

Idaho

State Water Quality Agency

The Idaho Department of Environmental Quality (DEQ), Water Quality Division is responsible for assuring that the State's surface, ground, and drinking waters meet State water quality standards.¹ Areas of emphasis include: monitoring surface water quality and collecting data; developing and coordinating implementation of water quality improvement plans; managing the State's watersheds; issuing permits; protecting the quality of public drinking water; and providing grants and loans.

Delegated Permit Authority

Idaho is not delegated permit authority for the National Pollutant Discharge Elimination System (NPDES) program (including stormwater permits) or the section 404 dredge and fill permit program.

State Definition of Covered Waters

According to Idaho State law, "waters of the state" are "all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state."² This definition explicitly includes groundwater, makes no distinction between navigable and non-navigable waters or their tributaries, and includes isolated wetlands.

Although wetlands are protected under Idaho's definition of waters of the State, Idaho has no water quality standards specific to wetlands. Thus, in its most recent Integrated Report,³ which describes the quality of all of Idaho's water bodies, the DEQ chose not to incorporate wetlands into any of its categories.

Per Idaho Water Quality Standards, if a surface water body is intermittent (i.e. has zero flow at some time during the year), then numeric criteria apply only during periods of "optimal" flow.⁴

Point Sources and NPDES Permits

The BLM does not hold any NPDES permits in Idaho.

Water Quality Standards

Designated Uses

Idaho's designated uses are listed in its water quality standards regulations and are described in Idaho Administrative Code section 58.01.02.100. These uses are outlined in Figure One. Aquatic life, recreation, and domestic water supply are applied on a water body-specific basis, whereas agriculture, industrial, wildlife, and aesthetic uses are applied to all waters of the State. Idaho also recognizes existing uses, which are uses that are actually attained in a water

¹ Additional information is available on its webpage: <http://www.deq.state.id.us/water/water1.htm>.

² Idaho Code § 22-4904(17). See also Idaho Code § 39-103(16), § 39-3602(28).

³ The Integrated Report can be found at:

http://www.deq.state.id.us/water/surface_water/IntegratedReport/DraftReport.htm#summary

⁴ WQS § 003.51, 070.07.

body on or after November 28, 1975, whether or not they are designated uses. Waters may also be designated as outstanding or special resource waters (see antidegradation discussion below).

Figure One: Idaho State-Designated Use Descriptions

| State-Designated Use Code | State-Designated Use | State-Designated Use Description |
|---------------------------|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A | Aesthetic | This use applies to all surface waters of the state. |
| AWS | Agricultural Water Supply | Water quality appropriate for the irrigation of crops or as drinking water for livestock. This use applies to all surface waters of the state. |
| COLD | Cold Water Aquatic Life | Water quality appropriate for the protection and maintenance of a viable aquatic life community for cold water species. |
| MOD | Modified Aquatic Life | Water quality appropriate for an aquatic life community that is limited due to one (1) or more conditions set forth in 40 C.F.R. § 131.10(g) which preclude attainment of reference streams and conditions. |
| SAL | Salmonid Spawning | Waters which provide or could provide a habitat for active self-propagating populations of salmonid fishes. |
| SC | Seasonal Cold Water Aquatic Life | Water quality appropriate for the protection and maintenance of a viable aquatic life community of cool and cold water species, where cold water aquatic life may be absent during, or tolerant of, seasonally warm temperatures. |
| WARM | Warm Water Aquatic Life | Water quality appropriate for the protection and maintenance of a viable aquatic life community for warm water species. |
| WH | Wildlife Habitat | Water quality appropriate for wildlife habitats. This use applies to all surface waters of the State. |
| IWS | Industrial Water Supply | Water quality appropriate for industrial water supplies. This use applies to all surface waters of the State. |
| DWS | Domestic Water Supply | Water quality appropriate for drinking water supplies. |
| PCR | Primary Contact Recreation | Water quality appropriate for prolonged and intimate contact by humans or for recreational activities when the ingestion of small quantities of water is likely to occur. Such activities include, but are not restricted to, those used for swimming, water skiing, or skin diving. |
| SCR | Secondary Contact Recreation | Water quality appropriate for recreational uses on or about the water and which are not included in the primary contact category. These activities may include fishing, boating, wading, infrequent swimming, and other activities where ingestion of raw water is not likely to occur. |
| UDW | Undesignated Surface Waters | Surface waters not designated in Sec 110-160 shall be designated according to Sec 39-3604, ID Code, considering use of surface water and such physical, geological, chemical, and biological measures as may affect surface water. Prior to designation, undesignated waters shall be protected for beneficial uses, which include all recreational use and protection and propagation of fish, shellfish, and wildlife. Presume that most waters will support cold water aquatic life and primary or secondary contact recreation beneficial uses, apply cold water aquatic life and primary or secondary contact recreation criteria to undesignated waters, unless section 101.01.b and 101.01.c are followed. |

Source: EPA WQSDB available at: http://oaspub.epa.gov/wqsdatabase/wqsi_water_body.rep_parameter

Water Quality Criteria

Idaho has established water quality criteria (IDAPA 58.01.02.200) that can be numeric or narrative. Numeric criteria are use-specific, while narrative criteria are general, applying to all waters irrespective of use.

The State's approach to assessing numeric standards is published in the Water Body Assessment Guidance – Second Edition (WBAG II).⁵ According to the DEQ, the State does not interpret the numeric criteria for conventional pollutants as a sharp line between impairment and non-impairment; rather there is a gray-zone where there may or may not be an impairment.⁶ The DEQ thus establishes a zone of up to 10 percent criteria exceedance in which the assessor has flexibility to consider other evidence to determine a violation.

The WBAG II also provides guidance on narrative criteria. Narrative criteria are statements that describe the desired water quality goal, such as Idaho's waters being "free from" pollutants such as oil and scum, color and odor, and other substances that cause harm to people and fish. Compliance with Idaho's narrative criteria is determined through biological assessments.⁷ These biological assessments directly measure whether the beneficial uses that the narrative standards were written to protect are being achieved. Idaho does not have a streamflow criterion.

Natural background conditions exist when there is no measurable difference between the quality of water now and the quality of water that would exist if there were no human-caused changes in the watershed. In April 2000, Idaho added natural background provisions to its water quality rules (IDAPA 58.01.02.200.09).

Sediment

Idaho's criterion for sediment is narrative. The state has published guidance on sediment impaired water bodies.⁸ The State also has a turbidity and intergravel dissolved oxygen standard.

Antidegradation

Idaho's Surface Water Quality Standards, Chapter 58, Title 01.02, Section 051, contain the State's antidegradation policy, which states:

01. Maintenance of Existing Uses for All Waters. The existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

⁵ Idaho's Water Body Assessment Guidance, Second Edition (WBAG II), describes the methods the DEQ uses to evaluate data and determine beneficial use support of Idaho water bodies. More information is available at: http://www.deq.state.id.us/water/surface_water/wbag/WBAG2001.htm.

⁶ State of Idaho, Department of Environmental Quality. Principles and Policies for the 2002/2003 Draft Integrated (303(d)/305(b)) Report. June 2, 2003.

⁷ The DEQ's WBAG II describes a process that uses biological and aquatic habitat parameters to assist in the assessment of beneficial use status. Bioassessment is particularly useful in judging compliance with Idaho's narrative criteria. Bioassessment parameters include: Aquatic Habitat Parameters (stream width, stream depth, stream shape, sediment impacts, bank stability, etc.) and Biological Parameters (distribution and relative abundance of aquatic insects, level of organic enrichment, relative abundance of functional feeding groups of aquatic insects, variety and abundance of fish and other aquatic life, etc.).

⁸ Rowe, Mike, Idaho Department of Environmental Quality. Guide to Selection of Sediment Targets for Use in Idaho TMDLs. June, 2003. Available at: http://www.deq.state.id.us/water/Sediment_Targets_Entire.pdf.

02. High Quality Waters. Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the Department finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Department's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the Department shall assure water quality adequate to protect existing uses fully. Further, the Department shall assure that there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources and cost-effective and reasonable best management practices for nonpoint source control. In providing such assurance, the Department may enter together into an agreement with other state of Idaho or federal agencies in accordance with Sections 67-2326 through 67-2333, Idaho Code.

03. Outstanding Resource Waters. Where high quality waters constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected from the impacts of point and nonpoint source activities.

Idaho does not have any formal procedures for implementing its antidegradation policy, but there is a plan to review other States' implementation policies and develop one for Idaho.

Outstanding resource waters (ORWs) or Tier III waters are designated in Idaho through a public nomination process. The public petitions the Idaho Water Resources Board (IWRB) to consider a stream segment for designation, and the legislature must designate that segment as an ORW. There is no specific provision in Idaho law for the IWRB or the legislature to make a designation of an ORW independent of a citizen petition. The IWRB has approved the nomination of over 60 water bodies, but the legislature has yet to designate any as ORWs. In theory, once designated, ORWs are protected from degradation from new nonpoint sources of pollution by the development and implementation of "outstanding resource water best management practices" which will assure that water quality of an ORW is not lowered.⁹ Existing activities may continue so long as they maintain and protect the current water quality.

Idaho's current antidegradation policy makes no mention of Tier 2 __. The DEQ is aware of the concept, has discussed its application internally, and may at some point discuss it with the public and incorporate it in future rules or guidance. Although not officially Tier 2 __, Idaho has "Special Resource Waters" which have similar protection to the Tier 2 __ concept. There are over 110 designated "Special Resource Waters," and these are listed in the State's Water Quality Standards at sections 58.01.02.56 and subsections 110-160.¹⁰

Idaho does not have formally designated Tier I and II waters.

⁹ Idaho Code sec. 39-3618.

¹⁰ Available at: <http://www2.state.id.us/adm/adminrules/rules/IDAPA58/0102.pdf>.

ONRWs on BLM land

There are no designated ORWs on BLM lands in Idaho.

State 305(b) Reporting

The National Assessment Database (NAD) contains information on the attainment of water quality standards. Assessed waters are classified as Fully Supporting, Threatened, or Not Supporting their designated uses. This information is reported in the National Water Quality Inventory Report to Congress under Section 305(b) of the CWA.¹¹

State 303(d) List and TMDLs

The EPA TMDL Tracking System contains information on all impaired waters under section 303(d) of the CWA. The database also has information on EPA-approved TMDLs.¹² As of 1998, the date of the most recent data in the EPA's tracking system, Idaho reported 838 water bodies on its 303(d) List and had 791 TMDLs approved. By 2002 over 900 river and stream segments were identified as impaired. Idaho's 2002 303(d) list can be found in the State's 2002-03 Integrated 303(d)/305(b) Report.¹³

Idaho maintains GIS coverage of its impaired water bodies. These data can be viewed and downloaded from the DEQ's website.¹⁴ The BLM Idaho State Office also maintains GIS coverage of impaired water bodies on BLM lands in Idaho. These data are available from the BLM Idaho State Office.

303(d) List

Listing and Credible Data Standards

The process by which the DEQ makes beneficial use support status determinations is outlined in Idaho's WBAG II. Listing occurs when monitoring data indicates beneficial use impairment or a violation of criteria.

Idaho's credible data standards consist of three tiers of data quality as outlined in the WBAG II. Each data tier is discussed below. In addition, a 10% temperature criteria exceedance policy exists for 303(d) listing and de-listing decisions only and is not intended to determine compliance with the WQS for other purposes.¹⁵

¹¹ Idaho's attainment of water quality standards can be found at:

http://oaspub.epa.gov/waters/w305b_report.state?p_state=ID. Idaho has not recently submitted detailed electronic water quality assessment data so the online data from the EPA is not current.

¹² Idaho's 303(d) lists and approved TMDLs are available at:

http://oaspub.epa.gov/waters/state_rept.control?p_state=ID.

¹³ The Integrated Report can be found at:

http://www.deq.state.id.us/water/surface_water/IntegratedReport/DraftReport.htm#summary, and the 303(d) list is available at: http://www.deq.state.id.us/water/surface_water/IntegratedReport/Section5.pdf.

¹⁴ Available at: <http://mapserver.deq.state.id.us/website/deqwaters/viewer.htm>. Use the viewer to create on-line maps, or click the "download" button in the lower right corner to download data.

¹⁵ More information on this temperature criteria can be found in Idaho's 2002-03 Integrated Report p. 10.

Tier I

The scientific rigor of Tier I data is characterized as high. Tier I data typically includes monitored data collected by professional scientists or professionally-trained technicians with more than 30 hours of supervised training. The data are collected and analyzed under a monitoring plan with quality assurance and parameters measured. Samples are processed in an EPA-certified lab following standard methods or by a professional taxonomist. Biological data may come from one of several different assemblages, such as macroinvertebrates, fish, or algae, and are identified by a professional taxonomist. Physical habitat data may include quantitative measurements and a standardized qualitative assessment.

To be considered relevant, Tier I data usually include direct measurements or observations of beneficial uses, criteria, or causes of impairment. In addition, the sampling needs to be representative, that is, it must have been conducted 1) at multiple times and locations, or 2) at a representative location with specific locations identified on a map or with geographical information system (GIS). The information must be less than five years old and must be able to be differentiated along a gradient of environmental conditions. Predictive models must include calibration factors and, as noted below, are not used exclusively to make beneficial use determinations. Examples of the types of monitoring data typically meeting Tier I criteria include Beneficial Use Reconnaissance Program (BURP), EPA Environmental Management and Assessment Program (EMAP), Rapid Bioassessment Protocols, Use Attainability Analyses, graduate theses, and professionally prepared and peer-reviewed studies, reports, or predictive models. These data can come from a number of possible sources such as State and Federal agencies, academic institutions, local governments, or private parties. Tier I data are of sufficient quality and relevance to be used for 303(d) listing and de-listing decisions, 305(b) reports, subbasin assessments, and TMDL development. Data must meet both the scientific rigor and relevance of the Tier I criteria to be classified at the Tier I level.

Tier II

The DEQ characterizes the scientific rigor of Tier II data is less than that of Tier I because Tier II data may include qualitative or semi-quantitative data. The data collectors will have followed documented field, laboratory, and data-handling protocols, have rated parameters, and may have a monitoring plan. The monitoring plan may not provide quality assurance (QA) or quality control (QC) information. Tier II data include professionally conducted evaluations and habitat data consisting primarily of standardized visual assessments or evaluations. However, some field staff may not be trained, the evaluating laboratory may not be certified, or a professional taxonomist may not identify the samples. Relevant Tier II data may include evaluations based on monitored or evaluated data more than five years old, watershed land use information, modeling results with estimated inputs, or measurement of an atypical event. Data may relate to a watershed rather than be water body specific. They may also relate to guidelines or objectives of other government entities. Data collected for Environmental Assessments, Proper Functioning Condition (PFC) assessments, Cumulative Watershed Effects (CWE) Process, and agency planning documents, as well as Citizen Volunteer Monitoring data, are examples of types of data that would be considered Tier II. Tier II data are not used in 303(d) listing decisions due to higher data requirements for impairment decisions under Section 303. However, Tier II data may be used in subbasin assessments and TMDLs when the assessor has the time to consider these data in context with other collected information. These data can also be used to establish beneficial uses for assessments and in 305(b) reports.

Tier III

The scientific rigor of Tier III data is less than that of Tiers I and II data. Tier II data often includes information collected by unknown or untrained individuals. The data may not have been collected or analyzed following standard or reported protocols. Data without any originating documentation also appears in this category. Relevance of data is limited due to

information having no intrinsic judgment or known reference for comparison. The data may have been extrapolated based on other sites or reflect a specific localized condition not representative of the water body. This type of information may be considered as general background information, but it is not of sufficient rigor and relevance for listing decisions or regulatory actions. Tier III data are not used in 303(d) decisions, subbasin assessments, TMDLs, or 305(b) reports due to the uncertainty in the scientific rigor of their collection and relevance to beneficial uses or water quality standards. This data may be used in helping the DEQ target future planning and monitoring.

De-Listing

Waters in Idaho can be de-listed for a variety of reasons including:

1. The water does not meet Idaho Water Quality Standards natural background provisions (IDAPA §58.01.02.003.65 and §58.01.02.053.3);
2. Data quality for the water does not meet minimums in Idaho's WBAG II; or
3. The water frequently exceeds the assessment threshold. WBAG allows up to 10% exceedance of numeric criteria if the bio-assessment indicators are good (WBAG II Chapter 5).

TMDLs

Idaho's 2002 Integrated Report identified over 900 river and stream segments as impaired, and TMDLs must be developed for each. Idaho and the EPA have a court-ordered responsibility to ensure TMDLs are developed in a timely manner. The schedule for TMDL development is outlined in the State's TMDL settlement agreement.¹⁶

For the BLM, the major TMDL issues in Idaho are sediment and temperature. The BLM is also involved in BMP effectiveness monitoring in TMDL watersheds. For example, the BLM monitors vegetation and stream bank stability as a surrogate for sediment and temperature.

Establishment, Apportionment, and Implementation

In Idaho, TMDLs are assessed on a subbasin level, which means water bodies and pollutants within a hydrologic subbasin are generally addressed in a single document. There are 84 subbasins (HUCs) in Idaho, and 21 have implementation plans developed to improve water quality. These plans typically cover agricultural sources, but some cover timber, grazing, and other sources of pollution.

¹⁶ Available at: <http://www.deq.state.id.us/water/tmdls/TMDLAgreement/SettlementAgreement.pdf>.

Idaho establishes TMDLs for water bodies impaired by point and nonpoint sources of pollution. The following general steps are involved in writing a TMDL in Idaho:

- The DEQ prepares a draft subbasin assessment with input and advice from a watershed advisory group (WAG).¹⁷
- The DEQ presents the draft subbasin assessment to the WAG and/or the basin advisory group (BAG).¹⁸
- The DEQ revises the draft subbasin assessment and determines water quality targets.
- The DEQ develops draft load allocations.
- The DEQ presents the load allocation to the WAG and/or BAG.
- The DEQ incorporates WAG and BAG comments and prepares the TMDL for formal public comment.
- A formal 30-day public comment period occurs.
- The DEQ responds to public comments.
- The DEQ submits a final TMDL to the EPA for approval.
- Concurrent with submittal to the EPA, the DEQ publishes notice in the Idaho Administrative Bulletin that the TMDL has been submitted to the EPA. Those affected by the TMDL may file an appeal within 35 days of publication in the bulletin.
- The EPA approves or disapproves the TMDL; if the EPA disapproves a TMDL, it has 30 days to issue a new one.

TMDLs are apportioned between point and non-point sources based on the assimilative capacity of the water body for the specific pollutant. Background loads are distinguished from human caused increases for both non-point source load calculations and load capacities, to the extent possible. Loads for non-point sources are typically estimated loads based on the type of source (land use) and area. Point source dischargers receive Wasteload Allocations (WLA) typically based on technology and their contribution to the pollutant problem.

An implementation plan is written for each TMDL in Idaho and provides details of the actions needed to achieve load reductions and a schedule of those actions. Implementation plans are developed by designated agencies and typically coordinated by the DEQ and the local WAG if one exists. Under a court settlement for TMDL development, implementation plans are required to be submitted to the DEQ within 18 months of EPA approval of the TMDL. These plans also must specify required monitoring. The U.S. Forest Service (USFS) and BLM are responsible for developing implementation plans for lands under their jurisdiction and providing them to the DEQ.

TMDLs for non-point sources are typically implemented with CWA § 319 funds provided by the EPA and matched by local conservation districts or individual landowners. TMDLs are not binding on nonpoint sources of pollution, but Idaho encourages land managers in a TMDL watershed to develop a OnePlan or a Natural Resources Conservation Service conservation plan, which include recommended BMPs based on specific conditions in the local area.

¹⁷ WAGs provide local public input and guidance. Members of each WAG represent the industries and interests affected by the management of that watershed. The WAG also includes representatives of local government and the land management or regulatory agencies interested in the management of water quality in the watershed. WAGs also have a role in TMDL implementation.

¹⁸ Idaho is divided into six basins and each basin has a BAG whose role is to advise DEQ on water quality objectives in its basin. The DEQ director appoints BAG members who represent a cross-section of interests in the basin.

Water Quality Monitoring

Idaho's monitoring program incorporates the BURP, guidance outlined in the WBAG, Idaho River Ecological Assessment Framework, and Idaho Small Stream Ecological Assessment Framework.

In 1993, the DEQ embarked on a pilot monitoring program, the BURP, which combined biological monitoring and habitat assessment to determine the quality of Idaho's waters. The purpose of the BURP is to help Idaho meet the requirements of the CWA by providing data to use in determining the existing uses and beneficial use support status of Idaho's water bodies. The program has been implemented statewide since 1994. At the end of the 2003 BURP season, a total of 5,182 stream sites had been sampled in Idaho, making Idaho a national leader in bioassessment monitoring. Additional information on the BURP can be found on the DEQ's monitoring website.¹⁹

The WBAG describes the DEQ's methods for evaluating data and determining beneficial use support of Idaho water bodies. This involves analyzing and integrating multiple types of data to determine the degree of beneficial use support and biological integrity of the water body and compile descriptive information about the water body. The current WBAG, published in 2002, is referred to as the "WBAG II," as it replaced the original WBAG published in 1996. Additional information on the monitoring provisions in the WBAG can be found on DEQ's monitoring website.²⁰

The BURP and WBAG constitute the heart of Idaho's monitoring program. The primary steps in Idaho's monitoring program are:

1. *Collect Data* – BURP sends crews into the field to collect water temperature data, biological samples (e.g., fish, bacteria), chemical measures (e.g., specific conductivity, the ability of water to pass an electrical current), and habitat data from Idaho's surface waters. The DEQ also collects data through the Trend Monitoring Network. This program, operated by the U.S. Geological Survey in cooperation with DEQ, monitors trends in water quality at 56 sites around Idaho. In addition to its own data collection efforts, the DEQ also solicits and considers data submitted from outside sources such as the USFS, the Idaho Department of Fish and Game, and the EPA.
2. *Assess Data and Determine Beneficial Use Support* – Using the BURP and other data and the methods described in the WBAG, the DEQ determines if each of Idaho's water bodies meets water quality standards and supports beneficial uses.
3. *Write and Submit Required Reports* – DEQ is required to submit an "Integrated Report" to the EPA that describes the quality of all of Idaho's water bodies and identifies and prioritizes the State's water quality problems. This report is based on the data collected and analyzed in Steps 1 and 2 and is submitted to the EPA approximately every two years.

¹⁹ Available at: http://www.deq.state.id.us/water/surface_water/Monitoring_Assessment.htm.

²⁰ Available at: http://www.deq.state.id.us/water/surface_water/Monitoring_Assessment.htm.

4. *Evaluate Impaired Waters to Determine Causes and Sources of Pollutants* – Where water quality fails to meet State water quality standards (as documented in the Integrated Report), the DEQ evaluates the water body to determine the causes and sources of pollutants. This is called the subbasin assessment. Additional data are collected to complete the subbasin assessment. This assessment is the first step to either developing a TMDL or recommending removing the water body from the list of impaired waters.
5. *Establish TMDLs for Water Bodies* – Using information from the subbasin assessment, the DEQ establishes a TMDL for each impaired water body. The TMDL sets maximum allowable levels for pollutants causing water quality violations.
6. *Develop an Implementation Plan* – An implementation plan is written after a TMDL is developed. The plan provides details of the actions needed to achieve pollutant load reductions and outlines a schedule of those actions. The plan also specifies monitoring needed to document action and progress toward meeting water quality standards.
7. *Continue to Monitor and Analyze Water Bodies* – The implementation plan specifies monitoring methods to determine if the recommended changes are improving water quality and if and when water quality standards are being met. If a water body was found to be meeting water quality standards in Steps 2, 3, or 4 (that is, no TMDL or implementation plan was written), it will be monitored again in the future to ensure it continues to meet standards.

Two documents that are incorporated into Idaho's monitoring program (one for rivers and one for small streams) provide technical information supporting the aquatic life use support section (Section 6) of the WBAG. The Idaho River Ecological Assessment Framework²¹ describes the DEQ's ecological assessment approach to determine aquatic life beneficial use support in Idaho's rivers. It provides detailed technical information concerning the development of the River Macroinvertebrate Index, River Fish Index, River Diatom Index, and River Physicochemical Index. The Idaho Small Stream Ecological Assessment Framework²² provides similar information for Idaho's small streams.

As mentioned above, the BLM is primarily involved in BMP effectiveness monitoring related to sediment and temperature.

Nonpoint Source Pollution Program

Formulation and adoption of a nonpoint source management plan started in Idaho in 1974 and has continued with periodic updating in response to changes in federal and state law. In 1999, DEQ revised Idaho's plan to conform to the EPA's revised Clean Water Act 319 program guidance dealing with nonpoint source pollution. Idaho's Nonpoint Source Management Plan now outlines a strategy to implement these guidelines.²³

Idaho's nonpoint source program focuses predominantly on implementing water quality activities prescribed in TMDLs.

²¹ Available at: http://www.deq.state.id.us/water/surface_water/wbag/Assessment_River_Complete.pdf.

²² Available at: http://www.deq.state.id.us/water/surface_water/wbag/Assessment_Streams_Complete.pdf.

²³ Idaho's 1999 Nonpoint Source Management Plan is available at: <http://www.deq.state.id.us/water/nps/npsp8bm.pdf>.

BMPs

In 2003, the DEQ published the "Compendium of Best Management Practices to Control Polluted Runoff: A Source Book"²⁴ to provide an overview of practices to control polluted runoff and a broad framework for selecting the appropriate practices for a specific situation. Much of the information in this document has been adapted from information developed by the EPA. It addresses the following seven sectors in which polluted runoff may originate: agriculture, silviculture, hydrologic modification, mining, urban/storm water runoff, transportation, and marinas and recreational boating.

Implementation on Federal Land

Idaho has not extensively used §319 funding on public lands. The BLM has been involved in a few cooperative nonpoint source pollution reduction projects that involved private and public lands. CWA§319 funding was used to help implement the private components of the cooperative projects.

The State of Idaho has been supportive of the BLM's implementation practices with regards to grazing. BLM's grazing requirements are usually more restrictive than the State BMPs.

Federal Consistency

The Federal consistency provisions of section 319 of the CWA authorize Idaho to review Federal financial assistance programs and development projects for their effect on water quality. If the State determines that an application or project is not consistent with the State Nonpoint Source Management Program and notifies the Federal agency of its concerns, the agency must make efforts to accommodate the State's concerns, or explain its decision to not make accommodations, in accordance with Executive Order 12372. Additionally, section 313 of the CWA requires Federal agencies having jurisdiction over property or facilities, or engaged in activities which may result in water pollution, to comply with State and local water pollution control regulations and authorities to the same extent as any non-governmental entity.

In determining whether a Federal agency has conducted its operations consistent with the Idaho Nonpoint Source Management Program, the State requires the Federal agency to address the following series of questions:

- Was the appropriate regional office of DEQ informed of the activity and steps to be taken to minimize nonpoint source pollution;
- Was a determination made if water quality limited (State of Idaho §303(d) list) stream segments exist within the project area;
- Was a determination made if Outstanding Resource Waters (ORWs) exist within the project area;
- Were the "appropriate beneficial uses" for the water bodies in the project area identified;
- Were the water quality standards and criteria to protect the "appropriate beneficial uses" identified and are they being met;
- Have the nonpoint source activities regulated by the Idaho Water Quality Standards been identified;
- Were State-approved BMPs for each nonpoint source activity identified;

²⁴ Available at: http://www.deq.state.id.us/water/nps/2003Compendium_FullReport.pdf.

- For each nonpoint source activity that does not have approved BMPs, were management practices identified that demonstrate a knowledgeable and reasonable effort to minimize resulting water quality impacts;
- Was a monitoring plan developed, and when implemented, did it provide adequate information to determine the effectiveness of the approved or specialized BMPs in protecting the beneficial uses;
- Was a process (including feedback from water quality monitoring) identified for modifying the approved or specialized BMPs in order to protect beneficial uses of water identified; and
- Did pre-project planning and design include an analysis of water quality resulting from the implementation of the proposed activity sufficient to predict exceedances of water quality criteria for the beneficial use(s), or in the absence of such criteria, sufficient to predict the potential for beneficial use impairment?

The State of Idaho entered into a memorandum of understanding in 1992 with the participating Federal land management agencies (including the BLM) within Idaho specifying that each agency would incorporate these items into all planned activities. The DEQ reviews the existing memorandum of understanding and modifies it as necessary to ensure that all Federal land management activities are consistent with the State's Nonpoint Source Management Program plan. However, with the vast holdings of Federal lands within the State, the DEQ relies on the internal policing of each Federal land management agency and periodic program reviews (e.g., §401 certifications, Forestry Practices Act audits (FPA), etc.) to ensure compliance.

A CWA §401 certification is also required on all §404 permits in watersheds with impaired waters and TMDLs.

Enforceable State Laws/Policies/Programs to Limit NPS Pollution

Water Pollution Control Laws

Idaho's water pollution control laws include a few provisions that could be enforceable against nonpoint source pollution. These are primarily related to outstanding resource waters and waters for which TMDLs have been developed.

Idaho law provides that "no person shall conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of an outstanding resource water, except where the nonpoint source activities are temporary or short-term and do not alter the essential character of a stream segment."²⁵

Where TMDLs are required, the State must develop "pollution control strategies for both point and nonpoint sources."²⁶ For "reasonably foreseeable nonpoint source activities," the agency is to develop and implement BMPs.²⁷ However, BMPs may not be required for agricultural operations, except on a "voluntary basis," even in cases where TMDLs are required.²⁸ Also, unless a TMDL is required to be developed and BMPs have been prescribed,

²⁵ Idaho Code 39-3618.

²⁶ Idaho Code 39-3611.

²⁷ Idaho Code 39-3620.

²⁸ Idaho Code 39-3610(1).

there is no requirement for persons who conduct nonpoint activities to meet water quality standards other than those necessary to support the existing beneficial use of the water body.²⁹

Fish and Fisheries Laws

Idaho law prohibits the placing in waters of any “... toxicants, chemicals, poisonous ... or other material which may tend to destroy, kill, disable, or drive away fish”³⁰

Operational Requirements

Forestry Requirements

Under Idaho law, the Forest Board is required to “develop methods for controlling watershed impacts resulting from cumulative effects” of forest practices.³¹ The Idaho Forestry Act envisions implementation through BMPs. The act directs the Forest Board to determine BMPs and establish site-specific BMPs for stream segments of concern.³² If implementation of BMPs is insufficient to protect beneficial uses, the forest activity may be stopped.

Agriculture and Grazing Requirements

Due to provisions of Idaho’s Right to Farm Act³³ and the general water pollution control law provisions exempting agriculture from BMPs not adopted voluntarily, there are few enforceable agricultural requirements under State law. Similarly, the Idaho Local Land Use Planning Act requires similar exemptions from the laws of county and local governments. However, Idaho law does establish soil conservation districts with authority to develop comprehensive plans and provides for the adoption of “appropriate soil-conserving land-use practices.”³⁴ These districts are required to adopt BMPs and incorporate them into five-year plans that protect water quality. But these are not enforceable except as conditions on receipt of assistance.

Idaho law also required the Department of Health and Welfare to promulgate a State nutrient management plan for surface waters, and State and local governments can enforce the plans using their police powers.³⁵

Earth-Disturbing Activities

No operating requirements are set forth apart from any that may be prescribed by general land use regulation such as zoning.

²⁹ Idaho Code 39-3604.

³⁰ Idaho Code 39-902.

³¹ Idaho Code 38-1305(8).

³² Idaho Code 38-1303(15); IDAPA 20.02.01.010.05 and 52.

³³ Idaho Code 22-4501, 22-4504.

³⁴ Idaho Code 22-276, 22-2722.

³⁵ Idaho Code 39-105; IDAPA 16.01.16.100.09.

Wetlands and §404 Permits

Dredge and fill permits in Idaho are issued by the COE, subject to EPA oversight and §401 certification by DEQ. BLM in Idaho has been involved with § 404 permits for stream channels, habitat restoration activities, and culvert and bridge construction.

Additional State Laws/Policies/Programs for Wetlands

The Idaho Conservation Data Center (IDCDC) has conducted field inventories of Idaho's wetlands for over 15 years. In 1994, the IDCDC received funding to conduct additional field inventories and integrate wetlands data into the IDCDC's data base. Wetlands-related data is compiled on two scales. Broad scale data, based on the National Wetlands Inventory, has been made available for portions of the State in digital format. Fine scale data on biologically significant wetlands or wetland conservation sites includes information on plant associations and special status plant and animal species. The data is used to develop watershed-based Wetland Conservation Strategies. These strategies include summaries of the type and extent of wetlands based on digital National Wetlands Inventory Data, a key to wetland and riparian plant associations, descriptions of selected wetland and riparian plant associations, and descriptions of selected wetland conservation sites in the watersheds. Hard copies of the conservation strategies are distributed to interested parties as they are completed and are available online.³⁶

Idaho also has wetlands requirements under the Idaho Streambank Alteration Act. This act, administered by the Idaho Department of Lands, requires an Idaho Stream Alteration Permit.

Storm Water Provisions

Since the EPA is the permitting authority for Idaho, a Construction General Permit (CGP)³⁷ is required for any construction activity one acre and above, including smaller sites that are part of a larger common plan of development or sale. The CGP outlines a set of provisions construction operators must follow to comply with the requirements of the NPDES stormwater regulations, and the CGP replaces and updates previous EPA permits.

In Idaho, permit number IDR100000 is required for activities on non-Indian land, and permit number IDR10000I is required in Indian country.

Idaho has developed stormwater BMPs for soil erosion and sediment control. These can be found in the "Catalog of Storm Water BMPs for Idaho Cities & Counties."³⁸

³⁶ IDCDC Wetland Publications. Available at: <http://fishandgame.idaho.gov/tech/CDC/ecology/wetlands.cfm>.

³⁷ Available at: http://www.epa.gov/npdes/pubs/cgp2003_entirepermit.pdf.

³⁸ Available at: http://www.deq.state.id.us/water/stormwater_catalog/index.asp.