

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[WH-FRL-3317-5]

Water Quality Standards for the Colville Indian Reservation in the State of Washington

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposal would establish Federal water quality standards on the Colville Confederated Tribes Reservation located within the State of Washington. This action, which is being taken at the request of the Tribes, would establish designated uses and criteria for all surface waters on the Reservation.

DATES: Comments must be received by September 13, 1988.

A public hearing will be held on August 18, 1988, beginning at 7:00 p.m.

ADDRESSES: Comments on this proposed rule should be addressed to: Fletcher Shives; EPA, Region X (M/S 433); 1200 Sixth Avenue; Seattle, WA 98101 (206) 442-8293. The public may inspect the administrative record for this rulemaking and all comments received on this proposed rule at: EPA, Region X; 1200 Sixth Avenue; Seattle, WA 98101, between the hours of 8:00 am and 4:00 pm on business days. A reasonable fee will be charged for copying. Inquiries can be made over the phone by calling (202) 475-7315 or (206) 442-8293. Portions of the record, including the correspondence and other actions cited in this proposal and written public comments will be available from the Criteria and Standards Division, OWRs; 401 M Street SW.; Room 919 East Tower; Washington, DC 20460, during usual business hours.

The public hearing will be held at the Nespelem Community Center, Nespelem, Washington.

FOR FURTHER INFORMATION CONTACT: Fletcher Shives, (206) 442-8293.

SUPPLEMENTARY INFORMATION:

A. Background

On February 7, 1986, the Environmental Protection Agency received a request from the Colville Confederated Tribes to promulgate the Tribes' recently adopted water quality standards as Federal standards for waters on the lands of the Reservation. The Colville Confederated Tribes are a federally recognized Indian Tribe operating pursuant to a Constitution and laws approved by the Commissioner

of Indian Affairs on April 19, 1938. EPA reviewed the Tribes' adopted standards. EPA today is proposing to adopt most of the Tribes' use designations and conventional water quality criteria for its waters. The Colville Confederated Tribes and the State of Washington have an agreement to maintain consistent standards on boundary and other common bodies of water. The State of Washington has formally proposed to adopt criteria for certain toxic and nonconventional pollutants for which EPA has recommended criteria (WSR 87-13-069, published July 1, 1987). These criteria are contained in guidance published, under section 304(a) of the Clean Water Act, in the *Federal Register* from time to time and summarized in *Quality Criteria for Water (1986)* as updated. The State may take final action on its changes during the pendency of this rulemaking. EPA will consider the State's action and may subsequently propose equivalent criteria for Reservation-State boundary waters, if need dictates.

Amendments to the Clean Water Act which specifically address water quality standards on Indian lands have been enacted by Congress and require EPA to promulgate regulations within 18 months of enactment for treating Indian Tribes as States (section 506, Pub. L. 100-4; section 518 of the Clean Water Act). The amendments authorize the Administrator to "treat an Indian tribe as a State for purposes of Title II and sections 104, 106, 303, 305, 308, 309, 314, 319, 401, 402, and 404 of this Act to the degree necessary to carry out the objectives" of the amendments when certain conditions have been met. Section 518(e). Because the regulations "specify[ing] how Indian tribes shall be treated as States" for purposes of the Act have not yet been promulgated, EPA is proposing to establish Federal water quality standards for the Colville Confederated Tribes Indian Reservation.

As noted above, EPA initiated this action before the 1987 amendments to the Clean Water Act were enacted. Under the 1987 amendments, EPA intends to assist other Tribes to establish their own water quality standards for EPA review and approval as provided by section 518 of the CWA.

B. Statement of Basis and Purpose

1. Legal Authority

Under section 303 of the Clean Water Act, States are given the first opportunity to set standards. However, if the Administrator disapproves a State adopted water quality standard, the Act directs the Administrator to promulgate the necessary standards. The

Administrator must also promulgate standards whenever he determines a revised or new standard is "necessary to meet the requirements of the Act." The Clean Water Act does not authorize States to implement or enforce their water quality management programs on Indian lands. Therefore, in the absence of a treaty or Federal statute granting such State authority over a particular tribal land, it is appropriate for EPA to proceed under section 303(c)(4)(B) to promulgate Federal water quality standards, where justified, for waters on Indian lands—in this case, for waters on the lands of the Colville Confederated Tribes.

Today's proposal is based on water quality standards developed by the Colville Confederated Tribes for application to waters on their Reservation. It is not, nor is it intended to be applicable to other lands, or used as a model for other Reservations. EPA's deference to the Colville Confederated Tribes on today's proposal is consistent with EPA's Indian Policy Statement of November 8, 1984, implementing the President's Indian Policy Statement of January 24, 1983, in which EPA committed to achieving a government-to-government relationship between the Agency and Indian tribes. (See also EPA Office of Federal Activities, *Administration of Environmental Programs on Indian Lands* (1983).) In keeping with the principle of Indian self-government, the EPA policy provides that Tribal governments are the primary parties for setting standards, making environmental policy decisions and managing programs for reservations. Moreover, Federal courts have approved EPA's decision to grant Indian Tribes the same degree of autonomy to determine the quality of their environment as was granted to the States. See *Nance v. EPA*, 645 F.2d 701 (9th Cir. 1981). See also, *State of Washington Dept. of Ecology v. EPA*, 752 F.2d 1465 (9th Cir. 1985), and *Phillips Petroleum Company v. EPA*, 803 F.2d 545 (10th Cir. 1986).

On August 28, 1985, EPA approved the Colville Water Quality Management Program under the Act and acknowledged that the Colville Confederated Tribes possess adequate authority and capability to enforce effective water quality management on the Reservation. EPA also determined that the Tribal activities would lead to on-reservation attainment of the water quality goals envisioned by Congress in enacting the Clean Water Act. See letter of Ernesta B. Barnes, EPA Regional Administrator, Region 10, to Governor Booth Gardner, re: Approval of the

Colville Water Quality Management Program (August 28, 1985). The Tribes have subsequently adopted water quality standards applicable to the waters of the Reservation.

Today, EPA is proposing Federal water quality standards applicable to the waters of the Colville Confederated Tribes Reservation that are essentially the same as the current tribal water quality standards. Thus, EPA will maintain Federal authority, but will work cooperatively with the Tribes in implementing the Clean Water Act and the Colville Water Quality Management Program on the Colville Confederated Tribes Indian Reservation.

2. Contents of the Proposed Rule

The proposed rule will become part of EPA's water quality standards regulation as § 131.35. Paragraphs (a) and (b) on "Background" and "Territory Covered" are self-explanatory.

Paragraph 131.35(c)(1), "Applicability, Administration and Amendment", specifies that these standards will be the basis of any NPDES permit limitations established based on water quality requirements. Water quality-based permits are those which have one or more parameters with more stringent limitations than required for a technology-based permit. As discussed above, EPA will be issuing regulations regarding when Indian tribes may be treated as States under the Clean Water Act. If the Colville Confederated Tribes qualify for treatment as a State for purposes of section 303, these Federally-issued water quality standards would remain in effect only until such time as EPA approves water quality standards adopted by the Colville Confederated Tribes and withdraws these regulations.

Paragraph 131.35(c)(2) authorizes the Regional Administrator, in consultation with the Tribal government, to develop general policies applicable to water quality standards. Public participation in establishing such policies would be provided in conjunction with the NPDES permit issuance process. Mixing zones must be justified by a discharger by an analysis similar to that presented in EPA's Technical Support Document for Water Quality Based Toxics Control (EPA, Office of Water; September 1985) or other technically sound method.

Paragraphs 131.35(c)(3) and (c)(4) establish amendment procedures. Paragraph (c)(5) simply reiterates that the existing regulation applies to the Reservation and identifies sections of special importance for compliance.

Paragraph 131.35(c)(6) provides that numeric criteria apply at instream flows equal to or greater than the lowest average 7-consecutive day low flow

with a recurrence frequency of once in ten years. Qualitative criteria apply at all times regardless of flow.

Paragraph 131.35(d) includes the definitions which are applicable to this rulemaking. These definitions are intended to apply only to § 131.35.

Paragraph 131.35(e), "General Considerations", establishes requirements and interpretations for all waters on the Reservation. Paragraph 131.35(e)(1) establishes that at boundaries between waters of different classifications, the more stringent use and criteria apply.

Paragraph 131.35(e)(2), "Antidegradation", is a restatement of 40 CFR 131.12 with changes authorizing the Regional Administrator to administer the policy on the Reservation.

Paragraph 131.35(e)(3), "Aesthetic Qualities", establishes minimum, qualitative criteria which are applicable to all waters under all circumstances and flows.

EPA is not proposing numeric criteria for toxic pollutants for the protection of aquatic life or for the protection of human health for the Tribes' waters at this time. EPA is preparing proposed regulatory changes to the Water Quality Standards regulation to address the new requirements of the Clean Water Act Amendments of 1987 related to toxic pollutants. Until these regulatory changes are finalized it is the Agency's judgment that adopting numeric criteria for toxic pollutants in waters on the Colville Confederated Tribes Reservation is premature. The Agency has reviewed the current discharges with NPDES permits on the Reservation and did not discover any discharges causing a human health or aquatic life risk due to toxics discharges based on available Agency criteria guidance.

Paragraph 131.35(e)(4), requires that EPA's approved analytical methods be used for all testing done to demonstrate compliance with these standards.

Paragraph 131.35(f) defines water use classifications and specifies the criteria to protect each use classification. The Tribes' uses and criteria generally were used as the basis for today's proposal. However, with the concurrence of the Tribes, one change in criteria was to substitute EPA's section 304(a) recommended bacteriological indicator for the Tribes' criteria in swimmable waters. EPA is proposing enterococci (rather than fecal coliform) as a bacteriological indicator because it is a more reliable indicator. EPA's proposed bacteriological criterion is designed to provide approximately the same level of protection as a tribal one.

The dissolved oxygen criteria for Class I and II waters are the same as those adopted by the Tribes and the State of Washington for boundary waters between the Reservation and the State. These criteria are more stringent than EPA recommends under section 304(a).

EPA is proposing to adopt dissolved oxygen and bacteriological criteria similar in stringency to those adopted by the Tribes for the following reasons. First, EPA has determined that Federal promulgation of these criteria is consistent with the intent of the framers of the Clean Water Act and Federal policy regarding Indian tribes. (See section B.1. of this preamble.) Second, the Agency determined that the tribal program would be compatible with State water quality standards for surface waters adjacent to the Reservation; 40 CFR 131.10(b) provides that upstream standards shall provide for the attainment and maintenance of the water quality standards of downstream waters. Third, the more stringent criteria were adopted by the Tribes in consultation with the State of Washington and were designed to provide consistent levels of protection on waters passing between the State and Tribal boundaries; it was not designed to force the State to impose more stringent regulatory measures than otherwise required under the Act.

Paragraph 131.35(g), "General Classification", assigns designated uses to all waters not receiving use designations by name (for example, tributary streams) and establishes rules for assigning use designations to impoundments. All waters not covered by these rules or whose uses are not specifically designated are established as Class II. This latter provision is the same as in the Tribes' standards.

Paragraph 131.35(h) contains the specific use designations. EPA is proposing the identical use designations as those made by the Tribes except for waters designated Class IV. Class IV is not a fishable-swimmable classification. Until the Tribes provide a use attainability analysis for each of these segments, the use will be established as Class III. Even though Class III waters are only designated for secondary contact recreation, the bacteriological and other criteria applicable to these waters are suitable for swimming. Therefore, EPA is treating this classification as fishable-swimmable.

C. Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for all

proposed regulations that have a significant impact on a substantial number of small entities. EPA has determined that because of the small area and number of people affected, and because a Tribal regulation is already in place which is essentially equivalent in stringency to this rule, there will be no significant adverse impact on small entities caused by the subsequent promulgation of this rule.

D. Executive Order 12291

Under E.O. 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of preparing a Regulatory Impact Analysis. EPA has determined that this rule is not major and that no Regulatory Impact Analysis is required. Also, as required by Executive Order 12291 this proposed rule has been reviewed by the Office of Management and Budget. Any comments from OMB to EPA and any response to those comments are available for public inspection through contacting the person listed at the beginning of this notice.

E. Paperwork Reduction Act

There are no significant information collection provisions in this rule. Therefore, there is no requirement for approval of an additional ICR by OMB for the Paperwork Reduction Act of 1980.

List of Subjects in 40 CFR Part 131

Indian reservation water quality standards, Water pollution control, Water quality standards.

Date: July 6, 1988.

Lee M. Thomas,
Administrator.

For the reasons set out in the SUPPLEMENTARY INFORMATION section, Part 131, Subpart D, of the Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for Part 131 continues to read as follows:

Authority: Clean Water Act, Pub. L. 92-500, as amended; 33 U.S.C. 1251 *et seq.*

2. By adding a new § 131.35 to read as follows:

§ 131.35 Colville Confederated Tribes Indian Reservation.

The water quality standards applicable to the waters within the Colville Indian Reservation, located in the State of Washington.

(a) *Background.* (1) It is the purpose of these Federal water quality standards to prescribe minimum water quality

requirements for the surface waters located within the exterior boundaries of the Colville Indian Reservation to ensure compliance with section 303(c) of the Clean Water Act.

(2) The Colville Confederated Tribes have a primary interest in the protection, control, conservation, and utilization of the water resources of the Colville Indian Reservation. Water quality standards have been enacted into tribal law by the Colville Business Council of the Confederated Tribes of the Colville Reservation, as the *Colville Water Quality Standards Act*, CTC Title 33 (Resolution No. 1984-526 (August 6, 1984) as amended by Resolution No. 1985-20 (January 18, 1985)).

(b) *Territory covered.* The provisions of these water quality standards shall apply to all surface waters within the exterior boundaries of the Colville Indian Reservation.

(c) *Applicability, administration and amendment.* (1) The water quality standards in this section shall be used by the Regional Administrator for establishing any water quality based National Pollutant Discharge Elimination System Permit (NPDES) for point sources on the Colville Confederated Tribes Reservation.

(2) General Policies, as defined in § 131.13 of this part, may be implemented by the Regional Administrator for the Reservation. However, opportunity for public hearings in conjunction with that provided pursuant to the NPDES Regulations (40 CFR Parts 122, 124 and 125) will be provided by EPA for all such actions.

(3) Amendments to this section at the request of the Tribe shall proceed in the following manner.

(i) The requested amendment shall first be duly approved by the Confederated Tribes of the Colville Reservation (and so certified by the Tribes' Legal Counsel) and submitted to the Regional Administrator.

(ii) The requested amendment shall be reviewed by EPA (and by the State of Washington, if the action would affect a boundary water).

(iii) If deemed in compliance with the Clean Water Act, EPA will propose and promulgate an appropriate change to this section.

(4) Amendment of this section at EPA's initiative will follow consultation with the Tribe and other appropriate entities. Such amendments will then follow normal EPA rulemaking procedures.

(5) All other applicable provisions of this Part 131 shall apply on the Colville Confederated Tribes Reservation. Special attention should be paid to

§§ 131.6, 131.10, 131.11 and 131.20 for any amendments to these standards to be initiated by the Tribe.

(6) All numeric criteria contained in this section apply at all instream flow rates greater than or equal to that flow rate calculated as the minimum 7-consecutive day average flow with a recurrence frequency of once in ten years (7Q10); qualitative criteria (§ 131.35(e)(3)) apply regardless of flow. The 7Q10 low flow shall be calculated using methods recommended by the U.S. Geological Survey.

(d) *Definitions.* (1) "Acute toxicity" means the 96-hour LC₅₀; that is, the concentration of a constituent that causes lethality to 50% of the test organisms over a 96-hour exposure period.

(2) "Background conditions" means the biological, chemical, and physical conditions of a water body, upstream from the point or non-point source discharge under consideration. Background sampling location in an enforcement action will be upstream from the point of discharge, but not upstream from other inflows. If several discharges to any water body exist, and an enforcement action is being taken for possible violations to the standards, background sampling will be undertaken immediately upstream from each discharge.

(3) "Ceremonial and Religious water use" means activities involving traditional Native American spiritual practices which involve, among other things, primary (direct) contact with water.

(4) "Chronic Toxicity" means the lowest concentration of a constituent causing observable effects (i.e., considering lethality, growth, reduced reproduction, etc.) over a relatively long period of time, usually a 28-day test period for small fish test species.

(5) "Council" or "Tribal Council" means the Colville Business Council of the Colville Confederated Tribes.

(6) "Geometric mean" means the "nth" root of a product of "n" factors.

(7) "Mean retention time" means the time obtained by dividing a reservoir's mean annual minimum total storage by the non-zero 30-day, ten-year low-flow from the reservoir.

(8) "Mixing Zone" or "dilution zone" means a limited area or volume of water where initial dilution of a discharge takes place; and where numeric water quality criteria can be exceeded but acutely toxic conditions are prevented from occurring.

(9) "pH" means the negative logarithm of the hydrogen ion concentration.

(10) "Primary contact recreation" means activities where a person would have direct contact with water to the point of complete submergence, including but not limited to skin diving, swimming, and water skiing.

(11) "Regional Administrator" means the Administrator of EPA's Region X.

(12) "Reservation" means the Colville Indian Reservation established on July 2, 1872 by Executive Order and presently containing 1,389,000 acres more or less.

(13) "Secondary contact recreation" means activities where a person's water contact would be limited to the extent that bacterial infections of eyes, ears, respiratory, or digestive systems or urogenital areas would normally be avoided (such as wading or fishing).

(14) "Surface water" means all water above the surface of the ground within the exterior boundaries of the Colville Indian Reservation including but not limited to lakes, ponds, reservoirs, artificial impoundments, streams, rivers, springs, seeps and wetlands.

(15) "Temperature" means water temperature expressed in degrees Celsius (°C).

(16) "Total dissolved solids" (TDS) means the total filterable residue that passes through a standard glass fiber filter disk and remains after evaporation and drying to a constant weight at 180 °C. It is considered to be measure of the dissolved salt content of the water.

(17) "Toxicity" means acute and/or chronic toxicity.

(18) "Tribe" or "Tribes" means the Colville Confederated Tribes.

(19) "Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

(20) "Wildlife habitat" means the waters and surrounding land areas of the Reservation used by fish, other aquatic life and wildlife at any stage of their life history or activity.

(e) *General considerations.* The following general guidelines shall apply to the water quality standards and classifications set forth in the use designation Sections.

(1) *Classification boundaries.* At the boundary between waters of different classifications, the water quality standards for the higher classification shall prevail.

(2) *Antidegradation policy.* This antidegradation policy shall be applicable to all surface waters of the Reservation.

(i) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

(ii) Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Regional Administrator finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Tribes' continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the Regional Administrator shall assure water quality adequate to protect existing uses fully. Further, the Regional Administrator shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control.

(iii) Where high quality waters are identified as constituting an outstanding national or reservation resource, such as waters within areas designated as unique water quality management areas and waters otherwise of exceptional recreational or ecological significance, and are designated as special resource waters, that water quality shall be maintained and protected.

(iv) In those cases where potential water quality impairment associated with a thermal discharge is involved, this antidegradation policy's implementing method shall be consistent with section 316 of the Clean Water Act.

(3) *Aesthetic qualities.* All waters within the Reservation, including those within mixing zones, shall be free from substances, attributable to wastewater discharges or other pollutant sources, that:

- (i) Settle to form objectionable deposits;
- (ii) Float as debris, scum, oil, or other matter forming nuisances;
- (iii) Produce objectionable color, odor, taste, or turbidity;
- (iv) Cause injury to, are toxic to, or produce adverse physiological responses in humans, animals, or plants; or
- (v) Produce undesirable or nuisance aquatic life.

(4) *Analytical methods.* (i) The analytical testing methods used to measure or otherwise evaluate compliance with water quality standards shall to the extent practicable, be in accordance with the "Guidelines Establishing Test Procedures for the Analysis of

Pollutants" (40 CFR Part 136). When a testing method is not available for a particular substance, the most recent edition of "Standard Methods for the Examination of Water and Wastewater" (published by the American Public Health Association, American Water Works Association, and the Water Pollution Control Federation) and other or superseding methods published and/or approved by EPA shall be used.

(f) *General water use and criteria classes.* The following criteria shall apply to the various classes of surface waters on the Colville Indian Reservation:

(1) *Class I (Extraordinary)—(i) Designated uses.* The designated uses include, but are not limited to, the following:

- (A) Water supply (domestic, industrial, agricultural).
- (B) Stock watering.
- (C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting.
- (D) Wildlife habitat.
- (E) Ceremonial and religious water use.
- (F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(ii) *Water quality criteria.* (A) *Bacteriological Criteria*—The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 8 per 100 milliliters, nor shall any single sample exceed an enterococci density of 35 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) *Dissolved oxygen*—The dissolved oxygen shall exceed 9.5 mg/l.

(C) *Total dissolved gas*—concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) *Temperature*—shall not exceed 16.0°C due to human activities. Temperature increases shall not, at any time, exceed $t = 23 / (T + 5)$.

(1) When natural conditions exceed 16.0°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C.

(2) For purposes hereof, "t" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(3) Provided that temperature increase resulting from nonpoint source activities shall not exceed 2.8°C, and the maximum water temperature shall not exceed 16.3°C.

(E) pH shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.2 units.

(F) Turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(2) *Class II (Excellent)*. (i) *Designated uses*. The designated uses include but are not limited to, the following:

(A) Water supply (domestic, industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting; crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(ii) *Water quality criteria*. (A)

Bacteriological Criteria—The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 16/100 ml, nor shall any single sample exceed an enterococci density of 75 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen—The dissolved oxygen shall exceed 8.0 mg/l.

(C) Total dissolved gas—concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperature—shall not exceed 18.0°C due to human activities.

Temperature increases shall not, at any time, exceed $t = 28/(T+7)$.

(1) When natural conditions exceed 18.0°C no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C.

(2) For purposes hereof, "t" represents the permissive temperature change

across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(3) Provided that temperature increase resulting from non-point source activities shall not exceed 2.8°C, and the maximum water temperature shall not exceed 18.3°C.

(E) pH shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.5 units.

(F) Turbidity shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(3) *Class III (Good)*—(i) *Designated uses*. The designated uses include but are not limited to, the following:

(A) Water supply (industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting, crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Recreation (secondary contact recreation, sport fishing, boating and aesthetic enjoyment).

(F) Commerce and navigation.

(ii) *Water quality criteria*.

(A) **Bacteriological Criteria**—The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 33/100 ml, nor shall any single sample exceed an enterococci density of 150 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) Dissolved oxygen.

	Early life stages ^{1,2}	Other life stages
7 day mean	9.5 (6.5)	³ NA
1 day minimum ⁴	8.0 (5.0)	6.5

¹ These are water column concentrations recommended to achieve the required intergravel dissolved oxygen concentrations shown in parentheses. The 3 mg/L differential is discussed in the criteria document. For species that have early life stages exposed directly to the water column, the figures in parentheses apply.

² Includes all embryonic and larval stages and all juvenile forms to 30-days following hatching.

³ NA (not applicable)

⁴ All minima should be considered as instantaneous concentrations to be achieved at all times.

(C) Total dissolved gas concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) Temperature shall not exceed 21.0°C due to human activities. Temperature increases shall not, at any time, exceed $t = 34(T+9)$.

(1) When natural conditions exceed 21.0°C no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C.

(2) For purposes hereof, "t" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(3) Provided that temperature increase resulting from nonpoint source activities shall not exceed 2.8°C, and the maximum water temperature shall not exceed 21.3°C.

(E) pH shall be within the range of 6.5 to 8.5 with a human-caused variation of less than 0.5 units.

(F) Turbidity shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(G) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significant, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(4) *Class IV (Fair)*—(i) *Designated uses*. The designated uses include but are not limited to, the following:

(A) Water supply (industrial).

(B) Stock watering.

(C) Fish (salmonid and other fish migration).

(D) Recreation (secondary contact recreation, sport fishing, boating and aesthetic enjoyment).

(E) Commerce and navigation.

(ii) *Water quality criteria*. (A)

Dissolved oxygen.

	During periods of salmonid and other fish migration	During all other time periods
30 day mean	6.5	5.5
7 day mean	¹ NA	¹ NA
7 day mean minimum	5.0	4.0
1 day minimum ²	4.0	3.0

¹ NA (not applicable).

² All minima should be considered as instantaneous concentrations to be achieved at all times.

(B) Total dissolved gas—concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(C) Temperature shall not exceed 22.0 °C due to human activities. Temperature increases shall not, at any time, exceed $t = 20 / (T + 2)$.

(1) When natural conditions exceed 22.0 °C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3 °C.

(2) For purposes hereof, "t" represents the permissive temperature change across the dilution zone; and "T" represents the highest existing temperature in this water classification outside of any dilution zone.

(D) pH shall be within the range of 6.5 to 9.0 with a human-caused variation of less than 0.5 units.

(E) Turbidity shall not exceed 10 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

(F) Toxic, radioactive, nonconventional, or deleterious material concentrations shall be less than those of public health significance, or which may cause acute or chronic toxic conditions to the aquatic biota, or which may adversely affect designated water uses.

(5) *Lake Class*—(i) *Designated uses*. The designated uses include but are not limited to, the following:

(A) Water supply (domestic, industrial, agricultural).

(B) Stock watering.

(C) Fish and shellfish: Salmonid migration, rearing, spawning, and harvesting; other fish migration, rearing, spawning, and harvesting crayfish rearing, spawning, and harvesting.

(D) Wildlife habitat.

(E) Ceremonial and religious water use.

(F) Recreation (primary contact recreation, sport fishing, boating and aesthetic enjoyment).

(G) Commerce and navigation.

(ii) *Water quality criteria*.

(A) *Bacteriological Criteria*—The geometric mean of the enterococci bacteria densities in samples taken over a 30 day period shall not exceed 33/100 ml, nor shall any single sample exceed an enterococci density of 150 per 100 milliliters. These limits are calculated as the geometric mean of the collected samples approximately equally spaced over a thirty day period.

(B) *Dissolved oxygen*—no measurable decrease from natural conditions.

(C) Total dissolved gas concentrations shall not exceed 110 percent of the saturation value for gases at the existing atmospheric and hydrostatic pressures at any point of sample collection.

(D) *Temperature*—no measurable change from natural conditions.

(E) *pH*—no measurable change from natural conditions.

(F) *Turbidity* shall not exceed 5 NTU over natural conditions.

(G) *Toxic, radioactive, nonconventional, or deleterious material concentrations* shall be less than those which may affect public health, the natural aquatic environment, or the desirability of the water for any use.

(6) *Special Resource Water Class (SRW)*—(i) *General characteristics*. These are fresh or saline waters which comprise a special and unique resource to the Reservation. Water quality of this class will be varied and unique as determined by the Regional Administrator in cooperation with the Tribes.

(ii) *Designated uses*. The designated uses include, but are not limited to, the following:

(A) Wildlife habitat.

(B) Natural foodchain maintenance.

(iii) *Water quality criteria*. (A) Enterococci bacteria densities shall not exceed natural conditions

(B) *Dissolved oxygen*—shall not show any measurable decrease from natural conditions.

(C) *Total dissolved gas* shall not vary from natural conditions.

(D) *Temperature*—shall not show any measurable change from natural conditions.

(E) *pH* shall not show any measurable change from natural conditions.

(F) *Settleable solids* shall not show any change from natural conditions.

(G) *Turbidity* shall not exceed 5 NTU over natural conditions.

(H) *Toxic, radioactive, or deleterious material concentrations* shall not exceed those found under natural conditions.

(g) *General classifications*. General classifications applying to various surface water bodies not specifically classified under § 131.35(h) are as follows:

(1) All surface waters that are tributaries to Class I waters are classified Class I, unless otherwise classified.

(2) Except for those specifically classified otherwise, all lakes with existing average concentrations less than 2000 mg/L TDS and their feeder streams on the Colville Indian Reservation are classified as Lake Class and Class I, respectively.

(3) All lakes on the Colville Indian Reservation with existing average

concentrations of TDS equal to or exceeding 2000 mg/L and their feeder streams are classified as Lake Class and Class I respectively unless specifically classified otherwise.

(4) All reservoirs with a mean detention time of greater than 15 days are classified Lake Class.

(5) All reservoirs with a mean detention time of 15 days or less are classified the same as the river section in which they are located.

(6) All reservoirs established on preexisting lakes are classified as Lake Class.

(7) All wetlands are assigned to the Special Resource Water Class.

(8) All other waters not specifically assigned to a use classification of the reservation are classified as Class II.

(h) *Specific classifications*. Specific classifications for surface waters of the Colville Indian Reservation are as follows:

(1) *Streams*:

Alice Creek	Class III
Anderson Creek	Class III
Armstrong Creek	Class III
Barnaby Creek	Class II
Bear Creek	Class III
Beaver Dam Creek	Class II
Bridge Creek	Class II
Brush Creek	Class III
Buckhorn Creek	Class III
Cache Creek	Class III
Canteen Creek	Class I
Capoose Creek	Class III
Cobbs Creek	Class III
Columbia River from Chief Joseph Dam to Wells Dam	Class II
Columbia River from northern Reservation boundary to Grand Coulee Dam (Roosevelt Lake)	Class I
Columbia River from Grand Coulee Dam to Chief Joseph Dam	Class II
Cook Creek	Class I
Copper Creek	Class III
Cornstalk Creek	Class III
Cougar Creek	Class I
Coyote Creek	Class II
Deerhorn Creek	Class III
Dick Creek	Class III
Dry Creek	Class I
Empire Creek	Class III
Faye Creek	Class I
Forty Mile Creek	Class III
Gibson Creek	Class I
Gold Creek	Class II
Granite Creek	Class II
Grizzly Creek	Class III
Haley Creek	Class III
Hall Creek	Class II
Hall Creek, West Fork	Class I
Iron Creek	Class III
Jack Creek	Class III
Jerred Creek	Class I
Joe Moses Creek	Class III
John Tom Creek	Class III
Jones Creek	Class I

Kartar Creek.....	Class III	San Poil River.....	Class I	Crawfish Lakes.....	LC
Kincaid Creek.....	Class III ¹	Sanpoil, River West Fork.....	Class II	Camille Lake.....	LC
King Creek.....	Class III ¹	Seventeen Mile Creek.....	Class III	Elbow Lake.....	LC
Klondyke Creek.....	Class I	Silver Creek.....	Class III	Fish Lake.....	LC
Lime Creek.....	Class III	Sitdown Creek.....	Class III	Gold Lake.....	LC
Little Jim Creek.....	Class III	Six Mile Creek.....	Class III ¹	Great Western Lake.....	LC
Little Neapelem.....	Class II	South Nanamkin Creek.....	Class III	Johnson Lake.....	LC
Louie Creek.....	Class III	Spring Creek.....	Class III	LaFleur Lake.....	LC
Lynx Creek.....	Class II	Stapaloop Creek.....	Class III	Little Goose Lake.....	LC
Minila Creek.....	Class III	Stepstone Creek.....	Class III	Little Owhi Lake.....	LC
McAllister Creek.....	Class III	Stranger Creek.....	Class II	McCinnis Lake.....	LC
Meadow Creek.....	Class III	Strawberry Creek.....	Class III	Nicholas Lake.....	LC
Mill Creek.....	Class II	Swimptkin Creek.....	Class III	Omak Lake.....	SRW
Mission Creek.....	Class III ¹	Three Forks Creek.....	Class I	Owhi Lake.....	SRW
Nespelem River.....	Class II	Three Mile Creek.....	Class III ¹	Penley Lake.....	SRW
Nez Perce Creek.....	Class III	Thirteen Mile Creek.....	Class II	Rebecca Lake.....	LC
Nine Mile Creek.....	Class II	Thirty Mile Creek.....	Class II	Round Lake.....	LC
Nineteen Mile Creek.....	Class III	Trail Creek.....	Class III	Simpson Lake.....	LC
No Name Creek.....	Class II	Twentyfive Mile Creek.....	Class III	Soap Lake.....	SRW
North Nanamkin Creek.....	Class III	Twentyone Mile Creek.....	Class III	Sugar Lake.....	LC
North Star Creek.....	Class III	Twentythree Mile Creek.....	Class III	Summit Lake.....	LC
Okanogan River from Reser- vation north boundary to Columbia River	Class II	Wannacot Creek.....	Class III	Twin Lakes.....	SRW
Olds Creek.....	Class I	Wells Creek.....	Class I		
Omak Creek.....	Class II	Whitelaw Creek.....	Class III ¹		
Onion Creek.....	Class II	Wilmont Creek.....	Class II		
Parmenter Creek.....	Class III ¹	(2) Lakes:			
Peel Creek.....	Class III ¹	Apex Lake.....	LC		
Peter Dan Creek.....	Class III ¹	Big Goose Lake.....	LC		
Rock Creek.....	Class I	Bourgeau Lake.....	LC		
		Buffalo Lake.....	LC		
		Cody Lake.....	LC		

¹ The Tribe has adopted a class IV use designation for these waters. EPA will likewise designate these waters as class IV if the Tribe provides adequate use attainability analyses prior to final promulgation of these standards.

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