even in natural systems, that can be expected in all places at all times. The State has struggled with this and is currently revising its definition of natural background to at least recognize this. The State's revised definition, currently in rulemaking, reads as follows:</p> <p>"Natural Background Conditions. No lowering of water quality from the physical, chemical, biological, or radiological conditions existing in a water body without human sources of pollution within the watershed. Natural disturbances including, but not limited to, wildfire, mineralogy, diseased vegetation, or flow extremes that affect the physical, chemical, and biological integrity of the water are part of natural background conditions. Natural background conditions inherently vary with time and place, therefore are not usually the best possible condition. Natural background conditions should be described and evaluated in this context."</p> <p>The State suggests the Tribe consider incorporating this language in its WQS</p>	<p>Thank you. Comment Noted. However, the Tribe has incorporated the EPA's suggested rewrite of Section 4 into its revised proposed WQS. <i>See</i> EPA Comment # 98, above.</p>
247	IDEQ	1/11/2006	<p>Paragraph (3) refers to a Table 3. There is no Table identified as Table 3 in the Tribe's proposed WQS. The State presumes this refers to the Table of criteria for toxics substances in Section 7, but this should be made clear.</p>	<p>The Tribe has incorporated the EPA's suggested rewrite of Section 4 into its revised proposed WQS. <i>See</i> EPA Comment # 98, above. While adding no substantive changes, the duplicative subsections and inadvertent reference to Table 3 have been removed and clarity improved throughout the section.</p>
248	IDEQ	1/11/2006	<p>The numbering of paragraphs repeats after paragraph (3). It is unclear whether this is just a numbering problem, or if there is a revision tracking problem, however, it appears that the second set of paragraphs 3-5 is somewhat redundant of the first five paragraphs and should be deleted</p>	<p>The Tribe has incorporated the EPA's suggested rewrite of Section 4 into its revised proposed WQS. <i>See</i> EPA Comment # 98, above. While adding no substantive changes, the duplicative subsections and reference to Table 3 have been removed and clarity improved throughout the section.</p>
249	IDEQ	1/11/2006	<p>In Section 5 (Narrative Criteria), the criterion for turbidity uses the word "potentially". This creates ambiguity, and the State suggests that the word "potentially" can be dropped without detracting from the intent. It is also unclear what the addition of "or aquatic biota" adds to the criterion. Is the Tribe suggesting there is aquatic life that they are not protecting with use designations?</p>	<p>The Tribe's Narrative Criteria in Section 5 are included to protect Reservation TAS Waters for aesthetic purposes, fish and aquatic life protection, cultural and recreation use and other purposes. The Narrative Criteria are not meant to contain scientific absolutes. The Narrative Criteria supplement the numeric criteria and describe the Tribe's water quality goals as applicable to all of the Tribe's designated uses. This is consistent with 40 C.F.R. 131.11(b)(2).</p> <p>The Tribe has removed the word "potentially" from its revised WQS. Also, the Tribe is not intending to suggest there is aquatic life not protected by its use designations. The Tribe's WQS have taken into consideration the use and value of water, for among other things, fish, shellfish and wildlife as required by 40 CFR 131.10. In fact, the use of the term "aquatic biota" relates to certain beneficial uses, such as bull trout, which are dependant on other biota for survival. The Tribe's intent was to notify a reader that other aquatic biota may be used in the determination of impairment to the listed beneficial use.</p>

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
250	IDEQ	1/11/2006	Also in Section 5 (Narrative Criteria), the criterion on bottom deposits say they shall be free from anthropogenic contaminants, yet there exist bottom deposits that are not currently free from such contamination. How does the Tribe intend to handle this legacy situation? Is this intended to drive sediment removal actions in Reservation TAS Waters? What about the ongoing transport of contaminated systems despite extensive cleanup efforts? Is there a way, with this criterion, for the Tribe to acknowledge improving trends and accept gradual recovery?	The Narrative Criteria in Section 5 are included to protect Reservation TAS Waters for aesthetic purposes, fish and aquatic life protection, cultural and recreation use and other purposes. The Narrative Criteria are not meant to contain scientific absolutes or to detail the Tribe's subsequent action plans for a given water quality concern. The Narrative Criteria supplement the numeric criteria and describe the Tribe's water quality <i>goals</i> and desired conditions as applicable to all of the Tribe's designated uses. This is consistent with 40 C.F.R. 131.11(b)(2). The Tribe's six narrative criteria contain those recommended by EPA and address floating solids; oils and grease; color; odor and taste; nuisance conditions; turbidity, and bottom deposits. <i>See</i> Water Quality Standards Handbook, 1994. As such, it is impossible and outside the scope and intent of this public response phase to address future, hypothetical scenarios pertaining to the Tribe's Reservation TAS Waters. Whether a given criteria is exceeded, and how the Tribe would address such exceedance are matters best addressed by a complete analysis of all attending facts. Additionally, in 2008, Idaho and the Tribe reached an agreement upon a consensus Coeur d'Alene Lake Management Plan wherein several jointly-created objectives were established to address the mining-related contamination contained in lake bottom sediments and is undoubtedly a more relevant source to evidence the Tribe's intent regarding what actionable steps are necessary to address this issue.
251	IDEQ	1/11/2006	Section 6 (1) (Antidegradation Policy) states that where designated uses are impaired, "no calculable lowering of water quality" is allowed. The State is concerned about how this Policy will be implemented since the Tribe's WQS appear to establish numerical and narrative criteria that are not attainable and therefore Section 6(1) would apply to all Reservation TAS Waters. The State suggests that the Tribe uses a "measurable" lowering of water quality standard.	The Tribe is required to develop, adopt, and retain an antidegradation policy regarding water quality standards and establish procedures for its implementation through the water quality management process. The Tribe's antidegradation policy and implementation procedures are consistent with the requirements contained in 40 CFR 131.12. As such, the Tribe's antidegradation policy provides for steps to be taken if water quality drops below the levels that are protective of existing uses. The Section 131.12(a)(1), or "Tier 1," protects "existing uses," requires that "[e]xisting instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected." Section 131.12(a)(2), or "Tier 2," applies to waters whose quality exceeds that necessary to protect the section 101(a)(2) goals of the Act. In this case, water quality may not be lowered to less than the level necessary to fully protect the "fishable/swimmable" uses and other existing uses and may be lowered even to those levels only after following all the provisions described in section 131.12(a)(2). The Tribe's antidegradation policy will be applied on a case-by-case basis using the best available science and after a full analysis of the facts.
252	IDEQ	1/11/2006	In Section 7 (Toxic Substances) there are several issues: Paragraph (1) uses the phrase "have the potential" in regard to toxic substances. The meaning of this phrase is unclear and its removal will not detract from the paragraph's meaning.	The Tribe believes this phrase to be unambiguous and necessary to promote its goals of protecting public health and welfare, enhancing the quality of its Reservation TAS Waters, and serving the purposes of the Clean Water Act. Without this phrase included, one erroneous interpretation of Section 7 (1) may be that toxic substances may not be regulated <i>until</i> adverse effects are noticed. That would not reflect the Tribe's intentions. The Tribe seeks a proactive approach to administering its WQS, one that employs scientific testing and assessments to protect its Reservation TAS Waters, and will retain this phrase in Section 7(1).
253	IDEQ	1/11/2006	Paragraph (6), indicates that only lead is measured as total recoverable however, footnote T to the table of toxics criteria, states that selenium criteria are also expressed as total recoverable concentrations.	Thank you. While that same footnote T also provides a scientifically acceptable conversion factor to express selenium in terms of dissolved metals, the Tribe will evaluate whether Section 7 (6) needs further clarification.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
254	IDEQ	1/11/2006	In paragraph (9) what are contaminants with blanks? Is this a reference to contaminants for which criteria are yet to be developed, and not a reference to sampling or analytical blanks? This should be clarified. Also "State's" should be replaced with "Tribe's".	The Tribe has adopted numeric toxic criteria for all Section 307(a)(1) toxic pollutants for which EPA has published criteria. Blanks indicate that the EPA has not calculated criteria for a given contaminant. Subsequent triennial reviews of the Tribe's WQS will incorporate appropriate water quality criteria as they are developed. Also, the Tribe will make the suggested change to reflect that NPDES permits should use the Tribe's narrative criteria for toxics in the interim.
255	IDEQ	1/11/2006	<p>Water Quality Criteria for Toxic Pollutants. The Tribe's proposed CCC for mercury is not EPA's current recommendation, and is not supported by current science. It is in fact based on an FDA action level for food contamination that has nothing to do with aquatic life protection. Furthermore, the original EPA publication of this 0.012 ug/L criterion includes a footnote stating:</p> <p>"If the CCC for total mercury is exceeded more than once in a three (3) year period in ambient water, the edible portion of aquatic species of concern must be analyzed to determine whether the concentration of methyl mercury exceeds the FDA action level (one (1.0) mg/kg) If the FDA action level is exceeded, the Director must notify the EPA regional administrator, initiate a review and as appropriate, revision of its mercury criterion in these water quality standards, and take other appropriate action such as the issuance of fish consumption advisory for the affected area."</p> <p>This necessary footnote is absent from the Tribe's proposal, which at the very least needs to be corrected. But the State believes the Tribe should either propose EPA's currently recommended CCC criterion, or a site-specific criterion supported by the current science on aquatic life toxicity. Because of issues surrounding mercury aquatic life criteria Idaho has moved to reliance on a fish tissue methylmercury criterion of 0.3 mg/Kg</p>	As a sovereign government, the Tribe may set water quality standards more stringent than federal or state standards. <i>Albuquerque v. Browner</i> , 97 F.3d 415 (10th Cir. 1996). The Tribe has proposed the National Toxics Rule value for the chronic mercury criterion due to current EPA re-evaluations of the science of this criteria. The Tribe's mercury revision is acceptable and conforms to Federal promulgations in the National Toxics Rule and the California Toxics Rule. See Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance Final Rule, 40 CFR 131.36, as amended May 4, 1995; Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California, Final Rule, 65 FR 31681, May 18, 2000. The Tribe will consider revising this criteria once EPA has issued the revised methylmercury implementation guidance. Additionally, the footnote suggested by the Commenter has been added at Section 7 note hh.
256	IDEQ	1/11/2006	Idaho is in the process of adopting site-specific aquatic life criteria for cadmium (pending rule 58-0102-0503). The State believes the Tribe should consider adoption of these Idaho specific cadmium criteria in place of EPA's national recommendations	The Tribe has worked extensively with the State and EPA to consider implementation issues that could arise from having different standards in effect in shared waters. The Tribe recognizes that Idaho did adopt updated criteria for cadmium (1.3 ug/L acute and 0.6 ug/L chronic). <i>See</i> IDAPA 58.01.02. The Tribe based its cadmium criteria on EPA's most recent (2002) recommendation for the criteria for cadmium (2.0 ug/l acute and 0.25 ug/l chronic) which, to date, is still the recommended EPA criteria. The Tribe's standards reflect the latest science considered by EPA when establishing and updating the water quality criteria. The Tribe does not intend at this time to modify its acute and chronic cadmium criteria in its revised proposed WQS. The Tribe's revised WQS do include additional hardness information related to this metal. Footnote E of Section 7 notes that hardness is based on ambient values found at the time of sampling and no low end hardness cap will be used. Additionally, Section 11 (Calculations of Dissolved Metals Criteria) now provides that "[a]ctual hardness values found at the time of sampling shall be used in hardness-dependant calculations. High end hardness is capped at 400 mg/L and is not capped at the low end." This criteria, and others, may be assessed to ensure they are aligned with the best available science during the Tribe's triennial review of its WQS.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
257	IDEQ	1/11/2006	There is a freshwater ammonia criterion in Section 7(12) (Toxic Substances), for waters where salmonid fish are not present, yet both Reservation TAS Waters are designated for protection of salmonid. It seems this criterion is not needed and could be confusing to the public.	Pursuant to Section 3 (3) of the Tribe's WQS, the more stringent water quality criteria shall apply at the boundary between waters of different classifications or if the existing use or beneficial uses of more than one resource are affected.
258	IDEQ	1/11/2006	The State notes in Section 9 (Biological Criteria) that paragraph (3) speaks to biological assessment methods approved by the Department (of the Tribe). Idaho believes this methodology must be open to public comment when it is developed. The State also believes that while watersheds that are absent or have minimal human impact are essential to developing biological benchmarks, or reference conditions, a balanced allowance for human use means those reference conditions cannot become the expectation for all waters.	Thank you. Comment Noted.
259	IDEQ	1/11/2006	Wetlands (Section 11) are defined and given criteria but no Reservation TAS Waters are designated as wetlands. Are there any? It would be useful to the public to know exactly where any wetlands are within the Reservation TAS Waters so that it was known where applicable criteria apply.	The Tribe notes that these areas do exist within its TAS jurisdiction and the interaction of its WQS with wetlands, ephemeral or intermittent streams will be analyzed on a case-by-case basis.
260	IDEQ	1/11/2006	Section 12 (Mixing Zones):The section states that no mixing zones will be granted for discharges to wetlands and ephemeral or intermittent streams. Are there any wetlands, ephemeral streams, or intermittent streams identified within the Reservation TAS Waters so that the public is aware where a mixing zone will not be allowed?	TheTribe notes that these areas do exist within its TAS jurisdiction and the interaction of its WQS with wetlands, ephemeral or intermittent streams will be analyzed on a case-by-case basis.
261	IDEQ	1/11/2006	Subsection (h) under the Mixing Zone section applies to reservoirs. Are there any within the Reservation TAS Waters? If so, where do they exist so that the public is aware where the mixing zone requirements apply.	Thank you. The Tribe has deleted the term "reservoir" from Section 12 (h) of its revised WQS.
262	IDEQ	1/11/2006	Subsection (2) under Mixing Zones describes critical design flows for various criteria, but is silent on other mixing zone design criteria, such as 1) upstream receiving water quality to be used; 2) effluent discharge rate to be used; and 3) effluent quality to be used.	Thank You. Comment Noted. The Tribe's WQS seek to protect water quality for designated uses in critical low flow situations using the best available science. As such, the Tribe's proposed WQS used the EPA's biologically-based recommendations for design flows (WQS Handbook section 5-2 p. 5-11). The Tribe is not required to include the suggested mixing zone criterias offered by the Commenter. The Tribe may consider other mixing zone criteria during the triennial review of its WQS but will not amend its WQS Section 12 (2) at this time. Meanwhile, the EPA is responsible for writing mixing zone permits.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
263	IDEQ	1/11/2006	Section 13 (Implementation) should be removed from the WQS, as it does not appear to be a water quality standard approvable by EPA under TAS authority. EPA has stated that it will enforce and implement the Tribe's WQS thus compliance can not be determined by the Tribe as stated in subsection 13(1). This same subsection refers to nonpoint source pollution over which EPA has no authority. Subsection 13(2) states that activities undertaken by certain federal agencies, state agencies, and other governmental agencies and commissions must be conducted in a manner so as not to violate this chapter. Such requirements are beyond the Tribe's authority.	The EPA will continue to be responsible for implementing the Tribal WQS under the CWA. This means the EPA will continue to run the NPDES permit program throughout Idaho. When permits are issued or revised for discharges to Reservation TAS Waters, EPA will use the Tribe's water quality standards to set any discharge limits needed to protect water quality. The Tribe has yet to apply for Treatment as a state to administer NPDES permits and EPA TAS approval does not authorize Tribal issuance or enforcement of NPDES permits. When EPA renews NPDES permits upstream of the area for which the Tribe is approved, however, EPA will check whether any changes to discharge limits are needed to avoid violating the downstream water quality standards of the Tribe. Also, as TMDLs are developed by EPA on the Reservation, the Tribe's WQS will be used to determine the amounts of pollutant loadings that can be allowed and still meet the Tribal WQS on the Reservation, and still meet the WQS of the downstream state. Accordingly, Section 13 will remain in the proposed revised WQS. In addition, pursuant to the Clean Water Act, the Tribe is authorized to manage and protect water resources and uses within the borders of its Reservation. As noted in prior responses, the Tribe applied for and received TAS for the lower third of the Lake and those portions of the St. Joe River within the Reservation. However, activities on lands adjacent to Reservation TAS Waters, which may be owned in fee by nonmembers yet still within the Reservation, and on lands outside of the Reservation can also be affected by the Tribe's WQS. Section 13 of the Tribe's WQS sets forth the Tribe's expectations for compliance in either situation, "[n]o person shall engage in any activity that violates or causes the violation of these standards . . . [a]ll discharges from point sources, all in-stream activities and all activities which generate nonpoint source pollution shall be conducted so as to comply with this chapter." For lands outside the geographic scope of the Reservation TAS Waters, including off-Reservation lands, that impact Reservation TAS Waters, the Tribe will exercise its authority consistent with not only the Clean Water Act, but its inherent powers, treaty rights and agreements pursuant to federal law to manage and protect these waters.
264	IDEQ	1/11/2006	Although the Tribe's proposed WQS provide allowance for compliance schedules (Section 15) and short-term modifications (Section 16) neither of these appears suited to a longer term variance to water quality standards which may be necessary in limited circumstances, e.g. removal or remediation of contaminated sediments.	The Tribe believes its proposed Section 16, accomplishes its intentions of allowing for modification for a specific waterbody on a short-term basis in order to respond to emergencies, accommodate essential activities, or to otherwise protect the public health and welfare. The Tribe does not intend to modify this Section at this time. The Tribe may consider revising its standards as suggested during the triennial review of its WQS.
265	IDEQ	1/11/2006	Section 18 (Water Use Classification): Subsection (1) on Domestic Water Supply uses the phrase "suitable or intended to become suitable for". This sounds like protection for a future use. Idaho once had protection for future uses and has steered away from this at EPA's behest. The State suggests a better phrase may be "water quality appropriate for".	Thank you. Comment Noted.
266	IDEQ	1/11/2006	Subsection (3) is confusing in that it speaks of "prolonged intimate contact" but then goes on to offer examples of recreational activities - fishing and boating -for which prolonged intimate contact is not likely. If the tribe wants to rely on one broad recreational use category then it should describe such.	Thank you. Comment Noted.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
267	IDEQ	1/11/2006	Subsection (4)(a) refers to spawning of bull trout. This use, later in Section 21, is applied to Lake Coeur d'Alene. It is the State's understanding that bull trout spawning occurs only in tributaries, and not in the lake, thus this use description is inappropriate to Lake Coeur d'Alene.	Thank you. The aquatic life uses in Subsection 4(a) has been revised and is applicable to "surface waters used for, or naturally suitable as habitat for bull trout and cutthroat trout."
268	IDEQ	1/11/2006	The focus on two species of fish in subsection 18(4) gives the impression that macro invertebrates and other forms of aquatic life are not important. In fact many of the aquatic life criteria for toxic substances are based on protection of sensitive aquatic insects. An aquatic community approach may be more prudent.	The two particular species in Section 18, bull trout and cutthroat trout, occupy cultural significance to the Tribe and the lack of current fishing opportunities has significantly reduced the Tribe's utilization of this Trust resource. However, just because the Tribe strives to once again possess a high-quality coldwater, adfluvial, fishery does not mean it has forsaken other species. Nor can it agree that specifying use classifications for these two species gives that impression. The Tribe believes that by adopting the relevant EPA criteria that protect a substantial portion of the aquatic community, its proposed WQS, on balance, protect public health or welfare, enhance the quality of water, serves the purposes of the Clean Water Act and attempts to achieve a level of water quality that provides for the protection and propagation of all fish, shellfish, and wildlife within its Reservation TAS Waters jurisdiction.
269	IDEQ	1/11/2006	Section 19 (Specific Water Quality Criteria for Use Classifications): The turbidity criteria (for domestic water supply and both aquatic life uses) are considerably more stringent than Idaho's. The State would like to know the scientific basis for these criteria These criteria also use a difference from natural background, which is sensible, but go on to define natural background as the 90th percentile of the annual average turbidity. Fixing natural background at the 90th percentile could be problematic. At times turbidity will naturally exceed this criterion, making it unreasonable and more protective than intended. At other times a 10% increase (above a fixed 90th percentile) would allow for more than a 10% increase over the natural background prevailing at the time, thus the criterion being less protective than intended. The State suggests the Tribe be more flexible in the determination of natural background.	The Tribe has worked extensively with the State and EPA to consider implementation issues that could arise from having different standards in effect in shared waters. In certain instances, the Tribe's WQS criteria are more stringent than the States and the current natural conditions obtainable by its Reservation TAS Waters. As a sovereign government, the Tribe may set water quality standards more stringent than federal or state standards. <i>Albuquerque v. Browner</i> , 97 F.3d 415 (10th Cir. 1996). The EPA will have the final review of the revised proposed WQS and the Tribe may amend the WQS during a triennial review of its standards. The Tribe's WQS, including its turbidity criteria, represent the most current best available science and are based on criteria recommended by EPA to meet federal guidelines. See, <i>EPA Ecoregional Nutrient Criteria Documents for Rivers & Streams</i> , Ecoregion II.
270	IDEQ	1/11/2006	In subsection (3)(a), the value for the single sample E. coli maximum is missing.	Thank you. The exceedence criteria will be included in revised WQS.
271	IDEQ	1/11/2006	In subsection (3)(d), the State suggests that the Tribe allow a 3 to 7 day sampling interval for determining the E. coli geomean, as Idaho has done. This still provides for 5 samples in 30 days, while avoiding the necessity for weekend sampling.	Thank you. Comment Noted.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
272	IDEQ	1/11/2006	<p>The aquatic life criteria for DO and temperature criteria for aquatic life will be naturally exceeded. While Lake Coeur d'Alene may come close to meeting an 8.0 mg/l DO minimum most of the time, it currently does not and likely cannot meet it at all times within the water column. Meeting a 9.5 mg/l average will be physically impossible at times. Although the Tribe's WQS allow for site-specific criteria at a later time, the State believes the Tribe should deal with the natural potential of the Lake now.</p>	<p>As a general matter, the Tribe's WQS represent the most current best available science and are based on criteria recommended by EPA to meet federal guidelines. In certain instances, the Tribe's WQS criteria are more stringent than the States and the current natural conditions obtainable by its Reservation TAS Waters. The Tribe does not agree with the Commenter's assertion that this renders the WQS infirm in some way. The Tribe believes its proposed WQS reflects the fact the Tribe adopted its water quality standards to protect public health and welfare, enhance the quality of its Reservation TAS Waters, and serve the purposes of the Clean Water Act. However, the Tribe has been made aware through the public commenting process that clarifications may be necessary to its temperature standards for Aquatic Life Uses in Section 19. In response, the Tribe has amended Section 19 (4)(a) - (b) where necessary to reflect that the temperature standard is only applicable to the hypolimnion of the waters designated for specific aquatic life uses. The Tribe also added definitions in Section 2 for "epilimnion" and "metalimnion" to add further clarification to that issue. As for dissolved oxygen criteria, while the Tribe may revisit this criteria during the triennial review of its WQS, it anticipates retaining its proposed dissolved oxygen in the hypolimnion criteria to require exceedence of 8.0 mg/L. Both Idaho and the Tribe recognize that differing standards are promulgated by each respective sovereign government. However, this did not preclude the Tribe and Idaho from reaching an agreement upon a consensus Coeur d'Alene Lake Management Plan through which each government will have authority under the CWA within their respective jurisdictional areas to manage a common water body to achieve each government's respective beneficial uses. <i>See e.g.</i>, 2008 Draft Lake Management Plan, Table 6 at 48 (noting Tribe's 8.0 mg/L criteria and Idaho's criteria of minimum >6.0 mg/L – bottom 20% of depth exempt (250.02.a.iii)). Furthermore, The Tribe's WQS provide that "[w]henver the natural condition of the surface reservation TAS waters are demonstrated to be of lower quality than the criteria assigned, the Tribe may determine that the natural conditions shall constitute the water quality criteria, (a) If the natural condition varies with time, the natural condition will be determined as the natural condition measured during an annual, seasonal, or shorter period of time prior to human caused influence. (b) The Tribe may, at its discretion determine a natural condition for one or more seasonal or shorter time period to reflect variable ambient conditions. (c) Historical data or data from an appropriate reference site, that represents natural condition may be used to determine the criterion. <i>See</i> WQS Section 4(3).</p>
273	IDEQ	1/11/2006	<p>The specification of hypolimnetic dissolved oxygen content is not clear to the State. In Coeur d'Alene Lake regions less than 35 meters with thermal stratification, is the "standard that applies to only the bottom 1 meter of the water column" the natural condition determination? Does that mean that the remaining portion of the hypolimnion is subject to the 7-day average of 9.5 mg/L DO? In lake regions greater than 35 meters, is the hypolimnion above the bottom 20 percent subject to the 9.5 m/L average? This needs clarification. It should be noted that the currently measured conditions at the USGS sampling stations within Reservation TAS Waters, station 5 (Blue Point) and Station 6 (Chatcolet Lake), very often do during July through September.</p>	<p>Please see the Response to IDEQ's comment # 272 above.</p>

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
274	IDEQ	1/11/2006	The State notes here that the DO criteria in the draft Tribal WQS is different than the Idaho criteria. If a lake or reservoir develops thermally stratified layers, those waters of the hypolimnion are exempt from the 6.0mg/L criteria (IDAPA 58.01.02.250.02.a.iii). In addition, for lakes less than 35 meters (the vast majority of Coeur d' Lake within Reservation TAS boundaries) the Idaho exempt zone would be the bottom 20% (250.02.a.i).	Please see the Response to IDEQ's comment # 272 above.
275	IDEQ	1/11/2006	Does the Tribe really expect that the Lake can be kept below 12°C MWMT within the upper water layers in the summer? If so, based on what evidence? If not, how will perpetual (natural) non-compliance be handled? Why not deal with this now at the stage of adopting new criteria? If the concern is assuring a layer of water of suitable DO and temperature sufficient to support summer rearing of bull trout that exists in Lake Coeur d'Alene, the State believes there are alternative statements of criteria that could achieve this end without setting up impossible expectations for Lake water quality that will only have to be resolved, likely with great difficulty, in the future.	Please see the Response to IDEQ's comment # 272 above.
276	IDEQ	1/11/2006	Section 20 (General Classifications), refers to a cold water biota use. This use is not defined nor is it given a criterion. The only aquatic life uses given criteria are Bull Trout and Cutthroat Trout.	The term "cold water biota" is deleted in the revised proposed WQS and replaced by the term "aquatic life uses."
277	IDEQ	1/11/2006	Also under Section 20 (General Classifications), the State does not believe that the Tribe can designate uses for waters that are not Reservation TAS Waters. The State contends that the Tribe has no authority to set uses for any unclassified waters; only the two Reservation TAS Waters may be classified.	The Tribe agrees with the commenter to the extent that the Tribe's WQS apply to its designated "Reservation TAS Waters" as delineated in its proposed standards. It is unclear from the comment, however, which particular language, if any, in Section 20 asserts broader jurisdictional authority by the Tribe. Furthermore, in response to Avista's Comment # 28, the Tribe included the phrase "Reservation TAS Waters" in Section 20 as needed to clarify the Tribe's TAS jurisdiction.
278	IDEQ	1/11/2006	Finally, the State believes that a clearer description of the classified Reservation TAS Waters is needed, similar to Idaho's designated water bodies found in its WQS. Although the Tribe has provided maps of the Reservation TAS Waters, the exact boundary of the St. Joe River on the reservation remains unclear. The State would be happy to work with the Tribe on these descriptions as we each regulate portions of the same water bodies. A clearer description of the water bodies will help the public understand which WQS apply where.	While "exact" boundaries of the Tribe's TAS jurisdiction may be difficult to define, the Tribe is willing to work with Idaho in the future to delineate each government's respective jurisdiction.
279	Intermountain Forest Assoc.	1/13/2006	The purpose of this letter is to submit comments to the Coeur d'Alene Tribe (Tribe) with respect to the Tribe's proposed water quality standards and the Draft Integrated Resource Management Plan (IRMP) Draft Programmatic Environmental Impact Statement (DPEIS). The purpose of these comments is to inform the Tribe and other interested government agencies of IFA concern with the practical application of the proposals and raise questions and concerns that should be addressed to aid in the understanding of the application of these proposed standards and IRMP.	Thank you. Comment Noted.
280	Intermountain Forest Assoc.	1/13/2006	Since IFA has previously submitted its comments on the Tribe's proposed water quality standards, we will only add in this letter, that IFA supports the concerns and questions indicated in the letters that were sent from IFA member companies Potlatch Corporation and Forest Capital Partners, LLC. We share their concerns and would ask for answers to the questions raised in their correspondence with the Tribe.	Thank you. Comment Noted.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
281	Intermountian Forest Assoc.	1/13/2006	In addition, we have reviewed the IRMP DPEIS and, after reviewing the Potlatch and Forest Capital Partners, LLC letters, wish to associate our issues with those expressed in their comments. We share their concerns and questions. We hope that the Tribe will address these concerns, questions and issues so as to answer our common questions. In specific, IFA has the same issues and questions that FCP expresses in its letter of December 13, 2005. We respectfully request your attention to answering these concerns as well as those IFA expressed in its earlier correspondence with the Tribe.	Thank you. Please see the Tribe's IRMP response to comments.
282	Intermountian Forest Assoc.	1/13/2006	IFA shares the same issues and questions with the Draft IRMP DPEIS as addressed in the FCC, LLC letter of December 13, 2005. The questions regarding implementation mechanism's that may flow from implementation of a final IRMP are a shared concern. We urge the Tribe to utilize the Idaho Forest Practices Act as the accepted and approved way to safeguard forest practices on all lands within the exterior boundaries of the CDA Tribe Reservation. This will assist in maintaining consistency and continuity of requirements between all landowners who practice forestry	Thank you. Please see the Tribe's IRMP response to comments.
283	Intermountian Forest Assoc.	1/13/2006	IFA respects the Tribe's desires to assert any and all jurisdiction over activities within its reservation boundaries to the full extent allowed by law. However, we share a desire to have a clear understanding of exactly what regulatory activity is planned by the Tribe, how the Tribe's plans may impact IFA members (both landowners and facility operators) and how the Tribe's regulatory program fits with regulatory programs of other government entities.	Thank you. Comment Noted. Please see the Reply to IFA's Comment # 284 below.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
284	Intermountian Forest Assoc.	1/13/2006	<p>IFA seeks to understand the applicability of the Tribe's authority over fee lands. From the documents available, it is not clear. Non-tribal entities like IFA member companies need to clearly understand the applicability of the delegated authority to fee lands both inside and outside of the reservation "TAS waters". We understand the NPDES permit and point source discharge explanation however the explanation is not clear with respect to nonpoint sources discharges and as importantly, the applicability of the Idaho Forest Practices Act. We ask that the Tribe provide clarity on these issues.</p>	<p>Pursuant to the Clean Water Act, the Tribe is authorized to manage and protect water resources and uses within the borders of its Reservation. As noted in prior responses, the Tribe applied for and received TAS for the lower third of the Lake and those portions of the St. Joe River within the Reservation. However, activities on lands adjacent to Reservation TAS Waters, which may be owned in fee by nonmembers yet still within the Reservation, and activities on lands outside of the Reservation can also be affected by the Tribe's WQS. When a boundary is shared, the upstream entity is required to ensure that downstream standards are met when designating and setting criteria for waters. For example, Idaho is required to ensure that its water quality standards and activities impacting waters within its jurisdiction can attain and maintain the standards of the downstream Reservation TAS Waters. In turn, if those Reservation TAS Waters flow into waters where Idaho has jurisdiction, the Tribe is subject to the same requirement. See 40 CFR 131.10(b); EPA Handbook Sec. 2.2.</p> <p>Also, Section 13 of the Tribe's WQS sets forth the Tribe's expectations for compliance in either situation, "[n]o person shall engage in any activity that violates or causes the violation of these standards . . . [a]ll discharges from point sources, all in-stream activities and all activities which generate nonpoint source pollution shall be conducted so as to comply with this chapter." The Tribe also applied for and received CWA Section 319 approval. Pursuant to Section 319(h), EPA awards grants to states and tribes with approved Nonpoint Source Assessment Reports and Nonpoint Source Management Programs. The funds are to be used to implement programs and projects designed to reduce nonpoint source pollution (i.e., to develop and implement watershed-based plans and Total Maximum Daily Loads (TMDLs) for nonpoint source problems and threats). As required by section 319(h), the Tribe's Nonpoint Source Management Program will describe the Tribe's program for nonpoint source management and serves as the basis for how funds are spent.</p> <p>For lands outside the geographic scope of the Reservation TAS Waters, including off-Reservation lands, that impact Reservation TAS Waters, the Tribe will exercise its authority consistent with not only the Clean Water Act, but its inherent powers, treaty rights and agreements pursuant to federal law to manage and protect these waters. Without a full presentation of the facts, it is predecisional and impossible to determine how the Tribe's WQS will impact the Commenter's lands specifically. As evidenced by the Tribe's collaboration with the City of St. Maries, however, the Tribe does intend on administering its WQS on a case-by-case basis.</p>
285	Intermountian Forest Assoc.	1/13/2006	<p>In closing, we respectfully request that you address all of the issues raised in IFA's letters as well as those of Potlatch Corporation and FCP, LLC, as organizations we all share the same concerns and issues and have many of the same questions. We also desire to develop a working relationship with the Tribe and would welcome an opportunity to meet with Tribal representatives to explore our shared interests.</p>	<p>Thank you. Comment Noted.</p>

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
286	Jack Bowlin, area resident	11/28/2005	I think the water quality for the Tribe is another entity, like the Tribe's been doing all along, is trying to improve everything for everybody. And I'd like to see everybody get aboard and work with the Tribe. And I understand that people tend to narrow out one item from the whole, instead of looking at the whole and narrowing out one item. And it takes a lot of changing in your attitude to be able to see that, to see yourself as one within the universe, getting away from yourself and looking at the environmental thing as something that benefits us all as a whole. And I think if we start changing our attitude and looking towards the whole without picking out one single item, that we'll probably be able to work together and see the environment improve immensely as the Tribe goes ahead.	Thank you. Comment Noted.
287	Kootenai Environmental Alliance	11/23/2005	The terms Special Resource Waters and outstanding resources waters are not in the definitions section of the document but outstanding resource waters are described on page eight.	Thank you. The Tribe will consider providing a definition of "outstanding resource waters." The term "Special Resource Waters" does not appear in the Tribe's WQS.
288	Kootenai Environmental Alliance	11/23/2005	Idaho WQS at IDAF'A 58.01.02.056.01 describes SRW and characteristics associated with the designation. IDAPA at 58.01.02.1 10.10 includes a SRW designation for Coeur d'Alene Lake. The St. Joe River, units P-27 and P-41, also has a SRW designation. In the event there are water bodies located within the Reservation TAS Waters that could be qualify as SRW, this designation may offer an additional level of protection. An additional issue relates to SRW and non-point source discharges. Idaho WQS do not address non-point discharges of pollutants such as sediment or temperature into SRW. It is unclear how SRW of the state, including Coeur d'Alene Lake and St. Joe River are being fully protected when non-point source discharges are not regulated. If a SRW designation will be considered, restrictions on non-point discharges of pollutants into SRW may be warranted.	Thank you. Comment Noted.
289	Kootenai Environmental Alliance	11/23/2005	Specialized Best Management Practices (BMPs):On page 24 there is a discussion of issues relating to best management practices. When it is apparent that Idaho FPA BMPs, and/or FPA site specific BMP's are not adequate, specialized BMPs OAPA 58.02.02.003) may be required to prevent further water pollution	Thank you. Comment Noted.
290	Potlatch Corp.	11/28/2005	1. Consistency with State of Idaho Numerical Water Quality Standards. As you know in the past, Idaho Water Quality Standards at IDAPA 58.01.02 (Idaho Standards) have applied by default to TAS waters. During EPA's consideration of TAS approval for the Tribe it was our understanding that any final standards adopted by the Tribe would closely follow Idaho standards. There are a number of practical reasons for consistency with State Standards including avoidance of a patchwork of differing rules throughout the St. Joe and Coeur d'Alene watersheds. We note that the proposed standards are different from Idaho Standards in various ways including differing dissolved oxygen standards, temperature standards, turbidity and some toxic pollutants. Potlatch requests that the Tribe amend the proposed numerical standards to be identical to Idaho's standards to avoid an unworkable situation in which differing rules apply to the St. Joe River and Coeur d'Alene Lake.	Please see Response to Avista comment # 12 above.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
291	Potlatch Corp.	11/28/2005	2. Consistency with State of Idaho Narrative Criteria. There are a number of new narrative provisions in the proposed standards governing odor, color, taste, bottom sediments, nuisance, biological criteria and whole effluent toxicity that may or may not be consistent with Idaho standards. It is difficult for Potlatch to comment upon these criteria since it is not clear how these criteria will be implemented. Potlatch recommends that the Tribe's narrative standards be consistent with existing Idaho Standards. Alternatively, we request that these standards be amended to include more objective criteria (numerical or some other objective means of measurement) so that potlatch can better understand how these new standards will affect the company.	Please see Response to Avista comment # 12 above.
292	Potlatch Corp.	11/28/2005	3. Designated Use. We note that the Tribe is proposing a new designated use known as "Recreational and Cultural Use". Potlatch understands the Tribe's desire to protect Tribal values, but it is unclear whether these values were adequately protected when Idaho Standards applied to TAS waters. If these values were adequately protected by Idaho Standards, we request that this use is not necessary or the use should reflect this fact. If the Tribe believes that these values are not currently protected, Potlatch cannot discern how protection of this new use will be implemented. The new proposed use contains new concepts such as protection of "instream flow, preservation of habitat for berries, roots, medicines, and other vegetation significant to the values" of the Tribe. Similar to the comment above, regarding narrative standards, if the Tribe retains this new designated use, we request that more objective (numerical or other measurable criteria) be included in the Tribe's Standards so the regulated community can understand how this new use will be implemented.	Please see Response to Avista comment # 31 above.
293	Potlatch Corp.	11/28/2005	4. Mixing Zone. The proposed mixing zone appears to be very different than Idaho's mixing zone policy. We request that the Tribe Standards be consistent with Idaho Standards with respect to mixing zones, including a specific provision for temperature identical to Idaho Standards. The concept of no "damage to the ecosystem," no loss of aquatic life, and an installation of all reasonable wastewater technology controls which must be demonstrated by a NPDES Permit applicant in the proposed Standards are new concepts. It is unclear to Potlatch how this new mixing zone policy will be applied in practice. For example, if a facility is utilizing technology based pollution controls required under the Clean Water Act will this policy require additional control to be entitled to a mixing zone? Further, Potlatch's discharge to the St. Joe is currently in compliance with Idaho Standards, will implementation of this policy result in additional controls on Potlatch? Similar to other comments, the proposed mixing zone policy should be revised to be more objective so that the regulated community can fully understand how it will be implemented.	The EPA will continue to issue NPDES permits throughout Idaho. The Tribe's WQS will set goals for how clean Reservation TAS Waters should be and establish benchmarks for how activities that affect those waters can maintain acceptable water quality. Individual sources that discharge directly into those waters will need an NPDES permit from EPA that includes limits as stringent as necessary to meet the WQS. The Tribe's WQS will serve as a basis for establishing water-quality based effluent limitations for facilities with NPDES permits that are discharging to those Reservation TAS Waters. To the extent the Commenter raises concerns regarding differing standards between Idaho and the Tribe, please see the Reply to Avista's Comment # 12, above.
294	Potlatch Corp.	11/28/2005	5. Antidegradation Policy. The proposed standard limits the introduction of pollutants to impaired waters to "no calculable lowering" of water quality with respect to pollutants of concern. It is unclear how this policy will be applied to existing sources or new sources and what is intended by use of the phrase "no calculable lowering". Similar to other comments, we request that this concept be deleted to be consistent with Idaho Standards or that it be revised so that the regulated community can fully understand how this new provision will be implemented.	Please see Response to Avista comment # 15 above.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
295	Robert Allan: City of St Maries Idaho	11/28/2005	My name is Robert Allen, I'm the mayor of the City of St. Maries. And one of the reasons I came here today was to ask for an extension and I see that's already been granted. So I did bring a comment letter from the Benewah County and the City of St. Maries asking for an extension. One of my concerns, the reason we need extension is our engineers have not had time to really look at the standards that the Tribe is going to have, and we would like for them to do that. And then we can file written comments. So this extension will help us. Our biggest concern right now is City of St. Maries has a permit to discharge from our sewage treatment plant into the St. Joe River, and we would like to know how this permitting process is going to be handled with the Tribe and if it will change from EPA or how that's going to happen. And we're in the process right now of getting a new permit through EPA, so I don't know how that's going to change. But that will be my concern, how that process is going to change and how that will be handled. Thank you for the extension.	The EPA will continue to issue NPDES permits throughout Idaho. The Tribe's WQS will set goals for how clean Reservation TAS Waters should be and establish benchmarks for how activities that affect those waters can maintain acceptable water quality. Individual sources that discharge directly into those waters will need an NPDES permit from EPA that includes limits as stringent as necessary to meet the WQS. The Tribe's WQS will serve as a basis for establishing water-quality based effluent limitations for facilities with NPDES permits that are discharging to those Reservation TAS Waters. The Tribe subsequently met with representatives of St. Maries to address issues raised in the comment. The result of this meeting was a Tribal-issued CWA Sec. 401 certification for the City's most recent NPDES permit. The NPDES permit was based on the Tribe's proposed WQS and represents the Tribe's ability and commitment to achieving workable solutions, on a case-by-case basis, for water quality issues impacting Reservation TAS Waters.
296	Sierra Club	11/29/2005	Development of water quality standards is a critical exercise of sovereignty that embodies both the authority and duty of governments to manage water resources on behalf of the public. The "public" includes the tribal and non-tribal reservation public, visitors who use and enjoy Coeur d'Alene tribal waters. The affected public also includes those who live in the downstream end of the watershed and benefit by protected water quality in upstream waters (as recognized in Section 18 of the draft standards). Consistent with this, Sierra Club requests that section 17 (public involvement) be clarified to provide notice to downstream communities of public hearings and public comment opportunities. Such notice could be provided via local newspapers and/or to lists of interested parties	The Tribe met and exceeded the requirements pertaining in accordance with 40 CFR part 25 in the development of these proposed WQS and will continue to do so in subsequent triennial revisions to its WQS. Notice of public comment opportunities was provided in both the Spokesman Review and Coeur d'Alene press newspapers as well as personal communications and flyers posted throughout the Reservation.
297	Sierra Club	11/29/2005	The Coeur d'Alene Tribe's exercise of Clean Water Act authority is particularly important given the substantial contamination of the watershed by historic and current mining activities and the need for strong standards to address cleanup. Consistent with this, Sierra Club recommends that the Department adopt a more stringent human health assumption in the section 7(5)(Toxic Substances) to reflect the increased consumption of fish by native communities, as well as other minority communities. A study completed by the Columbia River Inter- Tribal Fish Commission found that the average fish consumption rate among its member tribes was much higher than the figure utilized by the EPA (58.7 gpd). A copy of this study is available at http://www.critfc.org/tech/94-3report.html . Further, as reported in that study, consumption rates among anglers is higher than the recommended figure (36 gpd). Accordingly, Sierra Club recommends that a higher fish consumption assumption be utilized to protect populations most sensitive to the human health impacts associated with toxics. Thank you for the opportunity to provide comments on the Tribe's draft water quality standards	The Coeur d'Alene Tribe has initially chosen to use EPA's suggested fish consumption rate of 17.5g/day and will investigate conducting a fish consumption survey specific to this area or adopting the results of this study you mention during subsequent triennial revisions to the WQS.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
298	The Lands Council	1/11/2006	<p>The Lands Council (TLC) is a non-profit member organization that works to safeguard and revitalize our Inland Northwest forests, water, and wildlife through advocacy, education, effective action, and community engagement. The members, staff and board of TLC appreciate the opportunity to comment on the proposed Water Quality Standards (hereby referred to as "Standards") for Approved Surface Waters of the Coeur d'Alene Tribe.</p> <p>It is my understanding that this is the first time the Coeur d'Alene Tribe has issued such as standards in accordance with the decision last year by the U.S. Environmental Protection Agency (EPA) to approve the Coeur d'Alene Tribe to establish water quality standards under Section 303(c) of the Clean Water Act and to issue water quality certifications under Section 401 of the Clean Water Act for Reservation waters of Coeur d'Alene Lake and the St. Joe River, Idaho. I am heartened that these Standards have been developed in consultation with EPA and that the water quality criteria for toxics has been updated with the latest EPA-recommended standards</p>	Thank you. Comment Noted.
299	The Lands Council	1/11/2006	The Standards proposed have been researched in depth and I commend the Tribe for providing such detailed documentation and being available for questions and comments. The Lands Council has several concerns that we hope will be addressed before approval of these Standards by EPA:	Thank you. Comment Noted.
300	The Lands Council	1/11/2006	<p>1. We are concerned that adopting EPA's current aquatic organism consumption rate of 17.5g/day of aquatic organism (p. 9) may not be protective of human health. Northwest residents, especially tribal members, are known to eat more fish than the average American. Although data has not been gathered specifically about Coeur d'Alene Tribe consumption, the EPA's general public consumption rate of 17.5 grams (about two-thirds of an ounce a day or two eight-ounce fish meals per month) is far less than EPA's national subsistence fisher consumption rate of 143.4 grams per day or even the 63.2 grams per day average ingestion for subsistence and non-subsistence consumers identified in 1994 and 2002 studies conducted by the EPA and the Columbia River Inter- Tribal Fish Commission. Those studies determined that Northwest tribal members eat six to 11 times more fish than the national average.</p> <p>The Lands Council recommends-that the Coeur d'Alene Tribe conduct a scientific study of the consumption of both Tribal members and other residents who live and fish along the St. Joe, Coeur d'Alene River and Coeur d'Alene Lake in conjunction with other appropriate agencies in order to determine whether 17.5 grams/day is a safe public consumption rate for aquatic organisms. If the outcome of such a study shows that higher levels of fish are being consumed than the EPA rate, the rate should be changed and the water quality criteria for toxic pollutants reevaluated to be sure levels will protect for human health.</p>	Please see the Response to The Lands Council comment # 297 above.

Comment number	Commenter	Date	Comment	Coeur d'Alene Tribe Response
301	The Lands Council	1/11/2006	2) Currently, Potlatch and the city of St. Maries wastewater treatment facility have permits to discharge into these water bodies. How will these new Standards affect current dischargers into the St. Joe River and Lake Coeur d'Alene?	The EPA will continue to issue NPDES permits throughout Idaho. The Tribe's WQS will set goals for how clean Reservation TAS Waters should be and establish benchmarks for how activities that affect those waters can maintain acceptable water quality. Individual sources that discharge directly into those waters will need an NPDES permit from EPA that includes limits as stringent as necessary to meet the WQS. The Tribe's WQS will serve as a basis for establishing water-quality based effluent limitations for facilities with NPDES permits that are discharging to those Reservation TAS Waters.
302	The Lands Council	1/11/2006	3) Idaho Department of Environmental Quality has established water quality standards for the other 2/3 of Lake Coeur d'Alene and other surface water bodies that flow into and out of the Lake. How will the Coeur d'Alene Tribe Standards interact or change the overall management of the Lake? As talks continue between IDEQ and the Tribe on developing a Lake Management Plan that will address clean up and isolation of heavy metal sediments in the Lake and tributaries, as well as other important watershed planning issues, will both sets of water quality standards be discussed and/or subject to change in the future? The Lands Council suggests that IDEQ and the Tribe work together to discuss any significant differences in their respective water quality standards in order that these surface water bodies be treated as a connected watershed. If any changes in standards are proposed, we request that the public be involved in evaluating these changes.	WQS are mandated by EPA to be updated at least ever three years. The Tribe is committed to working with IDEQ to facilitate understanding between both parties and where standards may be different working toward constructive and collaborative dialogs in an effort to avoid (when possible) conflicts. An example of how the Tribe and DEQ are working together can be found in the recent development of a joint Lake Management Plan for Lake Coeur d'Alene. Further revisions to this document will follow the procedures set forth in section 17 of the WQS and also be consistent with 40 CFR part 25.
303	The Lands Council	1/11/2006	4) On page 25, public involvement in revising these Standards is discussed and defined in that the Tribe's process will "follow federal regulations...under the Clean Water Act." The Lands Council encourages the Tribe to keep not only Idahoans and Tribal members involved, but also downstream users and citizens in Washington State engaged in the public process. Public hearings and notices of changes should be advertised in both the Spokane and Coeur d'Alene press and to interested parties in Washington and Idaho. We ask that the Standards document include specific information on who will be informed and receive opportunity for public comment.	Please see response # 296.
304	The Lands Council	1/11/2006	5) The Lands Council commends the Tribe on choosing Dissolved Oxygen standards ("...shall exceed a 7-day average of 9.5 mg/L, and shall exceed 8.0 mg/L at all times) that are highly protective of both Bull Trout and Cutthroat Trout that use Lake Coeur d'Alene and the St. Joe River. We look forward to a Lake Management Plan that will help provide a comprehensive strategy to reduce nutrients in the Lake and prevent erosion so as to meet these Standards, along with arriving at appropriate lake levels during the ongoing Avista dam relicensing	Thank you. Comment Noted.