

# **Designation and Attainability of Beneficial Uses: Existing Uses- Discussion Paper #1**

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**State of Idaho  
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## **Definition IDAPA 58.01.02.010.37**

*Existing Beneficial Use Or Existing Use. 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, and “Water Quality Standards.”*

### **Existing Uses**

An existing beneficial use or existing use is defined in Idaho’s Water Quality Standards as “those beneficial uses actually attained in waters on or after November 28, 1975, whether or not they are designated for those waters...” This is adapted from 40 CFR 131.3(e) which explicitly defines existing uses as those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards. Federal regulations require the maintenance and protection of these uses, but not necessarily more stringent water quality than is necessary to protect these uses (EPA, 2008). In addition, IDEQ’s antidegradation policy requires that *“the existing in stream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected IDAPA 58.01.02.051.01.”* Section 050.02.b also provides that in all cases, existing beneficial uses of the waters of the state will be protected.

Determination of the existing use(s) of a water body must take into account all readily available information. A high degree of confidence is desired when determining whether a use is existing, because an existing use may not be removed regardless of whether the existing use remains attainable 40 CFR 131.10 (h)(1); (EPA, 2008). If an existing use has been attained at any point since November 28, 1975 the State is required to designate it. To date, not all existing uses have been designated in Idaho Water Quality Standards.

In general, nearly all natural water bodies in Idaho are expected to have attained both an aquatic life use and a contact recreation use since November 28, 1975 and therefore would have multiple existing uses. Additionally, water bodies may have different forms of aquatic life use. For example, a water body may have an existing use of cold water aquatic life and salmonid spawning. When there are multiple uses for a water body, the most stringent criterion of multiple criteria applies. IDAPA 58.01.02.070.01.

## **Designated Uses**

A designated beneficial use is defined as “those beneficial uses assigned to identified waters in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, “Water Quality Standards and Wastewater Treatment Requirements,” Sections 110 through 160, whether or not the uses are being attained.”

A designated use may or may not have ever been achieved, but rather describe a goal for the water body. Many water bodies may have designated uses that are more protective than existing uses. For example, a water body may have an existing use of cold water aquatic life, but be designated for salmonid spawning. When a designated use is not an existing use, a designated use may be removed or downgraded to the existing use if the designated use is not attainable.

Removing, changing, downgrading or revising a 101(a)(2) use requires justification using the Use Attainability Analysis (UAA) process. Specifically, 101(a)(2) uses include uses related to the protection and propagation of fish, shellfish, and wildlife and recreation in and on a water body. A UAA is a structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors as described in §131.10(g), (131.3(g)). When removing designated uses that are not 101(a)(2) uses, a UAA is not required.

## **Status of Beneficial Use Designations**

While many existing uses for water bodies have been identified and/or designated, Idaho has not identified, cataloged, or designated existing uses on a statewide scale. While the application of existing uses is flexible it must consider the following challenges: should existing use categories be independent of current designated use category framework described in Idaho’s WQS and secondly how should existing uses be designated using our current use designation framework.

Existing uses may be described using categories that are outside of the framework for which designated uses are described. This provides flexibility in recognizing existing uses. For example, Idaho currently has five designated aquatic life use classifications: cold water, salmonid spawning, seasonal cold water, warm water, and modified (as well as Kootenai River sturgeon and bull trout). While Idaho prefers to define existing uses utilizing this framework, there may be situations where the existing aquatic life use is not adequately captured under these categories. In these situations it is possible to define a new existing use category along with associated protective water quality criteria.

Practically speaking, the major challenge in this flexibility lies not in defining an existing use outside of the current designation framework, but rather in developing acceptable and protective water quality criteria. Because any new description of an existing use category also requires accompanying numeric water quality criteria designed to protect that use. However, there is

potential benefit in describing alternate use designations for a water body that does not fit into the current framework in that the associated water quality criteria may be more appropriate than other overly protective water quality criteria. To date, Idaho has not pursued this flexibility as it sees the development of additional water quality criteria as a limiting factor, especially when applied water body by water body. Alternatively, identifying an existing use that clearly fits within the current designated use scheme has the benefit of developed and accepted criteria. Historically, identifying existing uses according to our designated use categories has been the preferred method because there are corresponding water quality criteria.

Currently Idaho designates uses at the waterbody ID (WBID) level. Idaho is divided into 84 hydrologic unit codes (HUC), which are unique subbasins defined by the USGS. Each HUC consists of a unique number of drainages, referred to as water body units. A water body unit is comprised of all named and unnamed tributaries and is designated as a single unit, unless designated otherwise (IDAPA, 010.109). However, existing uses often are identified at the water body or assessment unit level. Assessment units are a way of reporting the use support status of portions of water bodies; based on stream order and land use.

One of the biggest hurdles in designating existing uses for specific water bodies is the fact that designated uses are assigned at the WBID scale, while existing uses are recognized at the finer assessment unit scale. Describing existing uses at the assessment unit level allows greater flexibility in not having to designate an entire WBID for an overly protective use. The challenge lies in applying it using our current WBID classification system. This hurdle has resulted in limiting the designation of existing uses.

## References

EPA, 2008. Letter of September 5, 2008 from Denise Keehner, Standards and Health Protection Division to Derek Smithee, OK Water Resources Board regarding existing uses