

# **Designation and Attainability of Beneficial Uses: Attainability – Discussion Paper #3**

---



**State of Idaho  
Department of Environmental Quality**

**April 2015**



Printed on recycled paper, DEQ, June 2014, PID WQST, CA 82136. Costs associated with this publication are available from the State of Idaho Department of Environmental Quality in accordance with Section 60-202, Idaho Code.

## Attainable

The Clean Water Act states that “*wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved...*” In its most simple form a use is attained when it exists. Attainable is a key element of both existing and designated beneficial uses. Existing uses are defined as those beneficial uses actually attained in waters on or after November 28, 1975....(IDAPA 58.01.02.37).” While designated uses are defined as “those beneficial uses assigned to identify waters .... whether or not the uses are being attained (IDAPA 58.01.02.24).” Attainable takes on key meaning when considering both existing and designated beneficial uses, and the role of a Use Attainability Analysis. While existing uses must always be protected, a designated use, which is not an existing use, may be removed or revised through the use attainability analysis process.

## What is Attainable?

CFR 131.10(d) speaks to what is attainable and states that “at a minimum, uses are deemed attainable if they can be achieved by the imposition of effluent limits required under sections 301(b) and 306 of the Act and cost-effective and reasonable best management practices for nonpoint source control.” Section 301 of the Clean Water Act speaks specifically to effluent limitations for existing point sources and publicly owned treatment works. It requires the installation of best practicable control technology which includes pretreatment, secondary treatment and the best available technology economically achievable. Section 306 of the Act requires new sources to employ the best available demonstrated control technology to control discharge of pollutants. IDAPA 58.01.02.010.16 defines cost-effective and Reasonable Best Management Practices (BMPs) for Nonpoint Sources as “all approved BMPs specified in Subsections 350.03 and 055.07 of these rules. BMPs for activities not specified are, in accordance with Section 350, determined on a case-by-case basis.” Nonpoint source BMPs are activity specific and include the Idaho Forest Practices Act, Solid Waste Management Rules and Standards, Individual/Subsurface Sewage Disposal Rules, Stream Channel Alteration Rules, the Rathdrum Prairie Sewage Disposal Rules, Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities, Dredge and Placer Mining Operations in Idaho, Rules Governing Dairy Waste and the Idaho Agriculture Pollution Abatement Plan.

In summary designated uses are deemed attainable if they can be achieved through a combination of effluent limitations and cost-effective and reasonable best management practices for nonpoint source control.

## When is a use not attainable?

Not all designated uses are attainable. A use attainability analysis is designed to determine whether a designated use is attainable or not attainable according to a very specific set of conditions. The Clean Water Act specifies that “States may remove a designated use which is *not* an existing use, as defined in §131.3, or establish sub-categories of a use if the State can demonstrate that attaining the designated use is not feasible because:

- (1) Naturally occurring pollutant concentrations prevent the attainment of the use; or
- (2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or
- (3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or
- (4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use; or
- (5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or
- (6) Controls more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.”

Only a designated use may be considered for revision or removal through the use attainability process. If a use is qualified as unattainable under one of these conditions the use may be downgraded, revised or removed. An existing use may not be removed.