



WQS Triennial Review – Issue Paper:

Jacks Creek Aquatic Life Beneficial Use Designation

Introduction

Under section 304(a) of the Clean Water Act, the US Environmental Protection Agency (EPA) is to develop and publish water quality criteria that reflect the latest scientific knowledge on the effects of a constituent concentration on animal and human health. These criteria are published as recommendations to states and authorized tribes for use in setting their water quality standards. While EPA provides scientific recommendations to protect aquatic life and recreation uses, these do not substitute for the Clean Water Act or EPA’s regulations, nor are they regulations themselves. As a practical matter, EPA uses recommended §304(a) criteria as one factor for determining whether to approve a state’s water quality standards. Revisions to Idaho water quality standards must be approved by EPA before they are applicable for Clean Water Act purposes. States must consider adopting new or updated Clean Water Act §304(a) criteria recommendations as part of their triennial review as described under 40 CFR 131.50(a).

DEQ is in the process of developing a Use Attainability Analysis for Jacks Creek to identify the appropriateness of applying Cold Water Aquatic Life criteria to WBID ID17050102SW001 in accordance with the Clean Water Act, DEQ wishes to designate the existing or highest attainable aquatic life beneficial use for Jacks Creek through the Jacks Creek valley.

Current Rules

Nondesignated Surface Waters (IDAPA 58.01.02.101)

01. Undesignated Surface Waters.

Surface waters not designated in Sections 110 through 160 shall be designated according to Section 39-3604, Idaho Code; taking into consideration the use of the surface water and such physical, geological, chemical, and biological measures as may affect the surface water. Prior to designation, undesignated waters shall be protected for beneficial uses, which include all recreational use in and on the water and the protection and propagation of fish, shellfish, and wildlife, wherever attainable.

- a. *Because the Department presumes most waters in the state will support cold water aquatic life and primary or secondary contact recreation beneficial uses, the Department will apply cold water aquatic life and primary or secondary contact recreation criteria to undesignated waters unless Sections 101.01.b and 101.01c. are followed.*
- b. *During the review of any new or existing activity on undesignated water, the Department may examine all relevant data or may require the gathering of*

relevant data on beneficial uses; pending determination in Section 101.01.c. existing activities will be allowed to continue.

- c. If, after review and public notice of relevant data, it is determined that beneficial uses in addition to or other than cold water aquatic life and primary or secondary contact recreation are appropriate, then the Department will:
 - ii. Initiate rulemaking necessary to designate the undesignated water, including providing all necessary data and information to support the proposed designation.**

Discussion

In the absence of designated uses, Jacks Creek (WBID ID17050102SW001) is presumed to support cold water aquatic life and contact recreation (58.01.02.a101a). DEQ will complete a use attainability analysis (UAA) to identify the highest attainable aquatic life beneficial use to designate for Jacks Creek. As a preliminary step, DEQ searched for historic sources describing the settlement of the area, land usage, well drilling, historic stream flow data for Big Jacks Creek as well as Bruneau River stream flow and temperature data. DEQ is also asking for local, historic knowledge of Jacks Creek. DEQ will review the available data and personal accounts and report the findings for public review. If DEQ finds the highest attainable aquatic life use of Jacks Creek is not cold water aquatic life, DEQ will initiate rulemaking and present the data for public review and comment. The alternative aquatic life use categories are seasonal cold, warm, or site-specific criteria if the Jacks Creek does not fit into one of the existing categories.