

**From:** [Norm Semanko](#)  
**To:** [Paula Wilson](#)  
**Subject:** Negotiated Rulemaking - Water Quality/Use Attainability Analysis, Docket No. 58-0102-1501 - Comments on Preliminary Draft (Draft No. 1)  
**Date:** Tuesday, April 21, 2015 4:56:09 PM

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Dear Paula,

These comments are provided on behalf of the Idaho Water Users Association (IWUA), regarding Draft No. 1 (Docket No. 58-0102-1501). IWUA represents more than 300 irrigation districts, canal companies and other water delivery organizations, which provide water to more than two million acres of irrigated farm land, housing subdivisions, parks, school yards, and other irrigated ground. IWUA has a particular interest in this negotiated rulemaking as it relates to man-made waterways and the use attainability analysis process. We have the following comments regarding the proposed rule changes:

**General Comments:**

Additional Negotiated Rulemaking Meeting. DEQ will likely make changes to Draft No. 1 after reviewing the comments received at the April 7 meeting and the written comments. Some of these changes could be significant and will certainly be substantive. IWUA believes that an additional negotiated rulemaking meeting should be held to review and discuss these changes. A single meeting, particularly on a “preliminary draft”, is not likely to be sufficient.

Written Permission from Owners/Operators of Man-Made Waterways. This rule, and others (including the developing National Pollutant Discharge Elimination System rule) should *very specifically* require written permission from the owners/operators of canals, ditches, drains and other man-made waterways, *before* DEQ (or EPA) issues a permit, certification or any other authorization or permission to discharge into such a waterway. To provide clear direction to applicants, dischargers and the agencies, reference should be made in the rule to compliance with the provisions of Idaho Code Sections 42-1102 and 42-1209. This written permission to encroach on the man-made waterway must be obtained and presented to the agency before any permission to discharge is granted. It cannot be a condition that is left to be complied with after the permission to discharge is issued.

**Specific Comments:**

**101. NONDESIGNATED SURFACE WATERS**

**02. Man-Made Waterways.** The rule needs to make clear that it only applies to those man-made waterways that have been determined to be jurisdictional under the federal Clean Water Act, and that no jurisdictional finding regarding any particular man-made waterway is being made in the rule itself. If a man-made waterway is not jurisdictional, or no valid jurisdictional determination has been made, it is not governed by the provisions of the Clean Water Act or any rules promulgated in furtherance of the Act. Jurisdiction cannot, and should not, be assumed by the agencies. This distinction is not clear in the current rule or Draft No. 1 and has been the source of

unnecessary confusion.

## **102. DESIGNATION AND REVISION OF BENEFICIAL USES**

### **01. Designation of Beneficial Uses.**

Use of the term “nonpoint source control” in subsection 01.a.vii. is problematic. It could be interpreted by some to require the implementation of mandatory practices. Clarification should be provided.

The terms “waste”, “waste transport”, “waste assimilation” and “water body” should be defined as they are used in subsection 01.b. In particular, it is unclear whether this provision prohibits the discharge of pollutants into a canal, ditch or drain which is determined to be jurisdictional and ultimately returns water to a navigable water, such as a river.

### **02. Revision of Beneficial Uses.**

Clarification should be provided regarding who or what entity will pay the cost of conducting a required use attainability analysis.

It is unclear whether the use attainability process is applicable to all designations, including existing uses when the original designation is determined to be in error. Clarification should be provided.

In subsection 02.a.ii., use of the term “water conservation requirements” is problematic. It could be interpreted by some to require the implementation of water conservation measures. Clarification should be provided.

In subsection 02.a.vi., use of the term “more stringent” is problematic. Idaho’s water quality provisions are not allowed to be more stringent than required under federal law. Clarification should be provided.

Thank you for the opportunity to provide these comments.

Respectfully submitted,

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