



STATE OF IDAHO

DEPARTMENT OF
ENVIRONMENTAL QUALITY

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C.L. "Butch" Otter, Governor
Curt Fransen, Director

MEMORANDUM

TO: Regional Administrators, Water Quality Managers
FROM: Barry Burnell, Water Quality Division Administrator *Barb*
DATE: December 6, 2012
SUBJECT: Guidance for Interpreting Antidegradation Policy for Unassessed, Ephemeral and Intermittent Streams

Several issues relating to implementation of Idaho's Antidegradation Policy have come into question prompting the development of statewide direction to DEQ staff. Please share this memo with the staff in your office that process Clean Water Act section 401 Water Quality Certifications.

This memo transmits several policy decisions to guide DEQ's efforts in addressing the following concerns:

- 1) tiering ephemeral waters,
- 2) tiering intermittent streams,
- 3) tiering unassessed waters on a case-by-case basis, for both individual and general permits, and
- 4) addressing the impacts of 404 permitting (sediment is typically the only pollutant addressed in certifications).

Each topic is explained below as to the approach that 401 certification staff will use to ensure consistency in applying our antidegradation policies throughout the state.

- 1) Ephemeral Waters: A stream, reach, or water body that flows naturally *only in direct response to precipitation in the immediate watershed and whose channel is at all times above the water table.* (IDAPA 58.01.02.010.35)

Ephemeral streams receive tier 1 protection under the Antidegradation Policy.

Justification for this determination: Tier 2 protection applies to waters where the water quality *exceeds* levels necessary to support aquatic life and contact recreation. Ephemeral streams do not have the same characteristics that intermittent and perennial streams have; the nature of the flows does not allow for the sustained support of beneficial uses relevant to antidegradation tiering (aquatic life and contact recreation), and therefore does not have the level of water quality necessary to qualify for tier 2 protection. *Therefore, ephemeral streams are to receive tier 1 protection under the*

Antidegradation Policy (IDAPA 58.01.02.051.01 and 58.01.02.052.01). Tier 2 protection is not appropriate for ephemeral waters.

- 2) **Intermittent Streams:** A stream, reach, or water body which naturally has a period of zero (0) flow for at least one (1) week during most years. Where flow records are available, a stream with a 7Q2 hydrologically-based unregulated flow of less than one-tenth (0.1) cubic feet per second (cfs) is considered intermittent. *Streams with natural perennial pools containing significant aquatic life uses are not intermittent.* (IDAPA 58.01.02.010.53)

Intermittent streams are to receive tier 1 protection under the antidegradation policy and may be raised to tier 2 protection if data supports such a decision.

How to proceed with a tiering decision:

- Look for available DEQ water quality data or outside agency water quality data (USFS, USGS, EPA, BLM, BOR). The Water Quality Exchange (WQX) is an excellent resource: <http://www.waterqualitydata.us/>.
- Conduct a site visit to collect water quality data. If water is flowing and water quality data collection is possible, collect water samples following Standard Operating Procedures (SOPs). Temperature and bacteria samples are sufficient for tiering purposes, but not for assessment purposes.
- If no data is available and collection of data is not possible, ask the applicant for permission to proceed with a tier 2 assumption.

Specific considerations in making a tiering decision for intermittent streams when water is *not* present during a site visit:

- Presence/absence and condition of riparian community
- Substrate type and cobble embeddedness
- Bank stability
- Evidence of macroinvertebrates (e.g. caddis casings, Exuviae)

Additional Reading - WBAGII Section 3.1 Designated Uses:

“Unless broken out separately in the tables, use designations listed in the tables as the standards for a WBID unit apply to all perennial segments of waters included within that particular WBID unit. Usually these are tributaries, but in a few cases include nearby disconnected waters, since the WBID system has to encompass all waters in the state.”

“The distinction that, unless otherwise designated, the use designations of a WBID unit only apply to perennial portions of waters in the WBID is necessary because of the inclusive manner in which WBIDs are defined. Somewhere in the continuum of stream channels from rivers to rills, there is a point above which a rivulet is so small that it cannot provide an aquatic habitat that can support a biological community with composition and function similar to reference conditions. All of the aquatic life uses presume fully established biological communities, which in turn presume a persistent aquatic environment. Temporary waters (e.g., intermittent streams, vernal pools) may have important ecological functions but cannot attain the same biological communities as perennial waters.”

3) Tiering Unassessed Waters on a Case-by-case Basis:

Individual permits – follow guidance procedures for making a tiering determination as outlined above. Screen available information and data, conduct a site visit if necessary, and collect samples if possible. Ask the applicant for a tier 2 assumption, if no data exists and data collection is not possible.

General permits – when assisting the regulated community in filling out the appropriate information for their NOI, use best professional judgment utilizing in-house resources such as the Interactive Mapper (Integrated Report), the WQX, Google Earth, personal knowledge, information provided by the applicant, etc. Conduct a site visit if necessary and collect data if possible.

4) Evaluation of 404 Permits (both individual permits and those NWP activities that we are providing individual certification for):

- Consider ALL pollutants of concern, *not just sediment*. (The template will be revised to make this expectation more clear.) Projects may cause adverse effects from other pollutants. For example, loss of riparian shading can have adverse effects on temperature, as well as sediment. Increases in impervious surfaces can cause increased runoff of nutrients and toxics. Projects should be screened to determine if there is the potential for adverse changes in other pollutants. If there is information of the potential for such adverse changes, a review of the potential impact should be included in the antidegradation review.
- If a water body is impaired, the certification should address the pollutants causing the impairment and how the project could (or won't) impact the water body.
- If a water body is high-quality, we must *demonstrate* (provide evidence for) why we believe the project will protect and maintain the existing uses, and *how* that high-quality water will not be degraded.
- When the ACOE assigns a project to a particular NWP, they do not provide public notice regarding these activities because the NWPs have already been through the public comment process on a national level. Therefore, our certification will be a stand-alone document for public review. In order to facilitate transparency, it is imperative to include all pertinent project information and a thorough antidegradation review in our individual certification of projects being covered under a NWP.

BNB/ma