

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 271

BY REVENUE AND TAXATION COMMITTEE

AN ACT

1 RELATING TO WATER QUALITY; AMENDING SECTION 39-3602, IDAHO CODE, TO DEFINE  
2 TERMS; AMENDING SECTION 39-3604, IDAHO CODE, TO CLARIFY THE DIREC-  
3 TOR'S CONSIDERATIONS IN DESIGNATING BENEFICIAL USES AND TO PROVIDE  
4 THAT THE DIRECTOR CONSULT WITH BASIN ADVISORY GROUPS AND WATERSHED  
5 ADVISORY GROUPS; AMENDING SECTION 39-3605, IDAHO CODE, TO CLARIFY THE  
6 REQUIREMENT THAT THE DIRECTOR CONSULT WITH BASIN ADVISORY GROUPS AND TO  
7 MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 39-3606, IDAHO CODE, TO  
8 CLARIFY THE DIRECTOR'S CONSIDERATIONS WHEN DETERMINING SUPPORT OF BEN-  
9 EFICIAL USES, TO PROVIDE THAT THE DIRECTOR CONSULT WITH BASIN ADVISORY  
10 GROUPS AND WATERSHED ADVISORY GROUPS AND TO MAKE TECHNICAL CORRECTIONS;  
11 AMENDING SECTION 39-3607, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR CON-  
12 SULT WITH BASIN ADVISORY GROUPS AND WATERSHED ADVISORY GROUPS AND TO  
13 MAKE A TECHNICAL CORRECTION; AND AMENDING SECTION 39-3609, IDAHO CODE,  
14 TO PROVIDE THAT THE DIRECTOR CONSULT WITH BASIN ADVISORY GROUPS AND WA-  
15 TERSHED ADVISORY GROUPS AND TO MAKE A TECHNICAL CORRECTION.  
16

17 Be It Enacted by the Legislature of the State of Idaho:

18 SECTION 1. That Section 39-3602, Idaho Code, be, and the same is hereby  
19 amended to read as follows:

20 39-3602. DEFINITIONS. Whenever used or referred to in this chapter,  
21 unless a different meaning clearly appears from the context, the following  
22 terms shall have the following meanings:

23 (1) "Applicable water quality standard" means those water quality  
24 standards identified in the rules of the department.

25 (2) "Attainable" beneficial uses means uses that can be achieved by the  
26 implementation of required effluent limits for point sources and cost-ef-  
27 fective and reasonable best management practices for nonpoint sources.

28 (3) "Best management practice" means practices, techniques or measures  
29 developed, or identified, by the designated agency and identified in the  
30 state water quality management plan which are determined to be a cost-effec-  
31 tive and practicable means of preventing or reducing pollutants generated  
32 from nonpoint sources to a level compatible with water quality goals.

33 (4) "Board" means the board of environmental quality.

34 (5) "Consult" or "consultation" with basin advisory groups and water-  
35 shed advisory groups, when not otherwise defined in this chapter, means that  
36 the director shall:

37 (a) Upon request, provide the groups with all available information in  
38 the possession of the department concerning the subject of the consul-  
39 tation;

40 (b) Utilize the knowledge, expertise, experience and information of  
41 the groups in making the determination that is the subject of the con-  
42 sultation; and

1        (c) Consider the groups' recommendations regarding the determination  
2        that is the subject of the consultation.

3        (6) "Control strategies" means cost-effective actions in TMDL imple-  
4        mentation plans to control the discharge of pollutants that can reasonably  
5        be taken to improve the water quality within the physical, operational, eco-  
6        nomic and other constraints that affect individual enterprises and communi-  
7        ties.

8        (67) "Degradation" or "lower water quality" means, for purposes of an-  
9        tidegradation review, a change in a pollutant that is adverse to designated  
10       or existing uses, as calculated for a new point source, and based upon moni-  
11       toring or calculated information for an existing point source increasing its  
12       discharge. Such degradation shall be calculated or measured after appropri-  
13       ate mixing of the discharge and receiving water body.

14       (78) "Department" means the department of environmental quality.

15       (89) "Designated agency" means the department of lands for timber har-  
16       vest activities, for oil and gas exploration and development and for mining  
17       activities; the soil and water conservation commission for grazing activi-  
18       ties and for agricultural activities; the transportation department for  
19       public road construction; the department of agriculture for aquaculture;  
20       and the department of environmental quality for all other activities.

21       (910) "Designated use or designated beneficial use" means those uses  
22       assigned to waters as identified in the rules of the department whether or  
23       not the uses are being attained. The department may adopt subcategories of  
24       a use.

25       (101) "Director" means the director of the department of environmental  
26       quality, or his or her designee.

27       (112) "Discharge" means any spilling, leaking, emitting, escaping,  
28       leaching, or disposing of a pollutant into the waters of the state. For the  
29       purposes of this chapter, discharge shall not include surface water runoff  
30       from nonpoint sources or natural soil disturbing events.

31       (123) "Existing use" means those surface water uses actually attained  
32       on or after November 28, 1975, whether or not they are designated uses. Ex-  
33       isting uses may form the basis for subcategories of designated uses.

34       (134) "Full protection, full support, or full maintenance of designated  
35       beneficial uses of water" means compliance with those levels of water qual-  
36       ity criteria listed in the appropriate rules of the department, or where  
37       there is no applicable numerical criteria, compliance with the reference  
38       streams or conditions approved by the director in consultation with the ap-  
39       propriate basin advisory group.

40       (145) "General permit" means an NPDES permit issued by the U.S. environ-  
41       mental protection agency authorizing a category of discharges under the fed-  
42       eral clean water act or a nationwide or regional permit issued by the U.S.  
43       army corps of engineers under the federal clean water act.

44       (156) "Integrated report" means the consolidated listing and reporting  
45       of the state's water quality status pursuant to the federal clean water act.

46       (167) "National pollutant discharge elimination system (NPDES)" means  
47       the point source permitting program established pursuant to section 402 of  
48       the federal clean water act.

49       (178) "New nonpoint source activity" means a new nonpoint source ac-  
50       tivity or a substantially modified existing nonpoint source activity on or

1 adversely affecting an outstanding resource water which includes, but is  
2 not limited to, new silvicultural activities, new mining activities and  
3 substantial modifications to an existing mining permit or approved plan, new  
4 recreational activities and substantial modifications to existing recre-  
5 ational activities, new residential or commercial development that includes  
6 soil disturbing activities, new grazing activities and substantial modifi-  
7 cations to existing grazing activities, except that reissuance of existing  
8 grazing permits, or grazing activities and practices authorized under an  
9 existing permit, is not considered a new activity. It does not include nat-  
10 urally occurring events such as floods, landslides, and wildfire including  
11 prescribed natural fire.

12 (189) "Nonpoint source activities" includes grazing, crop production,  
13 silviculture, log storage or rafting, construction, mining, recreation,  
14 septic systems, runoff from storms and other weather related events and  
15 other activities not subject to regulation under the federal national pol-  
16 lutant discharge elimination system. Nonpoint source activities on waters  
17 designated as outstanding resource waters do not include issuance of water  
18 rights permits or licenses, allocation of water rights, operation of diver-  
19 sions, or impoundments.

20 (1920) "Nonpoint source runoff" means water which may carry pollutants  
21 from nonpoint source activities into the waters of the state.

22 (201) "Outstanding resource water" means a high quality water, such  
23 as water of national and state parks and wildlife refuges and water of  
24 exceptional recreational or ecological significance, which has been so des-  
25 ignated by the legislature. It constitutes an outstanding national or state  
26 resource that requires protection from point source and nonpoint source ac-  
27 tivities that may lower water quality.

28 (212) "Person" means any individual, association, partnership, firm,  
29 joint stock company, joint venture, trust, estate, political subdivision,  
30 public or private corporation, state or federal governmental department,  
31 agency or instrumentality, or any legal entity, which is recognized by law as  
32 the subject of rights and duties.

33 (223) "Point source" means any discernible, confined, and discrete  
34 conveyance including, but not limited to, any pipe, ditch, channel, tunnel,  
35 conduit, well, discrete fissure, container, rolling stock, concentrated  
36 animal feeding operation, or vessel or other floating craft, from which  
37 pollutants are, or may be, discharged. This term does not include return  
38 flows from irrigated agriculture, discharges from dams and hydroelectric  
39 generating facilities or any source or activity considered a nonpoint source  
40 by definition.

41 (234) "Pollutant" means dredged spoil, solid waste, incinerator  
42 residue, sewage, garbage, sewage sludge, munitions, chemical waste, bi-  
43 ological materials, radioactive materials, heat, wrecked or discarded  
44 equipment, rock, sand, silt, cellar dirt; and industrial, municipal and  
45 agricultural waste, gases entrained in water; or other materials which, when  
46 discharged or released to water in excessive quantities cause or contribute  
47 to water pollution. Provided however, biological materials shall not in-  
48 clude live or occasional dead fish that may accidentally escape into the  
49 waters of the state from aquaculture facilities.

50 (245) "Reference stream or condition" means one (1) of the following:

1 (a) The minimum biological, physical and chemical conditions necessary  
2 to fully support the designated beneficial uses; or

3 (b) A water body representing natural conditions with few impacts from  
4 human activities and which are representative of the highest level of  
5 support attainable in the basin; or

6 (c) A water body representing minimum conditions necessary to fully  
7 support the designated beneficial uses.

8 In highly mineralized areas or in the absence of such reference streams or  
9 water bodies, the director, in consultation with the basin advisory group  
10 and the technical advisers to it, may define appropriate hypothetical refer-  
11 ence conditions or may use monitoring data specific to the site in question  
12 to determine conditions in which the beneficial uses are fully supported.

13 (256) "Short-term or temporary activity" means an activity which is  
14 limited in scope and is expected to have only minimal impact on water quality  
15 as determined by the director. Short-term or temporary activities include,  
16 but are not limited to, maintenance of existing structures, limited road and  
17 trail reconstruction, soil stabilization measures, and habitat enhancement  
18 structures.

19 (267) "Silviculture" means those activities associated with the regen-  
20 eration, growing and harvesting of trees and timber including, but not lim-  
21 ited to, disposal of logging slash, preparing sites for new stands of trees  
22 to be either planted or allowed to regenerate through natural means, road  
23 construction and road maintenance, drainage of surface water which inhibits  
24 tree growth or logging operations, fertilization, application of herbicides  
25 or pesticides, all logging operations, and all forest management techniques  
26 employed to enhance the growth of stands of trees or timber.

27 (278) "Soil and water conservation commission" means an agency of state  
28 government as created in section 22-2718, Idaho Code.

29 (289) "Soil conservation district" means an entity of state government  
30 as defined in section 22-2717, Idaho Code.

31 (2930) "State" means the state of Idaho.

32 (301) "State water quality management plan" means the state management  
33 plan developed and updated by the department in accordance with sections  
34 205, 208, and 303 of the federal clean water act.

35 (312) "Subbasin assessment" means a document that describes a watershed  
36 or watersheds for which a total maximum daily load is proposed, the water  
37 quality concerns, the status and attainability of designated uses and wa-  
38 ter quality criteria for individual water bodies, the nature and location of  
39 pollutant sources, past and ongoing pollutant control activities, and such  
40 other information that the director with the advice of the local watershed  
41 advisory group determines is pertinent to the analysis of water quality and  
42 the development and implementation of a total maximum daily load.

43 (323) "Total maximum daily load (TMDL)" means a plan for a water body  
44 not fully supporting designated beneficial uses and includes the sum of the  
45 individual wasteload allocations for point sources, load allocations for  
46 nonpoint sources, and natural background levels of the pollutant impacting  
47 the water body. Pollutant allocations established through TMDLs shall be at  
48 a level necessary to implement the applicable water quality standards for  
49 the identified pollutants with seasonal variations and a margin of safety to

1 account for uncertainty concerning the relationship between the pollutant  
2 loading and water quality standards.

3 (334) "Waters or water body" means the navigable waters of the United  
4 States as defined in the federal clean water act. For the purposes of this  
5 chapter, water bodies shall not include municipal or industrial wastewater  
6 treatment or storage structures or private reservoirs, the operation of  
7 which has no effect on waters.

8 (345) "Water pollution" is such alteration of the thermal, chemical,  
9 biological or radioactive properties of any waters of the state, or such dis-  
10 charge or release of any contaminant into the waters of the state as will or  
11 is likely to create a nuisance or render such waters harmful or detrimental  
12 or injurious to public health, safety or welfare or to domestic, commercial,  
13 industrial, recreational, aesthetic or other legitimate uses or to live-  
14 stock, wild animals, birds, fish or other aquatic life.

15 (356) "Water quality standards" are the designated uses of a water  
16 body and water quality criteria necessary to support those uses, and an an-  
17 tidegradation policy.

18 (367) "Watersheds" means the land area from which water flows into a  
19 stream or other body of water which drains the area. For the purposes of this  
20 chapter, the area of watersheds shall be recommended by the basin advisory  
21 group described in section 39-3613, Idaho Code.

22 SECTION 2. That Section 39-3604, Idaho Code, be, and the same is hereby  
23 amended to read as follows:

24 39-3604. DESIGNATION OF INSTREAM BENEFICIAL USES. ~~(1) For each sur-~~  
25 ~~face water body, the director shall designate, pursuant to chapter 52,~~  
26 ~~title 67, Idaho Code, and specifically list in the rules of the department,~~  
27 ~~the beneficial uses which that each surface water body can reasonably be~~  
28 ~~expected to support without regard to whether that use is fully supported~~  
29 ~~at the time of such designation. In making such designations, the director~~  
30 ~~shall consider the existing use of the water body and such physical, geologi-~~  
31 ~~cal, chemical and biological measures as may affect the water body and shall~~  
32 ~~make such designations utilizing fully the public participation provisions~~  
33 ~~set forth in this chapter. Designated uses as set forth in this chapter shall~~  
34 ~~fully support existing uses. Designations of beneficial uses shall be re-~~  
35 ~~viewed as necessary and revised when such physical, chemical or biological~~  
36 ~~measures indicate the need to do so attain.~~

37 (2) In revising a designated beneficial use, Designated beneficial  
38 uses shall reflect existing uses. The director shall designate beneficial  
39 uses without regard to whether the uses are currently being attained or  
40 whether the uses are fully supported at the time of designation. In disig-  
41 nating beneficial uses, the director shall consider:

42 (a) The existing uses of the water body;

43 (b) The physical, geological, hydrological, atmospheric, chemical and  
44 biological measures that affect the water body;

45 (c) The beneficial use attainability measures identified in section  
46 39-3607, Idaho Code; and

47 (d) The economic impact of the revision designation and the economic  
48 costs required to fully support the revised designated beneficial uses.

1       (3) When designating beneficial uses for a water body, the director  
 2 shall consult with the basin advisory group and the watershed advisory group  
 3 with the responsibilities described in this chapter for the water body.  
 4 After consultation, the director shall identify the designated beneficial  
 5 uses of each water body in the rules of the department pursuant to the rule-  
 6 making and public participation provisions of chapter 52, title 67, Idaho  
 7 Code.

8       (4) ~~There shall be no requirement for p~~Persons who either conduct non-  
 9 point activities or who conduct operations on waters described in section  
 10 39-3609, Idaho Code, pursuant to a national pollution discharge elimination  
 11 system permit, shall not be required to meet water quality criteria other  
 12 than those necessary for the full support of the a water body's existing and  
 13 designated beneficial uses for the water body pertinent to either the non-  
 14 point activity or point source permit in question, except as provided in sec-  
 15 tion 39-3611, Idaho Code.

16       SECTION 3. That Section 39-3605, Idaho Code, be, and the same is hereby  
 17 amended to read as follows:

18       39-3605. IDENTIFICATION OF REFERENCE STREAMS OR CONDITIONS. The di-  
 19 rector shall, ~~in a manner consistent with the public participation provi-~~  
 20 ~~sions set forth in this chapter and in accordance with chapter 52, title 67,~~  
 21 ~~Idaho Code,~~ consultation with the appropriate basin advisory group, iden-  
 22 tify reference streams or conditions to assist in determining ~~when~~ whether  
 23 the designated beneficial uses of water bodies within a basin are being fully  
 24 supported. Streams or conditions shall be selected to represent the land  
 25 types, land uses, hydrology, water uses and geophysical features ~~of~~ within  
 26 the basins described in this chapter. Reference streams or conditions shall  
 27 be representative of one (1) of the following:

28       (1) A stream or other water body reflecting natural conditions with few  
 29 impacts from human activities and which is representative of the highest  
 30 level of support attainable in the basin; or

31       (2) A stream or water body reflecting the minimum conditions necessary  
 32 to fully support the designated beneficial uses of the stream or water body;  
 33 or

34       (3) Physical, chemical and biological indicators identified in the  
 35 rules of the department which reflect full support of designated beneficial  
 36 uses.

37       SECTION 4. That Section 39-3606, Idaho Code, be, and the same is hereby  
 38 amended to read as follows:

39       39-3606. MONITORING AND USE OF REFERENCE STREAMS OR CONDITIONS TO DE-  
 40 TERMINE FULL SUPPORT OF BENEFICIAL USES AND BENEFICIAL USE SUPPORT ASSESS-  
 41 MENT. (1) ~~The director, in consultation with the basin advisory group,~~ shall  
 42 conduct monitoring to determine if whether designated beneficial uses of wa-  
 43 ter bodies are fully supported. In making such determinations, the director  
 44 shall consult with the basin advisory group and the watershed advisory group  
 45 with the responsibilities described in this chapter for the water body. The  
 46 director shall use the appropriate water quality standards as identified in  
 47 the rules of the department and shall compare the physical, chemical and bi-

1     ological measures of the water body ~~in question~~ with the reference stream or  
 2     condition appropriate to the land type, land uses, hydrology, water uses and  
 3     geophysical features of the water body ~~in question~~ as described in section  
 4     39-3605(2), Idaho Code. If the water body ~~in question~~ has such physical,  
 5     chemical or biological measures as the reference water body stream or con-  
 6     dition, even though such measures may be diminished from the conditions set  
 7     forth in section 39-3605(1), Idaho Code, then the director shall deem the  
 8     designated beneficial uses for the water ~~in question~~ body to be fully sup-  
 9     ported and as having achieved the objectives of the federal clean water act  
 10    and of this chapter. When site-specific standards have been developed for  
 11    an activity pursuant to the rules of the department, the use of reference  
 12    streams as described in this section shall not be necessary.

13       (2) The physical, geological, hydrological, atmospheric, chemical  
 14    or biological measures of a water body to be used to determine whether  
 15    beneficial uses are fully supported may include, but are not limited to:  
 16    stream width, stream depth, stream shade, sediment, bank stability, water  
 17    flows, physical characteristics of the stream that affect habitat for fish,  
 18    macroinvertebrate species or other aquatic life, and the variety and number  
 19    of fish or other aquatic life.

20       SECTION 5. That Section 39-3607, Idaho Code, be, and the same is hereby  
 21    amended to read as follows:

22       39-3607. ~~MONITORING TO DETERMINE SUPPORT REVISIONS AND ATTAINABILITY~~  
 23    ~~OF BENEFICIAL USES.~~ The director shall, in consultation with the appropri-  
 24    ate basin advisory group and watershed advisory group, conduct a beneficial  
 25    use attainability and status survey assessment to identify appropriate  
 26    designated uses and to determine the status of designated beneficial uses  
 27    in each water body. Measures to determine appropriate designated uses and  
 28    the status of designated beneficial uses shall include appropriate water  
 29    quality standards as identified in the rules of the department in conjunc-  
 30    tion with biological or aquatic habitat measures that may include, but are  
 31    not limited to: stream width, stream depth, stream shade, sediment, bank  
 32    stability, water flows, physical characteristics of the stream that affect  
 33    habitat for fish, macroinvertebrate species or other aquatic life, and the  
 34    variety and number of fish or other aquatic life determine whether benefi-  
 35    cial uses should be revised. Designated uses shall be reviewed and revised  
 36    when such physical, geological, hydrological, atmospheric, chemical or bi-  
 37    ological measures indicate the need to do so. The director shall consider  
 38    the economic costs required to attain a revised beneficial use. A designated  
 39    use, that is not an existing use, shall be removed when it is demonstrated  
 40    that attaining the use is not feasible, using those factors set forth in 40  
 41    CFR 131.10(g).

42       Previous assessments of beneficial use attainability ~~and status which~~  
 43    ~~that~~ are of a quality and content acceptable to the director shall consti-  
 44    tute the baseline data against which future assessments shall be made to de-  
 45    termine changes in the water body and what beneficial uses can be attained in  
 46    it. In addition, the director, to the extent possible, may determine whether  
 47    changes in the condition of the water body are the result of past or ongoing  
 48    point or nonpoint source activities. The director shall also seek informa-  
 49    tion from appropriate public agencies regarding land uses, water uses and

1 geological or other information for the watershed ~~which that~~ may affect wa-  
2 ter quality and the ability of the water body in question to ~~fully support or~~  
3 attain designated beneficial uses. In carrying out the provisions of this  
4 section, the director may contract with private enterprises or public agen-  
5 cies to provide the desired data.

6 SECTION 6. That Section 39-3609, Idaho Code, be, and the same is hereby  
7 amended to read as follows:

8 39-3609. IDENTIFICATION OF WATER BODIES WHERE BENEFICIAL USES ARE NOT  
9 FULLY SUPPORTED. In accordance with the provisions set forth in the federal  
10 clean water act and ~~the public participation provisions set forth in this~~  
11 ~~chapter,~~ after consultation with the appropriate basin advisory group and  
12 watershed advisory group, the director shall notify the appropriate public  
13 agencies of any water bodies in which the designated beneficial uses are not  
14 fully supported. For water bodies so identified, the director shall place  
15 such water bodies into one (1) of the following priority classifications for  
16 the development of total maximum daily load or equivalent processes:

17 (1) "High," wherein definitive and generally accepted water quality  
18 data indicate that unless remedial actions are taken in the near term there  
19 will be significant risk to designated or existing beneficial uses of a  
20 particular water body. The director, in establishing this category, shall  
21 consider public involvement as set forth in this chapter.

22 (2) "Medium," wherein water quality data indicate that unless remedial  
23 actions are taken there will be risks to designated or existing beneficial  
24 uses.

25 (3) "Low," wherein limited or subjective water quality data indicate  
26 designated uses are not fully supported, but that risks to human health,  
27 aquatic life, or the recreational, economic or aesthetic importance of a  
28 particular water body are minimal.