

Comments for House and Senate Committees
58-0102-1802 Recreational Use Designation
Idaho Department of Environmental Quality Board
January 14, 2019

My name is Lynn Tominaga, I am here representing Idaho Groundwater Appropriators, (IGWA) we are an association of Groundwater Districts, Irrigation Districts, cities, industrial users who use groundwater for their lively hood.

IGWA opposes document number 58-0102-1802 as it is presently written and hopes the committee will hold this rule in abeyance until Idaho Department Environment Quality can develop reliable data which will resolve the for which the rule is being developed.

History. This rule was originally developed in the 1990's to comply with the Federal Clean Water Act by designating beneficial uses of water bodies in Idaho as swimmable, drinkable, or fishable. At that time Idaho Department of Environmental Quality (IDEQ) did not always have sufficient data to defend its designations. When there was insufficient data available, IDEQ's default was to designate a water body as drinkable, swimmable, or fishable (i.e. recreational designation). As a result there are water bodies in Idaho that should never have carried that designation. When a water body carries a recreational designation, that designation includes both primary and secondary contact monitoring requirements. Primary contact is defined as water that could enter the eyes, ears, or nose if an individual is fully immersed in that water. Secondary contact applies to water where an individual could wade without becoming ill (not full immersion). There was legislative concern back then the state of Idaho thru IDEQ was overstepping its boundaries in designating water and water bodies with little or no data to defend those designated uses. Thus, IDEQ created defaults-based assumptions and narrative criteria. This was in response EPA's concerns about the state's designation of water bodies with little or no data and only using assumptions and narrative criteria. To address EPA's concern, IDEQ began a program call "beneficial use reconnaissance program" (BURP). IDEQ developed teams of technical staff who spent six weeks per site and did protocols on water bodies which was a snapshot of what the basic fauna and flora was within a water basin which helped identify the beneficial uses. BURP's development seemed to satisfy EPA's concern that this method did provide some necessary data to meet the intent of the Clean Water Act. IDEQ then every few years had these technical teams go back to the same locations and timeframe and repeat the same protocols to monitor trends to see if those beneficial uses had changed.

Thus, the primary and secondary contact criteria which outlines the number of bacteria colonies in a liter of water. This number of bacteria colonies (543) are triggered when high bacteria colonies are encountered, and more testing was necessary for both primary (421 colonies) and secondary contact of water. Primary is defined as water that could enter the eyes, ears, or nose of individual who was fully emerged in the water while secondary contact was water you could wade in and not become sick. In 2006, the end result was that since the public didn't understand those differences and there are always bacteria in everything, IDEQ decided that the use of e-coli would become the standard for both, but the *triggers and additional monitoring would be based on the number of bacteria colonies.*

Since that time, the technology has gotten better and more accurate but the standards for people getting sick have not changed. There are three issues this rule is trying to resolve in this negotiated rule: 1) When public swimming or beaches located in open water should be closed and pose a threat to human health, i.e. Lucky Peak beach or Eagle Island State Park; 2) When there might be mechanical

failures of sewer treatment facilities which could pose a threat to the public health; and 3) Designating beneficial uses for Idaho water bodies where there is little or no recreational use and data available.

The real concern is what will IDEQ require them to come into compliance with little or no data being developed by IDEQ and relying upon a small sample size in putting that segment of the river as in noncompliance of water quality standards for multiply years. What will IDEQ do if Region X Environmental Protection Agency (ESA) asks what the state will do to comply with Water Quality Standards if there are multiply years of noncompliance? The answer is to make the NPDES permit holders reduce their discharges to meet change noncompliance standards for bacteria.

The largest concern smaller cities have is that migratory ducks and geese are breeding and raising young ducklings and goslings in many of these water body tributaries as well as domestic livestock are causing increased e-coli counts in conjunction with high ambient temperatures promoting e-coli growth. It is only during the later summer months where this occurs, but will these smaller waste water systems be required to do change their discharge permits when they come up for renewal every five years, and since they have no control over wildlife, livestock, or other factors outside their control who will reduce e-coli?

The real issue change for those concerned about recreational use designation is that if one part of the of a water body is in violation for the designed use the entire water segment is then designed as impaired. This can create a problem for those permit holders. It was thought that when Idaho gained primacy over (NPDES) that the state would have more flexibility when a violation of a beneficial use occurred. It is now being speculated that this will increase the number of violations for recreational use and thus the segment water body will be in violation of the recreational use designation.

It is my hope that the committee will hold this rule or as an alternative is to delete the single sample as the trigger for additional testing, but have multiply testing to trigger the additional testing of five samples for a 30 day period. The existing rules allows for 90 days of testing. Thanks, you for this opportunity to express our concerns.