

Determining Next Steps after an Existing Use Finding

- 1) Need to reconcile Designated Use and Existing Use: 40 CFR 131.10(i)
“Where existing water quality standards specify designated uses less than those which are presently being attained, the State shall revise its standards to reflect the uses actually being attained.”

- 2) Can a state adopt an Existing Use as its Designated Use? EPA 2008*
“A state or tribe may adopt an existing use as the designated use where it is the highest attainable use. However, where it is not, states and tribes must consider designating uses based on the potential of a waterbody to attain a use, and not simply base the use designation on what has been attained, (i.e. the existing use).” (excerpt)

- 3) Designated Use as a goal: 40 CFR 131.3(f)
“Designated uses are those uses specified in water quality standards for each water body or segment whether or not they are being attained.”

- 4) Designated Use as a goal and Existing Use as a “floor”: EPA 2008*
“The existing use identifies a minimum use and level of water quality that must be maintained to protect uses that have already been attained (i.e, the "floor"). A designated uses, on the other hand, expresses the state/tribal objectives (i.e., the highest attainable uses) for a waterbody or set of waterbodies.”

- 5) Proposed definition of Highest Attainable Use: [2013 proposal at 40 CFR 131.3(m)]
“Highest attainable use is the aquatic life, wildlife, and/or recreation use that is both closest to the uses specified in section 101(a)(2) of the Act and attainable, as determined using best available data and information through a use attainability analysis defined in § 131.3(g).

- 6) When to conduct a Use Attainability 40 CFR § 131.10(j) and (l)
“A State must conduct a use attainability analysis as described in § 131.3(g) whenever: (1) The State designates or has designated uses that do not include the uses specified in section 101(a)(2) of the Act, or.....”

- 7) Use Attainability link to Highest Attainable Use: [2013 proposal at 40 CFR 131.10(g)]
“... If a State adopts new or revised water quality standards based on a use attainability analysis, the State shall also adopt the highest attainable use and the criteria to protect that use.....”

*Citation:

EPA 2008: September 5, 2008 letter from USEPA HQ (D. Keehner, Director, Standards and Health Protection Division) to Oklahoma Water Resources Board (D. Smithee) in response to Oklahoma Water Resources Board (D. Smithee, Chief, Water Quality Programs Division) letter and questions to USEPA-HQ (D. Keehner). *{available at water.epa.gov/scitech/swguidance/standards/upload/Smithee-existing-uses-2008-09-23.pdf}*