

Designation and Attainability of Beneficial Uses: Man-made Waters- Discussion Paper #2



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Rule IDAPA 58.01.02.101.02

Unless designated in Sections 110 through 160, man-made waterways are to be protected for the use for which they were developed.

Discussion

Waters of the state may be divided into two categories: nondesignated waters and designated waters. This paper briefly describes these different categories while focusing on man-made waters.

Idaho's rules provide that man-made waterways are to be protected for the use for which they were developed, while private waters are not protected specifically or generally for any beneficial use. Nondesignated waters are different from designated waters in that they have not been assigned an aquatic life or recreation beneficial use. Designated waters are specifically identified in IDAPA 58.01.02.110 through 160 with either an aquatic life use and/or a recreation use assigned. The following description of beneficial uses describes what uses may be designated for a water body.

Beneficial uses in Idaho include five categories of aquatic life (cold water, warm water, seasonal cold, salmonid spawning, and modified), two categories of recreation (primary contact and secondary contact), three categories of water supply (domestic, industrial, and agricultural), wildlife habitat, and aesthetics. All waters of the State, with the exception of private waters and man-made waterways, are protected for the following beneficial uses: agricultural and industrial water supply, wildlife habitat, and aesthetics. These "blanket designations" do not appear in the specific use designation tables in sections 110 to 160 of the Water Quality Standards, but are designations all the same.

Undesignated waters are those that have not yet been assigned an aquatic life or recreation beneficial use. Except for man-made waterways and private waters, until a specific aquatic life and recreation beneficial use are assigned to these waters they are presumed to support both cold water aquatic life (CWAL) and contact recreation, and therefore are protected for both CWAL and contact recreation. The presumed use is a place-holder that provides protection until the appropriate use designation can be determined and promulgated into the use designation tables. Under certain circumstances, this means a designation of a use that is different from the presumed use will not require a use attainability analysis.

Designated waters are those that have been specifically assigned a beneficial use within Idaho Administrative Code. A designated use is one that has been adopted into rule; it need not be an existing use, but rather considered a goal for the water body. Existing uses are defined as: "*those beneficial uses actually attained in waters on or after November 28, 1975, whether or not they are designated for those waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02*".

Water bodies are to be protected for both designated and existing uses. However, designating a beneficial use for a water body does not imply any rights to access or ability to conduct any activity related to the use designation, nor does it imply that an activity is safe. For example, the designation of primary or secondary contact recreation may occur in areas where it is unsafe to enter the water due to water flows, depth or other hazardous conditions. Another example is that aquatic life uses may be designated in areas that are closed to fishing.

This brings us to manmade waters. Idaho agriculture is dependent upon its water resources and has constructed a complex system of canals and drains able to transport large quantities of water long distances. Many of these drains and canals have perennial flow and create an artificial connectivity between water bodies and incidentally create potential habitat for aquatic organisms.

While Idaho protects man-made waterways for “the use for which they were developed”, they may also carry with them existing uses, and/or beneficial uses specifically designated to such waterways in Sections 110 through 160 (IDAPA 58.01.02.101.02). The typical use of a man-made waterway is for the conveyance of water to and from agricultural or residential lands.

Man-made waterways are defined in Idaho rule (Section 010.58) as:

Canals, flumes, ditches, wasteways, drains, laterals, and/or associated features, constructed for the purpose of water conveyance. This may include channels modified for such purposes prior to November 28, 1975. These waterways may have uniform and rectangular cross-sections, straight channels, follow rather than cross topographic contours, be lined to reduce water loss, and be operated or maintained to promote water conveyance.

Under this definition Idaho realizes that man-made waterways are distinctly different from traditional, natural water bodies. Man-made water bodies were constructed or modified existing perennial, intermittent or ephemeral stream channels developed for a purpose and not necessarily intended for aquatic life or recreation. While not intended for aquatic life or recreation uses, they may still occur. The method of protecting these unintended existing uses is a point of contention.

The primary motivation for reviewing the man-made waters provision is to provide consistent guidance for implementing man-made waterways across programs. As the permitting authority in Idaho, EPA is currently applying at a minimum coldwater aquatic life and secondary contact recreation to man-made waterways. This is contrary to Idaho’s interpretation of the man-made waterways provision and the presumed use provision. The proposed language confirms how DEQ has always intended and interpreted its Water Quality Standards-- the presumed uses of cold water aquatic life and recreational uses do not apply to man-made waterways; instead these waterways are only protected for the use for which they were created.