



COLUMBIA RIVERKEEPER  
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January 7, 2015

Jackie Ray, Permit Coordinator  
Oregon Department of Environmental Quality  
Eastern Region - Pendleton Office  
700 SE Emigrant Rd., Suite 330  
Pendleton, OR 97801

Sent via email to: [ray.jackie@deq.state.or.us](mailto:ray.jackie@deq.state.or.us)

**Re: Comments on proposed Biggs Service District NPDES Permit — Permit No. 101347**

Dear Ms. Ray,

Columbia Riverkeeper (Riverkeeper) submits these comments on Oregon Department of Environmental Quality's (DEQ) proposed NPDES permit for the Biggs Service District. Specifically, Riverkeeper urges DEQ to comply with the Clean Water Act's "anti-backsliding" requirement by re-instating a temperature effluent limit in Biggs' NPDES permit.

Riverkeeper's mission is to protect and restore the water quality Columbia River and all life associated with it, from its headwaters to the Pacific Ocean. Riverkeeper represents over 8,000 members and supporters in Oregon and Washington and regularly comments on DEQ actions that would impact water quality in the Columbia River. Riverkeeper's members boat, swim, fish, recreate, and consume fish from the Columbia River at and downstream from Biggs, Oregon.

High water temperatures in the Columbia River harm endangered salmon and steelhead. Salmonids require cold water temperatures for survival and recovery. Excessively high water temperatures impact salmonid metabolism, growth rate, and disease resistance, as well as the timing of migrations, fry emergence, and smoltification. Elevated water temperatures have contributed to the decline of the Columbia River's salmon runs. Recognizing this important negative impact, DEQ designated the entire main stem Columbia River in Oregon as water quality limited for temperature on a year-round basis with respect to rearing and migrating salmonids. *See Draft Permit, p.5.*

Despite the significant impairment of Columbia River salmon habitat caused by high water temperatures, DEQ proposes no temperature effluent limit for Biggs' NPDES permit. Previously, a temperature effluent limit was part of Biggs' permit. *See Permit Evaluation Report and Fact Sheet, p.10.* Now, DEQ proposes doing away with even that minimal level of protection for salmon and steelhead.

DEQ's proposal to remove the temperature effluent limit from Biggs' NPDES permit is illegal. The Clean Water Act prohibits DEQ from issuing a new permit with a less stringent effluent limit than the previous permit, except in limited situations not applicable here. *See* 33 U.S.C. § 1342(o); *see also* 40 C.F.R. § 122.44(l)(1). This is commonly referred to as the Clean Water Act's "anti-backsliding" rule. DEQ's Permit Evaluation Report and Fact Sheet for Biggs' permit succinctly explains: "anti-backsliding provisions (described in CFR 122.44(l)) do not allow relaxation of effluent limits in renewed permits." **If relaxing an effluent limit is not permitted, then completely eliminating an effluent limit is surely also illegal, and constitutes impermissible backsliding.** At the least, DEQ should reinstate the temperature effluent limit from the previous version of the permit or explain which of the anti-backsliding exemptions, 40 C.F.R. § 122.44(l)(2)(i), DEQ believes applies.

Riverkeeper is deeply concerned about the impacts of high water temperatures on Columbia River salmonids and by DEQ's apparent disregard for a very clear provision of the Clean Water Act. Riverkeeper looks forward to DEQ's response to this and other public comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Miles Johnson', with a long horizontal flourish extending to the right.

Miles Johnson  
Clean Water Attorney  
Columbia Riverkeeper  
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[miles@columbiariverkeeper.org](mailto:miles@columbiariverkeeper.org)