ATTACHMENT 3

June 11, 1999 letter from Michael T. Lleweln, ODEQ, to Randy Smith, EPA, with attached conservation measures.

Oregon
John A. Kitzhaber, M.D., Governor

Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
TDD (503) 229-6993

June 11, 1999

Mr. Randy Smith
EPA Region 10
1200 6th Ave.
Seattle, WA 98101

RE: State Conservation Measures for
Standards Consultation and Approval

Dear Mr. Smith:

EPA is in the process of consulting with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) on their proposal to approve the revised water quality standards submitted by the State of Oregon in July, 1996. EPA conducted a Biological Assessment, which concluded that some portions of the standards are likely to adversely affect ESA listed species. The State has been included in discussions about how to address these concerns.

In the interest of achieving our shared goal of protecting aquatic communities, and in particular our native salmonids, the Oregon Department of Environmental Quality offers our commitment to complete the ten State Conservation Measures listed in the attached document. Additional information on the standards consultation and approval processes, which provides background and context for the Measures, is included in the Biological Opinions being written by the Services and in the EPA approval action letter to the State.

Sincerely,

Michael T. Llewelyn
Water Quality Division Administrator

Cc: Rick Applegate, NMFS
Russell Peterson, USFWS

June 9, 1999

STATE CONSERVATION MEASURES

MEASURE 1

By June 1, 2000, DEQ will develop guidance on how the narrative criteria for "threatened and endangered species" and for "cold water refugia" in the temperature standard will be applied within DEQ's water quality program. DEQ will involve EPA and the Services in the development of the guidance. "Involve" means including the Services, and EPA in scoping, review of draft guidance, and discussion on the comments and final guidance. Should additional rulemaking be required to identify cold water refugia or areas where the narrative criteria will apply, that rulemaking will occur in the 1999-2002 Triennial Review. If it appears that these narrative criteria will not be included in the EPA temperature criteria or other measures below, and the Services agree, this measure becomes moot and will not be completed.

MEASURE 2

Within 3 months of the date the Services provide DEQ with GIS layers of listed and proposed species locations, DEQ will identify to the Services NPDES permits that meet all of the following characteristics:

1) discharge to streams with listed or proposed aquatic species, as specified by the Services, and
2) discharge to streams that are not water quality limited for temperature or DO (this will include streams with data that meet the standard and streams with insufficient data for listing), as data are available, and
3) have expired or will expire during the next 3 years and need to be renewed.

The Services will review the list of permits and identify to DEQ those permits that are of most concern for listed aquatic species. DEQ will notify the Services when applications for the permits identified by the Services are received. The Services will informally review the applications and accompanying information and provide comments to DEQ in a timely manner so as not to delay renewal schedules. DEQ also has a formal public notice and comment procedure for all NPDES permits. DEQ will review and consider all comments received during the public comment period and notify all who comment as to the final decision and provide a response to comments.

MEASURE 3

DEQ will develop a plan for the implementation of the anti-degradation policy by December 31, 2000. The state will involve EPA and the Services in the development of the implementation plan. "Involve" means including the services and EPA in scoping and review of the draft plan and providing an informal response to comments. DEQ intends to have the implementation plan completed prior to this date, however, DEQ is uncertain how the time line will be affected by EPA, NMFS and USFWS involvement. DEQ

anticipates applying the anti-degradation policy to NPDES permits as they are renewed following completion of the implementation plan.

MEASURE 4

During the 1999-2002 Triennial Review, DEQ will identify the geographic area and time period to which the spawning criteria for temperature and dissolved oxygen apply and will propose appropriate beneficial use designations, provided adequate information is available. DEQ will work with the Services, Oregon Department of Fish and Wildlife (ODFW), and others with relevant fish life history information to identify the geographic area and time period that spawning occurs. Within one year of the final BO, DEQ will identify the geographic area and time periods that the criteria will apply in three pilot basins identified by NMFS in the BO, provided adequate information is available. DEQ can apply the criteria in these basins in advance of rulemaking, because the spawning use designation is currently at the broad basin scale.

MEASURE 5

During the 1999-2002 Triennial Review, DEQ will identify the geographic area to which the cool water DO standard will apply. DEQ will work with the Services, ODFW, and others with relevant life history information to identify where application of the cold water DO criterion is necessary to fully protect threatened and endangered species.

MEASURE 6.

DEQ will use the 8mg/l IGDO "action level" in the intergravel dissolved oxygen standard as a listing criterion for impaired waterbodies in areas where there are relevant ESA listed species, beginning with the year 2000 303(d) list.

MEASURE 7

If EPA or the Services provide funding, DEQ will expand water temperature monitoring into the spring (to include May and June) and fall (to include September and October). Upon receiving funding, DEQ will begin to collect data to identify water bodies with threatened and endangered species that do not meet the water temperature standard for salmonid spawning and incubation. DEQ will work with the Services to identify target basins for spring and fall monitoring. The consultation identified the following basins as having threatened and endangered salmonid species that spawn or incubate during May-June, and September - early October.

May and June: Grande Ronde River, John Day River, Deschutes River, Miles Creek Basin, Hood River, upper Willamette River, Clackamas River, Sandy River (steelhead), and Umpqua River (sea-run cutthroat).
September and early October: Grande Ronde River (spring/summer & fall chinook), Upper Willamette River (chinook and steelhead), and Tillamook and Salmon Rivers (coho).

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MEASURE 8

DEQ will participate in interagency technical and policy workgroups to review temperature issues and develop proposed EPA Region 10 stream temperature criteria. The goal is to develop temperature criteria that meet the biological requirements of listed aquatic species for survival and recovery. EPA will lead this process, which is intended to include Oregon, Idaho, Washington, Tribes, the USFWS, and the NMFS. The workgroups will take approximately 2 years to develop temperature criteria that will be recommended for adoption by the States and Tribes. .

Following the completion of the EPA criteria and recommendations, the State of Oregon will consider adoption of those as a State water quality standard during the 1999-2002 triennial standards review. DEQ will conduct a concurrent public participation process. However, the State's formal rulemaking process is expected to take an additional 8 to 12 months following completion of the EPA criteria and recommendations.

MEASURE 9

During the 1999-2002 Triennial Review, DEQ will identify when and where the bull trout temperature criterion will apply, and propose appropriate beneficial use designations. DEQ will work with the Services, ODFW, and others with relevant life history information to determine geographic area and time of year (including migration corridors) when application of the bull trout temperature criterion is necessary to maintain the viability of native Oregon bull trout.

MEASURE 10

During the 1999-2002 Triennial Review, DEQ will develop numeric temperature criteria for warm and cool water species, which could include site specific criteria. These criteria would apply only where salmonids or other cold water species are not a designated beneficial use. The state will involve EPA and the Services in the development of these criteria.

MEASURE 11

DEQ will meet twice yearly through June 30, 2002 with EPA and the Services to review progress in completing measures 1 through 10.