

Man-made Waterways – Undesignated Waters

Rule IDAPA 58.01.02.101.02

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

Discussion

Waters of the state may be divided into four categories: man-made waterways, private waters, undesignated waters, and designated waters. This paper briefly describes these different categories while focusing on man-made waters.

Idaho's rules provide that man-made waterways are to be protected for the use for which they were developed, while private waters are not protected specifically or generally for any beneficial use. Undesignated waters are different from designated waters in that they have not been assigned an aquatic life or recreation beneficial use. Designated waters are specifically identified in IDAPA 58.01.02.110 through 160 with either an aquatic life use and/or a recreation use assigned. The following description of beneficial uses describes what uses may be designated for a water body.

Beneficial uses in Idaho include five categories of aquatic life (cold water, warm water, seasonal cold, salmonid spawning, and modified), two categories of recreation (primary contact and secondary contact), three categories of water supply (domestic, industrial, and agricultural), wildlife habitat, and aesthetics. All waters of the State, with the exception of private waters, are protected for the following beneficial uses: agricultural and industrial water supply, wildlife habitat, and aesthetics. These "blanket designations" do not appear in the specific use designation tables in sections 110 to 160 of the Water Quality Standards, but are designations all the same. Two other special uses designations are contained in the Water Quality Standards, bull trout in section 250.g and Kootenai River Sturgeon in section 250.h. Currently these also do not appear in the specific use designations tables.

Undesignated waters are those that have not yet been assigned an aquatic life or recreation beneficial use. Until a specific aquatic life and recreation beneficial use are assigned to these waters they are presumed to support both cold water aquatic life (CWAL) and contact recreation, and therefore are protected for both CWAL and contact recreation. There is divergence between the State of Idaho and the EPA in the application of presumed use protections. EPA region 10 believes these use preemptions are equivalent to a use designation and thus require a use attainability analysis to change; Idaho maintains that these use presumptions are only a placeholder that provides protection until the appropriate use designation can be determined and promulgated into the use designation tables.

Designated waters are those that have been specifically assigned a beneficial use within Idaho Administrative Code. A designated use is one that has been adopted into rule; it need not be an existing use, but rather considered a goal for the water body. Existing uses are defined as: “*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*”.

Water bodies are to be protected for both designated and existing uses. However, designating a beneficial use for a water body does not imply any rights to access or ability to conduct any activity related to the use designation, nor does it imply that an activity is safe. For example, the designation of primary or secondary contact recreation may occur in areas where it is unsafe to enter the water due to water flows, depth or other hazardous conditions. Another example is that aquatic life uses may be designated in areas that are closed to fishing.

This brings us to manmade waters. Idaho agriculture is dependent upon its water resources and has constructed a complex system of canals and drains able to transport large quantities of water long distances. Many of these drains and canals have perennial flow and create an artificial connectivity between water bodies and incidentally create potential habitat for aquatic organisms.

While Idaho protects man-made waterways for “the use for which they were developed”, they may also carry with them existing uses, and/or beneficial uses specifically designated to such waterways in Sections 110 through 160 (IDAPA 58.01.02.101.02). The typical use of a man-made waterway is for the conveyance of water to and from agricultural or residential lands.

Man-made waterways are defined in Idaho rule (Section 010.58) 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. These waterways may have uniform and rectangular cross-sections, straight channels, follow rather than cross topographic contours, be lined to reduce water loss, and be operated or maintained to promote water conveyance.

Under this definition Idaho realizes that man-made waterways are distinctly different from traditional, natural water bodies. Man-made water bodies were constructed or modified existing perennial, intermittent or ephemeral stream channels developed for a purpose and not necessarily intended for aquatic life or recreation. While not intended for aquatic life or recreation uses, they may still occur. The need to protect these unintended uses is a point of contention.

To resolve the contention, the Department is considering revising Idaho Administrative Code to include a category that would provide an additional use designation under aquatic life, surface water use designations 100.01(f). The designation would replace the presumed CWAL use designation on man-made waters if the water body does not have an existing use in Section 110 - 160. While we would replace CWAL, it is likely that contact recreation use designation would remain.

The primary motivation for reviewing the man-made waters provision is to provide consistent guidance for implementing man-made waterways across programs. As the permitting authority in Idaho, EPA has departed from past permitting approaches that recognized man-made waters are protected for “the use for which they were developed”, and is now applying at a minimum coldwater aquatic life and secondary contact recreation to man-made waterways. This is contrary to Idaho’s interpretation. In practice, man-made waterways are now being protected for CWAL and secondary contact recreation in discharge permits issued by the EPA according to their interpretation of the presumed use protections. The intent of a new aquatic life use category specific to man-made waters would provide a more appropriate designated beneficial use for these unique water bodies. This would be the basis for existing and future NPDES permit limits for discharge to man-made waterways.