



IDAHO
**WATER
USERS**
ASSOCIATION

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October 5, 2018

SENT VIA EMAIL: paula.wilson@deq.idaho.gov

Paula Wilson
Idaho Department of Environmental Quality
1410 N. Hilton
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RE: Recreational Contact Designation (Primary / Secondary)
(*IDEQ Docket No. 58-0102-1802*)

To Whom it May Concern:

The Idaho Water Users Association ("IWUA") provides the following comments on the Idaho Department of Environmental Quality's ("IDEQ") consideration concerning the agency's current rulemaking regarding primary and secondary recreational designations under Idaho's water quality standards (Docket No. 58-0102-1802). As discussed herein, (1) irrigation water delivery facilities are not recreational facilities and should not be subject to primary or secondary contact recreation water quality standards; and (2) the proposed rule's primary and secondary recreation standards offer no difference and effectively eliminate distinct standards.

IWUA is a non-profit corporation formed in 1937. Although originally named the Idaho State Reclamation Association, IWUA was subsequently renamed to reflect the broader-based mission of serving all water users of the State. IWUA represents approximately 300 canal companies, irrigation districts, water districts, ground water districts, municipal and public water suppliers, hydroelectric companies, aquaculture interests, agri-businesses, professional firms, and individuals – all dedicated to the wise and efficient use of the State's water resources. The purpose of IWUA is to promote, aid and assist in the development, control, conservation, preservation and utilization of the Idaho's water resources. IWUA maintains a standing Water Quality Committee.

Irrigation water delivery facilities are not recreational facilities

Idaho's irrigation facilities were created for the conveyance of agricultural water. They were not created for swimming, fishing or other recreational activities. IDEQ recognized as much in its Issue Paper #1 relative to the 2017 triennial review when it stated that "the primary use of a man-made waterway is for the conveyance of water to and from agricultural or residential lands ... They were developed to move irrigation water and were not built with the

intention of providing for aquatic life or recreation use.”^[1] Any encouragement of recreation in and around these facilities is dangerous and irresponsible. Furthermore, it is contrary to regulatory authority to place any use designation on these waterways.

The future success these systems depends on the ability to continue operating and maintaining them as irrigation delivery facilities – not as swimming, fishing, recreational or other facilities. It is untenable that water delivery and drainage facilities should be subject to such designations and/or TMDL requirements. Such obligations could cripple Idaho’s agricultural economy.

To the extent any designation of man-made irrigation facilities is made, IDEQ regulations provide that such facilities are only designated to “protect the use for which they were developed.” IDEQ regulations define man-made waterways 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.” IDAPA 58.01.02.010.58. The regulations further direct how IDEQ should treat man-made waterways:

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

IDAPA 58.01.02.101.02. Since irrigation facilities are identified or otherwise designated in “Sections 110 through 160,” this regulation mandates that man-made irrigation and drainage facilities must be protected “for the use for which they were developed.” There is no basis in the regulations to designate these facilities for any other purpose (including, but not limited to, primary or secondary contact recreation). Again, encouraging recreational use of irrigation facilities is poor policy. Sadly, children and adults die nearly every year in irrigation facilities. Applying recreational-based water quality standards to these facilities sends a dangerous message. Moreover, it renders Idaho’s man-made waterways provision meaningless.

The Proposed Rule Eliminates any Distinction Between Primary and Secondary Contact Recreation

Initial drafts of IDEQ’s proposed rule amendment eliminated the primary/secondary recreation distinction – creating one “recreation” standard. Following several rounds of public meetings and comments, IDEQ issued the currently proposed rule. Under the current draft, IDEQ would maintain different designations for primary and secondary contact recreation. However, a review of the proposed rule reveals that this is a distinction without a difference. Indeed, notwithstanding the primary/secondary contact designation distinction, the proposed rule would adopt identical standards for each designation.

^[1]<http://www.deq.idaho.gov/media/60179851/triennial-review-modified-aquatic-life-use-undesigned-waters-paper-1.pdf>.

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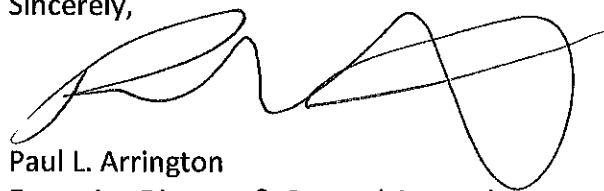
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The existing rule maintains distinct single sample maximum standards for primary and secondary recreational designations (406 v. 576 E. coli organisms per 100 ml). IDAPA 58.01.02.251.01.b. However, the proposed rule amendment would create the same single sample maximum of 410 CFU/100 ml for each designation.

The distinction between primary and secondary recreation is an important one. While primary recreational designations are intended for waters wherein there is anticipated "prolonged and intimate contact by humans," secondary recreational designations are not intended for such purposes (rather, they may be used for "fishing, boating, wading, infrequent swimming," etc.). IDAPA 58.01.02.100.02. By conflating the single sample maximums for each designation, IDEQ would effectively eliminate the secondary contact recreation distinction. IDEQ should clarify its rule to create distinct standards for primary and secondary contact recreation.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above the printed name.

Paul L. Arrington
Executive Director & General Counsel

PLA:kje