TABLE OF CONTENTS

AGENCY RECORD
Prepared by the Idaho Department of Water Resources for the following case:

CASE NO. CV 14-21-05008
RIVERSIDE IRRIGATION DISTRICT vs. the IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN in his official capacity as Director of the Idaho Department of Water Resources.

IN THE MATTER OF THE REUSE PERMIT NO. M-225-01, IN THE NAME OF THE CITY OF NAMPA

INDEX

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IN THE MATTER OF THE REUSE PERMIT NO. M-225-01, IN THE NAME OF THE CITY OF NAMPA

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Attorney for Riverside Irrigation District Ltd.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF REUSE PERMIT NO. M-255-01, IN THE NAME OF CITY OF NAMPA	)	Docket No.
	)	**PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER REUSE PERMIT NO. M-255-01**

1. Riverside Irrigation District ("Riverside"), by and through its attorneys, Barker Rosholt & Simpson, LLP, files this Petition for Declaratory Ruling ("Petition") pursuant to Idaho Code § 67-5232 and the Idaho Department of Water Resources Rules of Procedure, IDAPA 37.01.01.400 and IDAPA 37.01.01.230.01.b.

2. Riverside Irrigation District, Ltd. is an irrigation delivery entity formed under the laws of the State of Idaho. It delivers water to 10,000 acres of irrigated land west of Nampa, on the south side of the Boise River. Indian Creek is a primary source of water for Riverside. Riverside diverts water from Indian Creek at the Riverside Canal west of the City of Caldwell. Riverside has the right to divert approximately 180 CFS of water from Indian Creek under Water Rights 63-2279 and 63-2374 with priority dates reaching back to 1915 and 1922.

3. On January 21, 2020, the Idaho Department of Environmental Quality ("DEQ") issued Reuse Permit No. M-255-01 ("Permit"). The Permit authorizes the City of Nampa ("City") to construct, install, and operate a reuse facility.

4. Currently the City discharges to Indian Creek where the water is comingled with other waters of the State. The water has historically been diverted and put to use by senior downstream water right holders, including Riverside.

5. Under the Permit, the City intends to divert and deliver water to Pioneer Irrigation District ("Pioneer") through a gift of approximately 20 CFS of water to Pioneer's Phyllis Canal. In turn, Pioneer intends to use the water supplied to it under this Reuse Permit to deliver water to Pioneer's water users.

6. Pioneer does not have a water right to take the water from the City or to apply that water to land. Pioneer has indicated to Riverside it does not intend to apply for a water right to receive water under the Permit, or to mitigate for injury to Riverside as a result of taking this water.

7. In taking this water from the City, Pioneer is not recapturing its own waste water.

8. The Permit issued by DEQ does not require any of the reuse water to be reused by the City of Nampa itself and does not require Pioneer to have a water right to divert and use this 20 CFS that had been used by other Indian Creek water users.

9. Idaho Code § 42-201(2) provides that no person may "apply water to land" without having a valid water right to do so.

10. Under DEQ's Recycled Water Rules, when evaluating an application for a reuse permit, "[s]pecific conditions shall be established in consideration of characteristics specific to a facility." IDAPA 58.01.17.600.01 (emphasis added). Such characteristics include "[l]egal considerations relative to land use and water rights." IDAPA 58.01.17.600.01.d.

11. DEQ did not expressly require the City or Pioneer to obtain a water right for the use authorized in the permit by Pioneer as a condition of the reuse Permit. The Permit only obliquely refers to the City having to comply with "all other applicable federal, state, and local laws, statutes, and rules." DEQ's response to Riverside's comments indicated that DEQ did not believe it had authority to determine whether the City or any other entity was required to obtain a water right or not.

12. IDWR clearly has authority to make a determination of when a water right is required and whether Pioneer's use authorized by this Reuse Permit, rather than the City itself, requires a water right.

13. Pursuant to Idaho Code § 67-5232(1), Riverside hereby petitions the Department for a declaratory ruling as to the applicability of I.C. § 42-201(2) to Reuse Permit No. M-255-01. Specifically, and without limitation, Riverside seeks a declaratory ruling that:

a. Pioneer cannot divert or accept water from the City or apply any of that water to land in the Pioneer district boundaries under this Reuse Permit without first obtaining a water right.

b. Any attempt by Pioneer or the City to divert water under the Permit to Pioneer without applying for a water right is in contravention to Idaho Law.

14. Riverside requests oral argument relating to the foregoing requests for declaratory ruling.

DATED this 24th day of February, 2020.

BARKER, ROSHOLT & SIMPSON LLP

Albert P. Barker
Attorneys for Riverside Irrigation District Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February, 2020, I caused to be served a true and correct copy of the foregoing ***PETITION FOR DECLARATORY REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER REUSE PERMIT NO. M-255-01*** by the method indicated below, and addressed to each of the following:

Original to:

Director Gary Spackman
Idaho Department of Water Resources
322 E. Front St.
P.O. Box 83720
Boise, Idaho 83700-0098

_____ U.S. Mail, Postage Prepaid
__X__ Hand Delivery
_____ Overnight Mail
_____ Facsimile
_____ Email

Copies to the following:

City of Nampa
411 3rd St. South
Nampa, Idaho 83651

__X__ U.S. Mail, Postage Prepaid
_____ Hand Delivery
_____ Overnight Mail
_____ Facsimile
_____ Email

Andrew J. Waldera
Sawtooth Law
1101 W River St. Ste.110
Boise, ID83702

_____ U.S. Mail, Postage Prepaid
_____ Hand Delivery
_____ Overnight Mail
_____ Facsimile
__X__ Email

FOR Albert P. Barker

Christopher H. Meyer [ISB No. 4461]
Michael P. Lawrence [ISB No. 7288]
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Attorneys for City of Nampa

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **ANSWER TO PETITION FOR DECLARATORY RULING**

Pursuant to IDAPA 37.01.01.270.01 (answers to pleadings) and 37.01.01,230.01.b (definition of petition), the City of Nampa ("City"), by and through its counsel of record, hereby submits this *Answer to Petition for Declaratory Ruling* ("*Answer*") in response to the *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* ("*Riverside's Petition*") filed by Riverside Irrigation District, Ltd. ("Riverside") in the above-captioned matter.

ANSWER

1. Earlier today, the Department issued a *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* ("*Notice*").

2. Last week, the City was advised by counsel for the Idaho Department of Water Resources ("Department") that an answer to *Riverside's Petition* may not be required under the Department's rules, but that an answer is a permissible pleading. The *Notice* does not address whether an answer is required. Accordingly, the City is filing this *Answer* as a protective measure to ensure that it has a seat at the table and that the Department and parties are informed of the City's initial position with respect to the *Riverside Petition.*

3. As a further protective measure the City will file a *Petition to Intervene* in this matter.

4. *Riverside's Petition* was filed pursuant to Idaho Code 67-5232. The City agrees that this statutory mechanism, together with the Department's rules, authorizes the declaratory ruling sought by Riverside.

5. *Riverside's Petition* is directed to the Idaho Department of Water Resources ("IDWR" or "Department"), as opposed to the Idaho Water Resource Board. The City agrees that is appropriate.

6. The City believes that the Department is not obligated to issue a declaratory ruling in response to every petition for a declaratory ruling. In other words, the Department has discretion as to whether to initiate proceedings and issue a declaratory ruling.

7. The City has entered into an agreement with Pioneer Irrigation District ("Pioneer") to direct treated municipal wastewater into the Phyllis Canal owned and operated by Pioneer, in accordance with *Reuse Permit No. M-255-01* ("*Reuse Permit*") issued to the City by the Idaho Department of Environmental Quality ("IDEQ").

8. The *Riverside Petition* is directed to the question of whether the City and/or Pioneer must first obtain a new water right, or changes to existing water rights, in order to undertake the actions authorized by the *Reuse Permit*.

9. The City believes that the law, including but not limited to Idaho Code § 42-201(8), is crystal clear that no new or changed water right is required of either the City or of Pioneer to implement and operate under the *Reuse Permit*. Hence, the City believes that, in the absence of Riverside's challenge, there would have been no need for a declaratory ruling.

10. However, given that Riverside has challenged the City and Pioneer on this issue in two administrative forums and, presumably, would challenge a summary dismissal of *Riverside's Petition*, the City believes that a substantive declaratory ruling by the Department would be preferable to a judicial determination without the benefit of the Department's analysis of the subject. Accordingly, under the circumstances dictated by Riverside's challenge, the City does not oppose issuance of a substantive declaratory order by the Department and encourages the Department to exercise its discretion to issue a substantive declaratory ruling in this matter.

11. The City denies each and every allegation of *Riverside's Petition* not specifically admitted herein.

12. The City admits the allegations in Paragraph 1 of *Riverside's Petition.*

13. The City is without sufficient knowledge and information to respond to the allegations contained in Paragraph 2 of *Riverside's Petition* and therefore denies the same.

14. The City admits the allegations in Paragraph 3 of *Riverside's Petition.*

15. The City admits the allegations in Paragraph 4 of *Riverside's Petition*, except with respect to the description of Riverside as being "senior," which is ambiguous in that *Riverside's Petition* does not say to whom or what Riverside is senior. The City further denies Riverside's

insinuation that it or others downstream of the City's wastewater treatment plant have a vested legal right (water right or otherwise) by which it may force the City to continue to discharge its wastewater to Indian Creek or to provide mitigation for discontinuing such discharge.

16. The City is without sufficient knowledge and information to respond to the allegations contained in Paragraph 5 of *Riverside's Petition* and therefore denies the same. To the extent a response is required, the City denies it or Pioneer is "diverting" water under the *Reuse Permit*. Instead, the City is directing its wastewater discharge stream to Pioneer's Phyllis Canal for reuse consistent with the *Reuse Permit*, including reuse within the City's municipal pressurized irrigation system which diverts water from the Phyllis Canal system downstream of the City's wastewater treatment plant.

17. The City is without sufficient knowledge and information to respond to the allegations contained in Paragraph 6 of *Riverside's Petition* and therefore denies the same. Further, the allegations contained in Paragraph 6 of *Riverside's Petition* call for legal conclusions to which no responsive pleading is required. To the extent a response is required, the City denies that it or Pioneer need new or changed water rights to implement and operate under the *Reuse Permit*.

18. Paragraph 7 of *Riverside's Petition* is an assertion of principles of law, to which no answer is required. To the extent a response is required, the City denies that it or Pioneer need new or changed water rights to implement and operate under the *Reuse Permit*.

19. Paragraph 8 of *Riverside's Petition* is a characterization of the content and effect of the *Reuse Permit*, to which no answer is required. To the extent a response is required, the City denies that it or Pioneer need new or changed water rights to implement and operate under the *Reuse Permit*. The City further denies that Riverside or others downstream of the City's

wastewater treatment plant have any vested legal right (water right or otherwise) in the City's wastewater discharge.

20. Paragraph 9 of *Riverside's Petition* is a quotation from an Idaho statute, to which no answer is required. To the extent that response is required, the City submits that Idaho Code § 42-201(8) is the more specific subsection of the statute governing this matter.

21. Paragraph 10 of *Riverside's Petition* is a quotation from an Idaho regulation, to which no answer is required. To the extent a response is required, the City submits as follows: (a) The quoted provisions are from regulations of another agency (IDEQ) that have no bearing on the question presented to the Department. (b) In any event, the *Reuse Permit* sufficiently considers water right implications by requiring the City and Pioneer to comply with all other applicable laws when implementing and operating under the *Reuse Permit*. (c) IDEQ complied with Idaho Code § 42-201(7) (vesting in IDWR "exclusive authority over the appropriation of the public surface water and ground waters of the state") by avoiding any more specific interpretation or guidance regarding water rights in the *Reuse Permit*.

22. Paragraph 11 of *Riverside's Petition* is a characterization of the content and effect of the *Reuse Permit*, to which no answer is required. To the extent a response is required, the City denies that Riverside or others downstream of the City's wastewater treatment plant have any vested legal right (water right or otherwise) in the City's wastewater discharge.

23. Paragraph 12 of *Riverside's Petition* contains assertions respecting the Department's legal authority, to which no answer is required. To the extent a response is required, the City denies that Riverside or others downstream of the City's wastewater treatment plant have any vested legal right (water right or otherwise) in the City's wastewater discharge.

24. The City admits that Riverside seeks a declaratory ruling as set out in Paragraph 13 of *Riverside's Petition*. See Paragraphs 3 through 9 above.

25. The City admits that Riverside requests an oral argument as set out in Paragraph 14 of *Riverside's Petition*. The City agrees that oral argument following briefing is appropriate.

PRAYER FOR RELIEF

The City prays for a declaratory ruling and order as follows:

1. That the delivery by the City of treated municipal wastewater to Pioneer's Phyllis Canal pursuant to and in accordance with the *Reuse Permit* does not require the City to first obtain any new water right or change to the existing water rights and other water entitlements under which the City operates its municipal water system.

2. That Pioneer's acceptance and use within its irrigation delivery system of treated municipal wastewater delivered to the Phyllis Canal by the City pursuant to and in accordance with the *Reuse Permit* does not require Pioneer to first obtain any new water right or change to the existing water rights and other water entitlements under which Pioneer operates its irrigation delivery system.

3. That the City be granted its costs, expenses, and attorneys' fees incurred in the course of defending this matter.

4. That the City be granted such other relief as the Board deems appropriate.

Respectfully submitted this 16th day of March, 2020.

GIVENS PURSLEY LLP

Christopher H. Meyer

Attorneys for City of Nampa

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of March, 2020, the foregoing was filed, served, and copied as shown below.

DOCUMENT FILED:

IDAHO DEPARTMENT OF WATER RESOURCES P.O. Box 83720 Boise, ID 83720-0098 Hand delivery or overnight mail: 322 East Front Street Boise, ID 83702	☐ ☒ ☐ ☐ ☐	U. S. Mail Hand Delivered Overnight Mail Fax E-mail

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COURTESY COPIES:

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Christopher H. Meyer

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Attorneys for City of Nampa

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **PETITION TO INTERVENE**

The City of Nampa ("City"), by and through its counsel of record, hereby submits this *Petition to Intervene* in response to the *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* ("*Riverside's Petition*") filed by Riverside Irrigation District ("Riverside") in the above-captioned matter.

The City's *Petition to Intervene* is submitted pursuant to the rules of the Idaho Department of Water Resources ("IDWR" or "Department"), IDAPA 37.01.01.350 to 37.01.01.354 (the "Rules").

Earlier today, the Department issued a *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* ("*Notice*").

Neither the *Notice* nor any statute or regulation of which the City is aware expressly states that the City is automatically a party and does not need to file a petition seeking intervention.

In a separate pleading, the City has filed its *Answer to Petition for Declaratory Ruling.* The City is not aware of regulations definitively addressing whether it is necessary to intervene before filing an answer. In order to moot any argument on that procedural question or on the City's status as a party, the City is submitting this *Petition to Intervene*.

In support of its *Petition to Intervene*, the City states as follows:

1. Historically, water from the City's wastewater treatment plant has been discharged into Indian Creek, which flows to the Boise River. These discharges are regulated under the federal Clean Water Act.

2. In light of temperature concerns, total phosphorus limits, and other permit requirements, after discussions with regulatory officials and stakeholders, the City planned and began implementing upgrades to its wastewater treatment plant. The upgrades were expected to occur in three phases at substantial cost to sewer ratepayers. The final phase of the upgrades was designed to reduce the water temperature of wastewater discharged to Indian Creek.

3. As an alternative to the final wastewater treatment upgrade, the City applied for and received *Reuse Permit No. M-255-01* ("*Reuse Permit*") from the Idaho Department of Environmental Quality ("IDEQ"). Under the *Reuse Permit*, the City is authorized to direct its wastewater stream to the Phyllis Canal, owned operated by Pioneer Irrigation District ("Pioneer") for irrigation use when the temperature of treated wastewater may adversely impact Indian Creek. Seasonal (*i.e.*, during the irrigation season) City wastewater discharge to the Phyllis Canal also yields phosphorus limit flexibility (discharge to the canal can occur at higher

numeric limits than would be the case with discharges to Indian Creek), also saving City ratepayer money through avoided additional treatment costs. Because higher water temperatures and higher nutrient limits are allowed under the *Reuse Permit* for irrigation water flowing in the Phyllis Canal, the final wastewater upgrade, among other operational requirements, is no longer necessary. Consequently, the City and Pioneer partnership effectively achieves water quality objectives more efficiently and at substantially lower cost.

4. On February 24, 2020, Petitioner Riverside Irrigation District, Ltd. ("Riverside") filed a *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* challenging the ability of the City and/or Pioneer to undertake the actions contemplated under the *Reuse Permit* without first obtaining a new water right, or seeking changes to existing water rights.

5. Under the Department's Rules, "Persons . . . who claim a direct and substantial interest in a proceeding may petition" to intervene. IDAPA 37.01.01.350.

6. Because the City is the holder of the *Reuse Permit* whose use is challenged in this proceeding, it has a direct and substantial interest in the proceeding.

7. The City's interests are not represented by any party in this proceeding.

8. The City's intervention will not unduly broaden the issues, and will not cause delay or prejudice to Riverside.

9. Accordingly, the City is entitled to intervene as a matter of right under IDAPA 37.01.01.353.

For these reasons, the City requests the Department to grant intervention status to the City as a full party in this matter.

Respectfully submitted this 16th day of March, 2020.

GIVENS PURSLEY LLP

Christopher H. Meyer

Attorneys for City of Nampa

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of March, 2020, the foregoing was filed, served, and copied as shown below.

DOCUMENT FILED:

IDAHO DEPARTMENT OF WATER RESOURCES P.O. Box 83720 Boise, ID 83720-0098 Hand delivery or overnight mail: 322 East Front Street Boise, ID 83702	☐ ☒ ☐ ☐ ☐	U. S. Mail Hand Delivered Overnight Mail Fax E-mail

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Albert P. Barker, Esq. BARKER ROSHOLT & SIMPSON LLP PO Box 2139 Boise, ID 83701-2139 Email: apb@idahowaters.com Fax: (208) 344-6034 Hand delivery or overnight mail: 1010 W Jefferson St, Ste 102 Boise, ID 83702 *(For Petitioner Riverside Irrigation District Ltd.)*	☒ ☐ ☐ ☐ ☒	U. S. Mail Hand Delivered Overnight Mail Fax E-mail

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Christopher H. Meyer

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER REUSE PERMIT NO. M-225-01	Docket No. P-DR-2020-001 **NOTICE OF PREHEARING CONFERENCE; ORDER SETTING DEADLINE FOR PETITIONS TO INTERVENE**

BACKGROUND

On February 24, 2020, Riverside Irrigation District ("Riverside") submitted a *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* ("Petition") to the Idaho Department of Water Resources ("Department"). Riverside petitions the Department for a declaratory ruling as to the applicability of Idaho Code § 42-201(2) to Reuse Permit No. M-255-01 ("Permit"). *Petition* at 3. The Permit was issued by Idaho Department of Environmental Quality to the City of Nampa[1] ("City") on January 21, 2020. The Petition alleges that under the Permit, the City intends to deliver reuse water to Pioneer Irrigation District ("Pioneer") and that Pioneer intends to supply the reuse water to its patrons. *Id.* at 2. Riverside seeks a declaratory ruling that:

> 1) Pioneer cannot divert or accept reuse water from the City or apply the City's reuse water to land in the Pioneer boundaries under the reuse permit without first obtaining a water right.
>
> 2) Any attempt by Pioneer or the City to divert water under the permit to Pioneer without first applying for a water right is in contravention to Idaho law.

Petition at 3.

ANALYSIS

The Department's Rule of Procedure 400 ("Rule 400") states that any person may petition the Department "for a declaratory ruling on the applicability of a statute, rule or order administered by the agency." IDAPA 37.01.01.400. Rule 400 requires that a petition for declaratory ruling must identify the petitioner and state the petitioner's interest in the matter,

[1] The Director designates the City of Nampa a respondent in this matter.

state the declaratory ruling the petitioner seeks, and indicate the order and factual allegations upon which the petitioner relies to support the petition. *Id.* Riverside's Petition meets the requirements of Rule 400.

The Department's Rule of Procedure 401 ("Rule 401") requires the Department issue notice of the Petition "in a matter designed to call its attention to persons likely to be interested in the subject matter of the petition." IDAPA 37.01.01.401. The Department is in the process of publishing notice in the Times News, Post Register, Lewiston Tribune and Idaho Press Tribune. Idaho Code § 67-5232 states "[a] petition for declaratory ruling does not preclude an agency from initiating a contested case in the matter."

The Director will address Riverside's Petition through a formal contested case proceeding. The Director will schedule a prehearing conference for purposes identified in the Department's Rule of Procedure 510. *See* IDAPA 37.01.01.510. The Director will also require that petitions to intervene be filed by April 23, 2020, in accordance with the Department's Rules of Procedure 351 and 352. *See* IDAPA 37.01.01.350 & 352.

NOTICE OF PREHEARING

A prehearing conference will be held in the above-captioned matter on **April 30, 2020,** at the Department's state office, located at 322 E. Front Street, 6th Floor Conference Rooms, Boise, Idaho. The presiding officer at the hearing will be the Director, Gary Spackman. The purpose of the prehearing conference will be to discuss hearing dates and other items listed in the Department's Rules of Procedure 510. *See* IDAPA 37.01.01.510.

Riverside and those seeking to intervene must be represented at the prehearing conference in person or by telephone. If participating by telephone, **please dial 1-720-279-0026 and enter the following guest code when prompted: 234278#.**

The prehearing conference will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the Department's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department or at https://adminrules.idaho.gov/rules/current/37/370101.pdf.

The prehearing conference will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please contact Kimberle English at (208) 287-4815, no later than five (5) days prior to the conference.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that petitions to intervene must be filed with the Department by **April 23, 2020**, in accordance with the Department's Rules of Procedure 350-352. *See* IDAPA 37.01.01.350-352. A $25.00 filing fee per person seeking to intervene must be submitted at the time of filing a petition to intervene with the Department. *See* Idaho Code § 42-221.L.

DATED this 16th day of March, 2020.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of March 2020, I served a true and correct copy of the foregoing document on the following by the method(s) indicated:

Albert Barker Barker, Rosholt & Simpson LLP 1010 W. Jefferson, Ste. 102 P.O. Box 2139 Boise, ID 83701=2139	✓ U.S. Mail, Postage Prepaid __ Hand Delivery __ Overnight Mail __ Facsimile ✓ Email
Chris Meyer Givens Pursley LLP P.O. Box 2720 601 W Bannock St Boise, ID 83702	✓ U.S. Mail, Postage Prepaid __ Hand Delivery __ Overnight Mail __ Facsimile ✓ Email
City of Nampa 411 3rd St. South Nampa, ID 83651	✓ U.S. Mail, Postage Prepaid __ Hand Delivery __ Overnight Mail __ Facsimile __ Email

Courtesy copy to:

Andrew Waldera Sawtooth Law 1101 W. River St. Ste. 100 Boise, ID 83702	✓ U.S. Mail, Postage Prepaid __ Hand Delivery __ Overnight Mail __ Facsimile ✓ Email

Kimberle English

Kimberle English

NOTICE OF PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER REUSE PERMIT

Notice is hereby given that, on February 24, 2020, Riverside Irrigation District ("Riverside"), through its counsel Albert P. Barker of the firm Barker, Rosholt and Simpson LLP, PO Box 2139, Boise, ID, 83701-2139, submitted a Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01 ("Petition") to the Idaho Department of Water Resources ("Department").

The Petition may be viewed at any of the Department's offices or online at:

https://idwr.idaho.gov/legal-actions/administrative-actions/M-255-01-Nampa.html

Riverside petitions the Department for a declaratory ruling as to the applicability of Idaho Code § 42-201(2) to Reuse Permit No. M-255-01, issued by Idaho Department of Environmental Quality to the City of Nampa ("City"). The Petition alleges that under the permit, the City intends to deliver reuse water to Pioneer Irrigation District ("Pioneer") and that Pioneer intends to deliver the reuse water to its water users. Riverside seeks a declaratory ruling that:

1) Pioneer cannot divert or accept reuse water from the City or apply the City's reuse water to land in the Pioneer boundaries under the reuse permit without first obtaining a water right.

2) Any attempt by Pioneer or the City to divert water under the permit to Pioneer without first applying for a water right is in contravention to Idaho law.

The Director has issued an order setting April 23, 2020, as the deadline to intervene in this matter. Any petition to intervene must be filed by this day to be considered timely. Petitions to intervene should comply with the Department's Rules of Procedure, IDAPA 37.01.01. A copy of the Department's Rules of Procedure may obtained from any of the Department's offices or online at: https://adminrules.idaho.gov/rules/current/37/370101.pdf. A $25.00 filing fee per person seeking to intervene must be submitted at the time of filing a petition to intervene with the Department. See Idaho Code § 42-221.L.

Gary Spackman, Director

Published in the Times News, Post Register, Lewiston Tribune and the Idaho Press Tribune on March 26 & April 2, 2020.

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700
Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

Johanna Bell
Association of Idaho Cities
3100 S Vista Ave
Suite 201
Boise, ID 83705

April 2, 2020

Ms. Bell,

The Idaho Department of Water Resources is providing this notice to you as your groups may have members that are interested in this issue. We would appreciate your assistance in notifying your members of this matter and notifying them of the opportunity to intervene in the proceeding identified below.

On February 24, 2020, Riverside Irrigation District ("Riverside") submitted a *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* ("Petition") to the Idaho Department of Water Resources ("Department"). Riverside petitions the Department for a declaratory ruling as to the applicability of Idaho Code § 42-201(2) to Reuse Permit No. M-255-01 ("Permit"). *Petition* at 3. The Idaho Department of Environmental Quality issued the Permit to the City of Nampa ("City") on January 21, 2020. The Petition alleges that under the Permit, the City intends to deliver reuse water to Pioneer Irrigation District ("Pioneer") and that Pioneer intends to supply the reuse water to its patrons. *Id*. at 2. Riverside seeks a declaratory ruling that:

1) Pioneer cannot divert or accept reuse water from the City or apply the City's reuse water to land in the Pioneer boundaries under the reuse Permit without first obtaining a water right.

2) Any attempt by Pioneer or the City to divert water under the Permit to Pioneer without first applying for a water right is in contravention to Idaho law.
Petition at 3.

The Petition may be viewed at any IDWR office or online at: https://idwr.idaho.gov/legal-actions/administrative-actions/M-255-01-Nampa.html

The Department's Rule of Procedure 400 states that any person may petition the Department "for a declaratory ruling on the applicability of a statute, rule or order administered by the agency." IDAPA 37.01.01.400. The Department's Rule of Procedure 401 requires the Department issue notice of the Petition "in a matter designed to call its attention to persons likely to be interested in the subject matter of the petition." IDAPA 37.01.01.401. The Department is in the process of publishing notice in the Times News, Post Register, Lewiston Tribune, and the Idaho Press Tribune.

The Director will address Riverside's Petition through a formal contested case proceeding. The deadline to file petitions to intervene is April 23, 2020. A copy of the notice is attached. Thank you for your assistance in this matter.

Sincerely,

Gary Spackman

State of Idaho
DEPARTMENT OF WATER RESOURCES
322 E Front Street, Suite 648 • PO Box 83720 • Boise ID 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700
Website: idwr.idaho.gov • Email: idwrinfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

Paul Arrington
Idaho Water Users Association
1010 W Jefferson St.
Suite 101
Boise, ID 83702

April 2, 2020

Mr. Arrington,

The Idaho Department of Water Resources is providing this notice to you as your groups may have members that are interested in this issue. We would appreciate your assistance in notifying your members of this matter and notifying them of the opportunity to intervene in the proceeding identified below.

On February 24, 2020, Riverside Irrigation District ("Riverside") submitted a *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* ("Petition") to the Idaho Department of Water Resources ("Department"). Riverside petitions the Department for a declaratory ruling as to the applicability of Idaho Code § 42-201(2) to Reuse Permit No. M-255-01 ("Permit"). *Petition* at 3. The Idaho Department of Environmental Quality issued the Permit to the City of Nampa ("City") on January 21, 2020. The Petition alleges that under the Permit, the City intends to deliver reuse water to Pioneer Irrigation District ("Pioneer") and that Pioneer intends to supply the reuse water to its patrons. *Id*. at 2. Riverside seeks a declaratory ruling that:

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The Director will address Riverside's Petition through a formal contested case proceeding. The deadline to file petitions to intervene is April 23, 2020. A copy of the notice is attached. Thank you for your assistance in this matter.

Sincerely,

Gary Spackman

Gary Spackman

*** Proof of Publication ***

Twin Falls Times-News
132 Fairfield St W, Twin Falls, Idaho 83301

RUBY AUFDERHEIDE, being duly sworn, deposes and says: That she is the Principal Clerk of the Times-News, a daily newspaper printed and published at Twin Falls, Twin Falls County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in the Times-News, in conformity with Section 60-108, Idaho Code, as amended, for:

2 Insertions

ID DEPARTMENT OF WATER RESOURCES

650 ADDISON AVE W, STE 500
TWIN FALLS ID 83301

ORDER NUMBER 100014

Ruby Aufderheide
(Legals Clerk)

STATE OF IDAHO)
.SS
COUNTY OF TWIN FALLS)

On this 2nd day of April in the year of 2020 before me, a Notary Public, personally appeared before me Ruby Aufderheide known or identified to me to be the person whose name subscribed to the within instrument, and being by first duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Reba M Davis
Notary Public FOR Idaho
Residing at: Twin Falls, Idaho
My Commission expires: 5/8/2020

REBA M. DAVIS NOTARY PUBLIC MY COMMISSION EXPIRES 5-8-2020 STATE OF IDAHO COMMISSION NUMBER 63536

Section: Legals
Category: 50 Legal
PUBLISHED ON: 03/26/2020, 04/02/2020

TOTAL AD COST: 131.22
FILED ON: 4/2/2020

NOTICE OF PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER REUSE PERMIT

Notice is hereby given that, on February 24, 2020, Riverside Irrigation District ("Riverside"), through its counsel Albert P. Barker of the firm Barker, Rosholt and Simpson LLP, PO Box 2139, Boise, ID, 83701-2139, submitted a Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01 ("Petition") to the Idaho Department of Water Resources ("Department").

The Petition may be viewed at any of the Department's offices or online at:
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https://adminrules.idaho.gov/rules/current/37/370101.pdf. A $25-.00 filing fee per person seeking to intervene must be submitted at the time of filing a petition to intervene with the Department. See Idaho Code § 42-221.L.

Gary Spackman, Director

Published in the **Times News**, Post Register, Lewiston Tribune and the Idaho Press Tribune on March 26 & April 2, 2020.

RECEIVED
APR 06 2020
DEPT OF WATER RESOURCES
SOUTHERN REGION

✓ DM 4-9-2020

TRIBUNE PUBLISHING COMPANY, INC
The Lewiston Tribune
505 C St., P.O.Box 957
Lewiston, Idaho 83501
(208) 743-9411

LEGAL ADVERTISING INVOICE

Date: 04/02/2020 INVOICE NO. 157468

Account No. 446620

Description 157468 NOTICE O

Times 2 Lines 44
Tab. lines

$ 128.70

Sold To: DEPT OF WATER RESOURCES
650 ADDISON AVE W, STE 500
TWIN FALLS ID 83301

RECEIVED
APR 06 2020
DEPT OF WATER RESOURCES
SOUTHERN REGION

PO# Maline, Denise

NOTICE:This is a invoice of Purchase made by you. Statement will be rendered the first of the month
Please Retain This Invoice as Your Statement Will Refer to Invoice by No. Only.

157468

NOTICE OF PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER REUSE PERMIT

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Gary Spackman, Director
Published in the Times News, Post Register, Lewiston Tribune and the Idaho Press Tribune on March 26 & April 2, 2020.

AFFIDAVIT OF PUBLICATION

Hollie K Posey , being duly sworn, deposes and says, I am the Legal Clerk of the Tribune Publishing Company, a corporation organized and existing under and by virtue of the laws of the State of Idaho and under and by virtue of the laws of the State of Washington, publishers of the Lewiston Tribune, a newspaper of general circulation published at Lewiston, Nez Perce County, Idaho; That the said Lewiston Tribune is an established newspaper and has been published regularly and issued regularly at least once a day for more than 105 consecutive years next immediately preceding the first publication of this notice, and has been so published uninterrupted for said period; that the 157468 NOTICE O attached hereto and which is made a part of this affadavit was published in the said Lewiston Tribune, 2 time(s). Publication being on 03/26 , or once a Week for 2 consecutive Week , the first publication thereof being on the 03/26/2020 , and the last publication thereof being on the 04/02/2020 , and said 157468 NOTICE O was so published in the regular and entire issue of said newspaper and was not in a supplement thereof and was so published in every issue and number of the said paper, during the period and times of publication as set forth above.

Hollie K Posey

State of Idaho
S.S.
County of Nez Perce

On this 2 day of April in the year of 2020, before me, a Notary Public, personally appeared Hollie K Posey , known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Notary Public in and for the State of Idaho, residing at Lewiston, therein
Commission Expires 2/3/22

✓ DM
4-9-2020

TERESA M
NOTARY
PUBLIC
STATE OF IDAHO

00028

373165 2003665

1 IDWR - TWIN FALLS

650 ADDISON AVENUE W. #500
TWIN FALLS ID 83301

RECEIVED

APR 08 2020

DEPT OF WATER RESOURCES
SOUTHERN REGION

LEGAL NOTICE

NOTICE OF PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER REUSE PERMIT

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The Petition may be viewed at any of the Department's offices or online at:

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Riverside petitions the Department for a declaratory ruling as to the applicability of Idaho Code § 42-201(2) to Reuse Permit No. M-255-01, issued by Idaho Department of Environmental Quality to the City of Nampa ("City"). The Petition alleges that under the permit, the City intends to deliver reuse water to Pioneer Irrigation District ("Pioneer") and that Pioneer intends to deliver the reuse water to its water users. Riverside seeks a declaratory ruling that:

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Gary Spackman, Director

March 26, April 2, 2020 2003665

✓ DM 4-9-2020

AFFIDAVIT OF PUBLICATION
STATE OF IDAHO)
)SS.
County of Canyon and Ada)

Sharon Jessen
of the State of Idaho, being of first duly sworn, deposes and says:

1. That I am a citizen of the United States, and at all times hereinafter mentioned was over the age of eighteen years, and not a party to the above entitled action.
2. That I am the Principle Clerk of the Idaho Press-Tribune, a daily newspaper published in the Counties of Canyon and Ada, State of Idaho; that the said newspaper is in general circulation in the said Counties of Canyon and Ada, and in the vicinity of Nampa, Caldwell, and Boise, and has been uninterruptedly published in said Counties during a period of seventy-eight consecutive weeks prior to the first publication of this notice, a copy of which is hereto attached.
3. That the notice, of which the annexed is a printed copy, was published in said newspaper 2 time(s) in the regular and entire issue of said paper, and was printed in the newspaper proper, and not in a supplement.

That said notice was published the following:
03/26/2020 04/02/2020

Sharon Jessen
STATE OF IDAHO)
County of Canyon and Ada)

On this 2nd day of April in the year of 2020 before me a Notary Public, personally appeared. Sharon Jessen, known or identified to me to be the person whose name is subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledge to me that he/she executed the same.

Notary Public for Idaho
My Commission expires 06/28/2023

COLLEEN R. NIELSEN
NOTARY PUBLIC
Comm No. 70215
STATE OF IDAHO

00029

PROOF OF PUBLICATION
Post Register

RECEIVED
APR 10 2020
DEPT OF WATER RESOURCES
SOUTHERN REGION

State of Idaho
County of Bonneville

I, ~~Dawn Giannini, or~~ Collins Crapo first being duly sworn, depose and say: That I am the ~~Classified Manager, or~~ Processing Clerk of The Post Register, a corporation of Idaho Falls, Bonneville County, Idaho, publishers of The Post Register, a newspaper of general circulation, published 5 days, Tuesday-Friday and Sunday, at Idaho Falls, Idaho.

That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post Register for 2, first publication having been made on 03/26/2020 last publication having been made on 04/02/2020, and that the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

Collins Crapo

Subscribed and sworn to before me, on this 2nd day of April, 2020

Barbara

BAMBI L. FERGUSON
NOTARY PUBLIC - STATE OF IDAHO
COMMISSION NUMBER 70216
MY COMMISSION EXPIRES 6-28-2023

Notary Public
My commission expires:

_____ attached jurat _____

STATE OF IDAHO

ss.

COUNTY OF BONNEVILLE

On this 2nd day of April, 2020 before me, the undersigned, a Notary public for said state, personally appeared ~~Dawn Giannini or~~ Collins Crapo, known or identified to me to be the person(s) whose name(s) is/are subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he/she/they executed the same,

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Barbara

Notary Public for The Post Company
Residing: Idaho Falls, Idaho
Commission expires:

BAMBI L. FERGUSON
NOTARY PUBLIC - STATE OF IDAHO
COMMISSION NUMBER 70216
MY COMMISSION EXPIRES 6-28-2023

✓ DM 4.10.2020

NOTICE OF PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER REUSE PERMIT

Notice is hereby given that, on February 24, 2020, Riverside Irrigation District ("Riverside"), through its counsel Albert P. Barker of the firm Barker, Rosholt and Simpson LLP, PO Box 2139, Boise, ID, 83701-2139, submitted a Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01 ("Petition") to the Idaho Department of Water Resources ("Department").

The Petition may be viewed at any of the Department's offices or online at: https://idwr.idaho.gov/ legal-actions / administrative - actions / M-255-01-Nampa.html

Riverside petitions the Department for a declaratory ruling as to the applicability of Idaho Code § 42-201(2) to Reuse Permit No. M-255-01, issued by Idaho Department of Environmental Quality to the City of Nampa ("City"). The Petition alleges that under the permit, the City intends to deliver reuse water to Pioneer Irrigation District ("Pioneer") and that Pioneer intends to deliver the reuse water to its water users. Riverside seeks a declaratory ruling that:

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The Director has issued an order setting April 23, 2020, as the deadline to intervene in this matter. Any petition to intervene must be filed by this day to be considered timely. Petitions to intervene should comply with the Department's Rules of Procedure, IDAPA 37.01.01. A copy of the Depart-

AD# 6889

Client: IDWR South

00030

(over)

ment's Rules of Procedure may obtained from any of the Department's offices or online at: https://adminrules.idaho.gov/rules/current/37/370101.pdf. A $25.00 filing fee per person seeking to intervene must be submitted at the time of filing a petition to intervene with the Department. See Idaho Code § 42-221.L.

Gary Spackman, Director

Published: 3/26, 4/2, 2020

(6889-12622)

✓ DM 4.10.2020

CHARLES L. HONSINGER (ISB # 5240)
HONSINGER LAW, PLLC
P. O. Box 517
Boise, Idaho 83701
Telephone: (208) 863-6106
Facsimile: (208) 908-6085
honsingerlaw@gmail.com

Attorney for Prospective Intervenors
City of Meridian and City of Caldwell

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE IRRIGATION DISTRICT'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATERUNDER REUSE PERMIT NO. M-255-01	JOINT PETITION TO INTERVENE

COMES NOW, Petitioners City of Meridian and City of Caldwell (hereinafter collectively "Petitioners") by and through their counsel Honsinger Law, PLLC and, in conformance with and pursuant to IDAPA 37.01.01.350, hereby petition for intervention as parties in the Matter of Riverside Irrigation District's Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01 (hereinafter "Petition for Declaratory Ruling").

SUMMARY

The Idaho Department of Environmental Quality issued reuse permit no. M-255-01 to the City of Nampa on January 21, 2020. Riverside Irrigation District filed its Petition for

Declaratory Ruling on February 24, 2020. The Petition for Declaratory Ruling alleges that under reuse permit no. M-255-01, the City will deliver reuse water to Pioneer Irrigation District and that Pioneer Irrigation District intends to deliver such reuse water to lands within its boundaries. Riverside seeks a declaratory ruling that: (1) "Pioneer cannot divert or accept reuse water from the City or apply the City's reuse water to land in the Pioneer boundaries under the reuse Permit without first obtaining a water right"; and (2) "Any attempt by Pioneer or the City to divert water under the Permit to Pioneer without first applying for a water right is in contravention to Idaho law." Petition for Declaratory Ruling at 3.

STANDARDS

Entities not applicants or protestants in a proceeding before the Idaho Department of Water Resources ("IDWR") who claim a "direct and substantial interest may petition for an order from the presiding officer granting intervention to become a party." IDAPA 37.01.01.350. A petition to intervene showing "a direct and substantial interest in any part of the subject matter of a proceeding" that "does not unduly broaden the issues" is generally granted by the presiding officer "unless the applicant's interest is adequately represented by existing parties." IDAPA 37.01.01.353. The Idaho Department of Water Resources has required that Petitions to Intervene in this matter be filed on or before April 23, 2020.

DISCUSSION

Petitioners have a direct and substantial interest in this proceeding. They both own municipal water rights that they use to deliver water to their municipal customers. Both cities treat the wastewater generated by those customers. Petitioners assert that they have the right to

use the wastewater generated under their water rights so long as such use is within the ambit of those water rights' elements. Petitioners similarly assert that they cannot be forced to release their wastewater by downstream users. Petitioners also assert that they have the right to discharge their wastewater without seeking a water right to do so under the provisions of I.C. §42-201(8). The Petition for Declaratory Ruling apparently seeks to negate or otherwise contest these rights as applied to the City of Nampa. The analysis and legal ruling resulting from the Petition for Declaratory Ruling may affect not only hhe City of Nampa's rights with respect to its wastewater, but also those of Petitioners. Accordingly, Petitioners have a direct and substantial interest in this proceeding.

Petitioners do not seek to in any way broaden the issues in this proceeding - they are concerned with the same issues raised by Riverside Irrigation District, and by the City of Nampa (although the City of Nampa has not yet been accorded intervenor status - or any status - in this proceeding). Accordingly, Petitioners do not seek to broaden the scope of the proceeding beyond these issues in which they are substantially interested.

No currently named party in these proceedings is able to adequately represent the Petitioners' interests because currently there is no party to this matter other than Riverside Irrigation District.

This Petition to Intervene is submitted prior to the April 23, 2020 deadline set by IDWR. Accordingly it is timely.

There appears to be no reason to deny this Petition for Intervention. Accordingly, Petitioners respectfully requests that IDWR issue an order granting it intervention in this matter.

Dated this 16th day of April, 2020.

HONSINGER LAW, PLLC

Charles L. Honsinger
Attorney for Cities of Meridian and Caldwell

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on April 16, 2020, he caused a true and correct copy of the within and foregoing document to be transmitted by U.S. mail to the following:

Albert P. Barker
Barker Rosholt and Simpson
P.O. Box 2139
Boise, ID 83701-2139

Christopher H. Meyer (ISB No. 4461)
Givens Pursley, LLP
P.O. Box 2720
Boise, Idaho 83702
Telephone: (208) 388-1200
Facsimile: (208) 388-1300

Charles L. Honsinger

Idaho Department of Water Resources Receipt

Receipt ID: C108641

Payment Amount	$50.00	Date Received	4/21/2020	Region	STATE
Payment Type	Check	Check Number	1445		
Payer	HONSINGER LAW, PLLC				
Comments	JOINT PETITION TO INTERVENE FOR CITY OF MERIDIAN AND CITY OF CALDWELL IN THE MATTER OF RIVERSIDE IRRIGATION DISTRICT'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER REUSE PERMIT NO. M-255-01				

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
$50.00	PROTESTS	56103	0229	21		1155

Signature Line (Department Representative)

JAYME B. SULLIVAN
BOISE CITY ATTORNEY

ABIGAIL R. GERMAINE (ISB No. 9231)
Deputy City Attorney
BOISE CITY ATTORNEY'S OFFICE
150 N. Capitol Blvd.
P.O. Box 500
Boise, ID 83701-0500
Telephone: (208) 384-3870
Facsimile: (208) 384-4454
Email: agermaine@cityofboise.org

Attorney for Boise City

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF REUSE PERMIT NO. M-255-01, IN THE NAME OF CITY OF NAMPA	Case No. P-DR-001-2020 **CITY OF BOISE'S PETITION TO INTERVENE**

COMES NOW, the city of Boise City, herein referred to as "Boise City," by and through its attorney, Abigail R. Germaine, and pursuant to Rules 350 through 354 of the Rules of Procedure of the Idaho Department of Water Resources ("Department") (IDAPA 37.01.01.350 – 37.01.0.354) and the Department's Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene, filed on March 16, 2020, hereby petitions the Department for leave to intervene herein and to appear and participate as a party, and as the basis therefore states as follows:

I. BACKGROUND

On January 21, 2020, the Idaho Department of Environmental Quality ("DEQ") issued Reuse Permit No. M-255-01 ("Permit") authorizing the City of Nampa's ("Nampa") construction, installation, and operation of a reuse facility. In response to the issuance of this Permit, Riverside Irrigation District ("Riverside") submitted a Petition for Declaratory Ruling Regarding Need for a

Water Right to Divert Water Under Reuse Permit No. M-255-01, filed on February 24, 2020 ("Petition"). Riverside seeks a declaratory ruling by the Department providing a finding that Pioneer Irrigation District must obtain a water right prior to accepting reuse water by Nampa and furthermore, that Nampa must apply for a water right before diverting water to Pioneer's system.

Boise City requests to participate in these proceedings related to this Permit and Petition for Declaratory Ruling in order to be a part of these proceedings which may have a precedential effect on the interpretation of Idaho Code § 42-201(8) and future reuse permits within the State of Idaho. Boise City itself has proposed a reuse project similar to that of Nampa's and the outcome of this case may dictate Boise City's ability to pursue this reuse project in the future.

STANDARDS

The Department's Rule of Procedure 350 states:

> Persons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party, if a formal hearing is required by statute to be held in the proceeding.

IDAPA 37.01.01.350. A petition to intervene must state, "the direct and substantial interest of the potential intervenor in the proceeding." IDAPA 37.01.01.351. A petition to intervene shall be considered timely if "filed at least fourteen (14) days before the date set for formal hearing or by the date of the prehearing conference, whichever is earlier, unless a different time is provided by order or notice." IDAPA 37.01.01.352. A petition to intervene *will be* granted by the presiding officer, subject to reasonable conditioning, if the petition is timely filed, the petitioner shows a direct and substantial interest in the matter, and intervention does not unduly broaden the issues of the case. IDAPA 37.01.01.353 (emphasis added).

II. DISCUSSION

A. Boise City's Petition to Intervene is Timely.

The Department's Rule of Procedure 352 states that a petition to intervene will be considered timely if filed at least fourteen (14) days prior to the formal hearing, or by the date of the prehearing conference, whichever is earlier, of if it is filed by a different date as provided by the Department's. IDAPA 37.01.01.352. On March 16, 2020, the Department issued a Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene ("Notice and Order"). Within that Notice and Order, the Department established a deadline for filing a petition to intervene of April 23, 2020. This Petition to Intervene if being filed in advance of that April 23, 2020, deadline. Furthermore, at the date of filing this Petition to Intervene, a prehearing conference has not taken place. Therefore, this Petition to Intervene is timely.

B. Boise City has a Direct and Substantial Interest in this Proceeding.

Boise City owns and operates several publicly owned treatment works, or wastewater renewal facilities, pursuant to its National Pollutant Discharge Elimination System ("NPDES") permits which establish the parameters under which Boise City may discharge wastewater to the Boise River in conformance with the Clean Water Act. As a compliance strategy to meeting the requirements of its NPDES permit, Boise City has considered a reuse project similar to that of Nampa's Reuse Permit.

The Department's declaratory ruling and interpretation of Idaho Code § 42-201(8) pursuant to this Petition could affect Boise City's ability to pursue a reuse project in the future. Whether or not Boise City can pursue a reuse project will have significant impacts on Boise City's options to meet its NPDES permit requirements in the future as well as the ability to utilize highly treated

effluent for different purposes in the future. The inability to pursue a reuse project could have drastic effects on Boise City's water renewal facility planning, including requiring additional facility and system improvements to meet its NPDES permit requirements or prohibiting Boise City from using reuse water to address potential drought conditions in the future, thus costing the Boise City and its ratepayers more.

C. The Interests of Boise City are not Represented by Other Parties.

Boise City's interests are unique from that of Nampa or of other potential intervening parties as Boise City has a proposed project it intends to pursue in the future, and which is distinctively situated. It is important that Boise City be allowed to participate in this proceeding to address how the Department's decision could impact Boise City's ability to pursue this reuse project.

D. Boise City's Involvement in this Proceeding will not Broaden the Issues before the Department.

If Boise City is granted intervention, Boise City's involvement will not broaden the issues before the Department. The basis of Boise City's Petition to Intervene centers around the same issues brought by Riverside's Petition and answered by Nampa's Petition to Intervene and its Answer to Petition for Declaratory Ruling. These issues are already before the Department for determination as outlined in the Department's Notice and Order. Boise City does not intend to introduce new or different issues other than those related to Riverside's Petition and the Department's ultimate ruling on these issues.

III. CONCLUSION

Based on the foregoing, Boise City respectfully requests the Director and Presiding Officer, grant Boise City's Petition to Intervene and allow Boise City to fully participate in this proceeding.

Boise City has met the standards of intervention set forth in the Department's Rules of Procedure and Notice and Order. Boise City's Petition to Intervene is timely filed.

DATED this 16th day of April 2020.

Abigail Germaine
Deputy City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this 16th day of April 2020, served the foregoing documents on all parties of counsel as follows:

Director Gary Spackman Idaho Department of Water Resources P.O. Box 83720 322 East Front Street Boise, ID 83702	☑ U.S. Mail ☐ Personal Delivery ☐ Facsimile ☑ Electronic Means ☐ Other: _____
Chris Meyer Givens Pursley LLP P.O. Box 2720 601 W Bannock St. Boise, ID 83702 chrismeyer@givenspursley.com	☐ U.S. Mail ☐ Personal Delivery ☐ Facsimile ☑ Electronic Means ☐ Other: _____
City of Nampa 411 3rd St. South Nampa, ID 83651	☑ U.S. Mail ☐ Personal Delivery ☐ Facsimile ☐ Electronic Means ☐ Other: _____
Riverside Irrigation District C/O Albert P. Barker BARKER, ROSHOLT & SIMPSON LLP 1010 W. Jefferson, Suite 102 PO Box 2139 Boise, ID 83701-2139 apb@idahowaters.com	☑ U.S. Mail ☐ Personal Delivery ☐ Facsimile ☑ Electronic Means ☐ Other: _____
Pioneer Irrigation District Andrew J. Waldera SAWTOOTH LAW OFFICES, PLLC P.O. Box 7985 Boise, Idaho 83707 1101 W. River St., Suite 110 Boise, ID 83702 andy@sawtoothlaw.com	☐ U.S. Mail ☐ Personal Delivery ☐ Facsimile ☑ Electronic Means ☐ Other: _____

Abigail Germaine

Abigail R. Germaine
Deputy City Attorney

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Attorney for Hayden Area Regional Sewer Board

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 PETITION TO INTERVENE

Hayden Area Regional Sewer Board (HARSB), by and through its legal counsel of record hereby submits this Petition to Intervene in response to the *Petition for Declaratory Ruling Regarding Need for Water right to Divert Water Under Reuse Permit No. M-255-01 ("Riverside Petition")* filed by Riverside Irrigation District ("Riverside") in the above-captioned matter.

This *Petition to Intervene* is submitted pursuant to the rules of the Idaho Department of Water Resources ("IDWR") IDAPA 37.01.001.350 to 37.01.01.354.

HARSB is a joint power separate legal entity created through a joint power agreement ("Agreement") pursuant to Idaho Code §67-2328 executed by the city of Hayden, Kootenai County and Hayden Lake Sewer District. The Agreement was entered into for the purpose of collecting and treating wastewater generated by the parties to the Agreement. HARSB discharges the treated effluent into the Spokane River during the time of year it isn't practical to land apply or to use the effluent for some other endeavor that is not seasonal. The remainder of the year the treated effluent is applied to land owned by HARSB on which farm crops and trees are grown. HARSB makes a concerted effort to avoid wasting the treated effluent and to find opportunities to use the treated effluent in ways that would be beneficial to its users and reduce its costs. The outflow line from the HARSB treatment facility located at 10789 N Atlas Road, Hayden, Idaho to the point of discharge into the Spokane River is approximately six miles. The point of discharge is located on the west side of the city of Coeur d'Alene. It is more cost effective for HARSB to recapture and use its treated effluent rather than discharging it into the river whenever it is feasible and practical. HARSB currently delivers the treated effluent to the

farmland and to the stands of trees via a closed conveyance system owned and maintained by HARSB.

HARSB is a regional public entity operating a publicly owned treatment works. Idaho Code §42-201(8) exempts such an entity from having to obtain a water right for the "collection, treatment, storage or disposal of effluent" from the public owned treatment works. A decision that requires mitigation for downstream users or requires HARSB to continue sending its treated effluent to the Spokane River during certain times of the year or requires a water right for a regional public entity operating a publicly owned treatment works to use the treated effluent it generates would be detrimental to the interests of HARSB and its users, would be wasteful, would put an undue financial burden on HARSB and would be contrary Idaho Code §42-4201(8).

HARSB interests are not directly represented by either Riverside or the city of Nampa. HARSB's intervention in this matter and will not unduly broaden the issues, nor will it cause delay or prejudice to Riverside.

HARSB respectfully submits this Petition on the 17th day of April 2020 and requests that HARSB be granted intervention to become a party in this matter.

MASON & STRICKLIN LLP

Nancy Stricklin

Nancy Stricklin

Attorney for
Hayden Area Regional Sewer Board

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of April, 2020, the foregoing was filed, served, and copied via U. S. Mail as shown below.

DOCUMENT FILED:

IDAHO DEPARTMENT OF WATER RESOURCES
P.O. Box 83720
Boise, ID 83720-0098

SERVICE COPIES TO:

Albert P. Barker
BARKER ROSHOLT & SIMPSON LLP
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Boise, ID 83701-2139
(For Petitioner Riverside Irrigation District Ltd)

COURTESY COPIES:

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(For City of Nampa)

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Boise, ID 83707
(For Pioneer Irrigation District)

Garrick L. Baxter
Deputy Attorney General
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Attorney for the Association of Idaho Cities

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **PETITION TO INTERVENE**

COMES NOW the Association of Idaho Cities ("AIC"), by and through its counsel of record McHugh Bromley, PLLC, and pursuant to IDAPA 37.01.01.350 *et seq.*, hereby files this *Petition to Intervene* in the above-captioned matter.

I. BACKGROUND

On February 24, 2020, Riverside Irrigation District ("Riverside") filed a *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* ("Petition") with the Director of the Idaho Department of Water Resources ("Director" or "IDWR"). The Petition was filed in response to a water reuse permit issued by the Idaho Department of Environmental Quality ("DEQ") authorizing the City of Nampa ("Nampa") to discharge some amount of treated wastewater into Pioneer Irrigation District's ("Pioneer")

Phyllis Canal, as opposed to Indian Creek. Riverside alleges the discharge of treated wastewater into Indian Creek must continue unless Nampa and/or Pioneer obtain a water right from IDWR:

> Pursuant to Idaho Code § 67-5232(1), Riverside hereby petitions the Department of a declaratory ruling as to the applicability of I.C. § 42-201(2) to Reuse Permit No. M-255-01. Specifically, and without limitation, Riverside seeks a declaratory ruling that:
>
> a. Pioneer cannot divert or accept water from the City or apply any of that water to land in the Pioneer district boundaries under this Reuse Permit without first obtaining a water right.
>
> b. Any attempt by Pioneer or the City to divert water under the Permit to Pioneer without applying for a water right is in contravention to Idaho Law.

Petition at 3.

The Petition was noticed by IDWR with a statement that petitions to intervene must be filed by April 23, 2020. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (March 16, 2020). A prehearing conference is scheduled to occur on April 30, 2020.

II. ARGUMENT

In order to grant a petition to intervene, the moving party must demonstrate it is "timely" filed, IDAPA 37.01.01.352, and that it has a "direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues . . . ." IDAPA 37.01.01.353. AIC meets these requirements.

First, AIC's petition to intervene is timely. A petition to intervene is timely if it is "filed at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier unless a different time is provided by order or notice." IDAPA 37.01.01.352. Here, the Director has scheduled the prehearing conference to take place on April 30, 2020, with a deadline to intervene scheduled for April 23, 2020. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene*. Because AIC is petitioning the

Director to intervene in the above-captioned proceeding prior to the April 23, 2020 deadline, AIC's petition to intervene is timely, and intervention should be granted.

Second, AIC has a direct and substantial interest in the outcome of this matter. AIC was founded in 1947 and is a non-partisan, non-profit Idaho corporation that is owned, organized, and operated by Idaho's city governments. Its membership stretches from the Canadian border to its intersection with Utah and Wyoming. Approximately 78 percent of AIC's member cities provide drinking water to their communities. The majority of Idaho's population is served drinking water by cities. Many of Idaho's cities have their wastewater discharge regulated pursuant to water quality regulations administered by DEQ for safe return to the environment.

Riverside appears to base its Petition entirely off of its reading of I.C. § 42-201(2), but left unsaid in the Petition is the significance of I.C. § 42-201(8) and the century of common law regarding the law of wastewater and reuse, both of which allow Idaho's cities to develop wastewater/reuse projects without the need for a water right.

AIC understands individual cities may also petition to intervene in this proceeding and supports those efforts. AIC's intervention should in no way preclude individual cities from asserting their particularized interests. AIC's intervention, however, will not duplicate these efforts, as AIC's interest is in safeguarding and representing the rights of all cities, large or small to have the utmost flexibility of their water rights, while individual cities may have specific facts and circumstances that are also directly impacted by Riverside's petition. Thus, based on AIC's substantial interest and its broad membership, AIC should be granted intervention.

III. CONCLUSION

AIC's petition to intervene is timely and AIC has a direct and substantial interest in the outcome of this matter. Therefore, based on the foregoing, AIC's petition to intervene should be granted.

DATED this 20th day of April, 2020.

Chris M. Bromley
McHugh Bromley, PLLC
Attorneys for Association of Idaho Cities

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of April 2020, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

Director Gary Spackman Idaho Department Of Water Resources PO Box 83720 Boise, ID 83720 gary.spackman@idwr.idaho.gov	X Via US Mail, Postage Paid ☐ Via Facsimile ☐ Hand-Delivered X Via Electronic Mail
Garrick L. Baxter Deputy Attorney General Idaho Department Of Water Resources PO Box 83720 Boise, ID 83720-0098 garrick.baxter@idwr.idaho.gov kimberle.english@idwr.idaho.gov	☐ Via US Mail, Postage Paid ☐ Via Facsimile ☐ Hand-Delivered X Via Electronic Mail
Albert P. Barker Barker Rosholt & Simpson LLP PO Box 2139 Boise, ID 83701-2139 apb@idahowaters.com	X Via US Mail, Postage Paid ☐ Via Facsimile ☐ Hand-Delivered X Via Electronic Mail
Christopher H. Meyer Michael P. Lawrence Givens Pursley LLP PO Box 2720 Boise, ID 83701-2720 chrismeyer@givenspursley.com mpl@givenspursley.com	X Via US Mail, Postage Paid ☐ Via Facsimile ☐ Hand-Delivered X Via Electronic Mail
Andrew J. Waldera Sawtooth Law Offices PLLC PO Box 7985 Boise, ID 83707 andy@sawtoothlaw.com	X Via US Mail, Postage Paid ☐ Via Facsimile ☐ Hand-Delivered X Via Electronic Mail

CHRIS M. BROMLEY

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Attorney for City of Pocatello

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	**DOCKET NO. P-DR-2020-01** **PETITION TO INTERVENE** Fee Category: Exempt Idaho Code § 67-2301

CITY OF POCATELLO (the "City"), by and through its attorneys of record, files this *Petition to Intervene* in the captioned matter.

INTRODUCTION

The City seeks to intervene in this matter as a municipal water user interested in the legal availability of the city's wastewater effluent for reuse in a manner similar to that described by the City of Nampa Reuse Permit No. M-255-01. On this basis, as explained fully herein, the City requests that its Petition to Intervene be granted.

BACKGROUND

Riverside filed its Petition for Declaratory Ruling on February 24, 2020 seeking a determination whether a water right is required in order to discharge the City of Nampa's wastewater effluent into the Phyllis Canal for use by the Pioneer Irrigation District under the City of Nampa's Reuse Permit M-255-01. On March 16, 2020, the Director issued the "Notice of Prehearing Conference; Order Setting Deadlines for Petitions to Intervene" which included a deadline of April 23, 2020, for petitions to intervene.

ARGUMENT

1. Persons who are not currently a party "to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party." IDWR Rule 350. The Department's Procedural Rules, IDAPA 37.01.01 *et. seq.*, provide the standard for evaluating intervention at IDAPA 37.01.01.350-354.
2. First, a petitioner seeking to intervene under the IDAPA Procedural Rules must demonstrate the petition is "timely" filed, IDAPA 37.01.01.352.
3. The Director's deadline for filings petitions to intervene is April 23, and thus Pocatello's Petition is timely.
4. Second, a petitioner must demonstrate that it has a "direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues." IDAPA 37.01.01.353.

a. In its Petition, Riverside alleges that: "Pioneer cannot divert or accept water from the City or apply any of that water to land in the Pioneer district boundaries under this Reuse Permit without first obtaining a water right." Petition at 13.a.

b. Riverside also alleges that the Pioneer Irrigation District's use of the City of Nampa's wastewater under Reuse Permit No. M-255-01 will result in injury to Riverside. Petition at 6.

c. The City of Pocatello holds NDPES Permit No. ID0021784 for wastewater discharge into the Portneuf River.

d. The City of Pocatello, like the City of Nampa, is eligible to apply for a reuse permit with the Idaho Department of Environmental Quality.

e. The City of Pocatello has a direct and substantial interest in whether or not the wastewater effluent associated with the discharge under the City's NPDES permit can be reused without obtaining a water right, as alleged by Riverside Irrigation District.

f. The City of Pocatello also has a direct and substantial interest in whether or not reuse of wastewater in the manner allowed by Reuse Permit No. M-255-01 results in injury to senior water rights that would have otherwise received the effluent as a part of water diversions made in priority.

5. The City of Pocatello has direct and substantial interests in the outcome of this matter, and its participation will not unduly broaden the issues.

CONCLUSION

The City therefore satisfies the requirements for intervention and respectfully requests that its petition to intervene be granted.

Respectfully submitted this 20th of April.

SOMACH SIMMONS & DUNN

By _____

Sarah A. Klahn

#82379

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 2019, I caused to be served a true and correct copy of the foregoing **CITY OF POCATELLO'S MOTION TO INTERVENE**, by the method indicated below and addressed to the following:

Director Gary Spackman Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720-0098 Hand delivery or overnight mail: 322 East Front Street, Suite 648 Boise, ID 83702 Gary.Spackman@idwr.idaho.gov	____ U.S. Mail, Postage Prepaid ____ Hand Delivery __X__ Federal Express ____ Facsimile __X__ Email
Chris Meyer Givens Pursley LLP P.O. Box 2720 601 W Bannock St. Boise, ID 83702 chrismeyer@givenspursley.com mpl@givenspursley.com	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Federal Express ____ Facsimile (208) 388-1300 __X__ Email
City of Nampa 411 3rd St. South Nampa, ID 83651	__X__ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Federal Express ____ Facsimile ____ Email
Riverside Irrigation District c/o Albert P. Barker BARKER, ROSHOLT & SIMPSON LLP 1010 W. Jefferson, Suite 102 PO Box 2139 Boise, ID 83701-2139 apb@idahowaters.com	____ U.S. Mail, Postage Prepaid ____ Hand Delivery ____ Federal Express ____ Facsimile (208) 344-6034 __X__ Email

Courtesy copies to:	
Garrick L. Baxter, Esq. Deputy Attorney General Idaho Department of Water Resources P. O. Box 83720 Boise, ID 83720-0098 Hand delivery or overnight mail: 322 E. Front Street Boise, ID 83702 Garrick.baxter@idwr.idaho.gov	_____ U.S. Mail, Postage Prepaid _____ Hand Delivery _____ Federal Express _____ Facsimile (208) 287-6700 __X__ Email
Pioneer Irrigation District Andrew J. Waldera SAWTOOTH LAW OFFICES, PLLC P.O. Box 7985 Boise, Idaho 83707 Hand delivery or overnight mail: 1101 W. River St., Suite 110 Boise, ID 83702 andy@sawtoothlaw.com bryce@sawtoothlaw.com	_____ U.S. Mail, Postage Prepaid _____ Hand Delivery _____ Federal Express _____ Facsimile __X__ Email

Sarah Klahn
Somach Simmons & Dunn

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Attorneys for the City of Idaho Falls

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-001 **CITY OF IDAHO FALLS' PETITION TO INTERVENE** **Fee Category: Exempt** **Idaho Code § 67-2301**

The City of Idaho Falls ("Idaho Falls" or "City"), by and through its counsel, Holden, Kidwell, Hahn & Crapo, P.L.L.C., petitions to intervene in the above-entitled matter pursuant to the Rules of Procedure of the Idaho Department of Water Resources, specifically IDAPA 37.01.01.350—37.01.01.354. Idaho Falls seeks to intervene to represent and protect its interests.

I. BACKGROUND

On February 24, 2020, Riverside Irrigation District ("Riverside") filed a *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* (the "Petition") with the Director of the Idaho Department of Water Resources ("Director" or "IDWR"). The Petition was filed in response to a water reuse permit issued by the Idaho Department of Environmental Quality ("DEQ") authorizing the City of Nampa ("Nampa")

to discharge some amount of treated wastewater into Pioneer Irrigation District's ("Pioneer") Phyllis Canal, as opposed to the natural channel of Indian Creek. Riverside alleges the discharge of treated wastewater into Indian Creek must continue unless Nampa and/or Pioneer obtain a water right from IDWR:

> Pursuant to Idaho Code § 67-5232(1), Riverside hereby petitions the Department of a declaratory ruling as to the applicability of I.C. § 42-201(2) to Reuse Permit No. M-255-01. Specifically, and without limitation, Riverside seeks a declaratory ruling that:
>
> a. Pioneer cannot divert or accept water from the City or apply any of that water to land in the Pioneer district boundaries under this Reuse Permit without first obtaining a water right.
>
> b. Any attempt by Pioneer or the City to divert water under the Permit to Pioneer without applying for a water right is in contravention to Idaho Law.

Petition at 3.

The Petition was noticed by IDWR with a statement that petitions to intervene must be filed by April 23, 2020. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (March 16, 2020). A prehearing conference is scheduled to occur on April 30, 2020. *Id.*

II. LEGAL STANDARD

A party may intervene in a proceeding under certain circumstances. IDAPA 37.01.01.350. Rule 353 of the Idaho Department of Water Resources Rules of Procedure provides:

> If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

IDAPA 37.01.01.353. Accordingly, the analysis of a petition to intervene requires consideration of: (a) whether it is timely, (b) the potential intervenor showing a "direct and substantial interest

in any part of the subject matter of a proceeding," (c) a showing that the intervention would "not unduly broaden the issues," and (d) whether the potential intervenor's "interest is adequately represented by existing parties." *Id.*

III. ARGUMENT

A. Idaho Falls' petition is timely.

The Department's procedural rules provide further specificity regarding timeliness. A petition to intervene is timely filed if it is "filed at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier, unless a different time is provided by order or notice." IDAPA 37.01.01.352.

This *Petition* is being filed before April 23, 2020, which is "a different time [] provided by order or notice," and is therefore timely.

B. Idaho Falls has a direct and substantial interest in the subject matter of this proceeding.

Idaho Falls holds NPDES Permit No. ID0021261 for wastewater discharge into the Snake River. Idaho Falls, like Nampa, is eligible to apply for a reuse permit with DEQ. Idaho Falls therefore has a direct and substantial interest in the issue of whether or not the wastewater effluent associated with the wastewater discharge under Idaho Falls' NPDES permit can be reused without obtaining a water right. Idaho Falls also has a direct and substantial interest in whether or not reuse of wastewater in the manner allowed by Reuse Permit No. M-255-01 results in injury to senior water rights that would have otherwise received the effluent discharged to the Snake River as part of downstream water diversions. As such, Idaho Falls has a direct and substantial interest in the outcome of the above-entitled proceeding.

C. The City's intervention will not unduly broaden the issues involved in this proceeding.

Presently, this proceeding is in its very early stages, and the issues raised in the Petition are

those that Idaho Falls has a direct and substantial interest. Idaho Falls' participation will not unduly broaden the issues.

D. The City's interest is not adequately represented by existing parties.

Riverside does not represent the interests of Idaho Falls. Riverside's requested relief could negatively impact Idaho Falls' ability to dispose of its wastewater as it deems appropriate. Furthermore, while it is anticipated that Idaho Falls' positions in this proceeding will be similar to Nampa's positions, given the different factual situations surrounding Idaho Falls' treatment of effluent and Nampa's treatment of effluent, it is important for Idaho Falls to participate to determine and address how the Director's decision could impact Idaho Falls' ability to pursue reuse projects. For these reasons, Idaho Falls' interests are not adequately represented by the existing parties to this matter.

Additionally, other potential intervenors have their own property interests to protect and are not in a position to also protect Idaho Falls' interests. The intervention of Idaho Falls is necessary to adequately represent and protect its unique interests.

IV. CONCLUSION

For the foregoing reasons, Idaho Falls has satisfied the applicable rules regarding intervention and its petition should be granted to allow Idaho Falls to intervene in this proceeding and fully participate in all matters that may arise.

Dated this 22nd day of April, 2020.

Robert L. Harris

Robert L. Harris, Esq.
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of April, 2020, I served a true and correct copy of the following described pleading or document on the attorneys and/or individuals listed by the methods indicated.

Document Served: CITY OF IDAHO FALLS' PETITION TO INTERVENE

ORIGINAL HAND FILED AT EASTERN REGIONAL OFFICE;
ALSO BY EMAIL TO:

Director Gary Spackman
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720
gary.spackman@idwr.idaho.gov
Garrick.Baxter@idwr.idaho.gov
Kimi.White@idwr.idaho.gov

Attorneys and/or Individuals Served:

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Candice M. McHugh
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Attorneys for Pioneer Irrigation District Andrew J. Waldera Sawtooth Law Offices, PLLC P.O. Box 7985 Boise, ID 83707 andy@sawtoothlaw.com	( ) ( ) ( ) (X)	U.S. Mail Federal Express Facsimile: 208-344-6034 Electronic Mail
Attorneys for City of Boise Abigail R. Germaine Deputy City Attorney Boise City Attorney's Office 150 N. Capitol Blvd. P.O. Box 500 Boise, ID 83701-0500 agermaine@cityofboise.org	( ) ( ) ( ) (X)	U.S. Mail Federal Express Facsimile: 208-356-0768 Electronic Mail

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ORIGINAL

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Attorney for Idaho Power Company

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-001 **PETITION TO INTERVENE**

COMES NOW, Idaho Power Company ("Company"), by and through its attorneys of record, and hereby petitions to intervene in this matter pursuant to rules 350 through 354 of the Rules of Procedure of the Idaho Department of Water Resources ("IDWR").

I. BACKGROUND

Riverside Irrigation District ("Riverside") is an irrigation delivery entity which has a number of water rights in Indian Creek and irrigates lands west of Nampa, Idaho on the southside of the Boise River. A portion of the water supply in Indian Creek comes from water that the City of Nampa ("City") discharges under a discharge permit and a permit issued by DEQ which allows for the reuse of water from the City's facilities. Under this reuse permit, the City intends to change its historical discharge of water into Indian Creek and instead divert and deliver approximately 20 cfs to Pioneer Irrigation District ("Pioneer") into Pioneer's Phyllis Canal. Pioneer would utilize this additional water for the delivery to Pioneer water users.

In response to the City's proposed re-diversion, under Reuse Permit No. M-255-01, Riverside filed a Petition for Declaratory Ruling seeking a determination that:

1. Pioneer cannot divert or accept reuse water from the City or apply the City's reuse water to land in the Pioneer boundaries under the reuse permit without first obtaining a water right.
2. Any attempt by Pioneer or the City to divert water under the permit to Pioneer without first applying for a water right is in contravention to Idaho law.

The City of Nampa filed an Answer to the Petition denying numerous counts and denying that it had to file and obtain a water right. The Director has issued an order setting an April 23, 2020 deadline to intervene and a prehearing conference on that date.

II. LEGAL STANDARD

In order to grant a petition to intervene, the moving party must first demonstrate that the petition is "timely" filed, that is "at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier, unless a different time is provided by order or notice." IDAPA 37.01.01.352. Additionally, the moving party must show that it has a "direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues . . . ." IDAPA 37.01.01.353. The Company satisfies these requirements.

III. ARGUMENT

First, the Company's petition to intervene is timely. Here, the Director has set a deadline to intervene for April 23, 2020 in the April 30, 2020 prehearing conference. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* dated March 16, 2020. Given that this filing pre-dates the April 23rd deadline, the petition is timely. Second,

the Company has a direct and substantial interest in the outcome of this matter.

- Company has 17 hydroelectric facilities in the Snake River Basin with water rights to generate power at each of the facilities. A number of these facilities are downstream of the Boise River Basin.
- Additionally, the Company has other water rights throughout its service territory which aid in the delivery of electricity and in operations.
- While the water rights at those hydroelectric facilities are subordinated, the Company does depend upon reach gains in the source identified in the water rights to generate power.
- Many of these water rights are downstream of municipal, industrial and irrigation returns to the water source similar to the discharge described in the Riverside petition.
- Further, while the source (Indian Creek) raised in the Riverside petition is not tributary to the Snake River above Swan Falls Dam, similar discharges are present upstream of Swan Falls Dam and may trigger some analysis of the minimum flows pursuant to the Swan Falls Settlement depending upon the outcome of the issues raised in the present proceeding.
- A determination of the legal issues described in the petition or other determinations by the Director may impact the Company's generation and planning.

IV. CONCLUSION

Since the Company meets the requirements as specified in the Department's Rules, the Hearing Officer should enter an order granting intervention.

///

DATED this 22nd day of April, 2020.

BARKER ROSHOLT & SIMPSON LLP

John K. Simpson
Attorneys for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of April, 2020, I caused a true and correct copy of the foregoing **PETITION TO INTERVENE** to be served on the following parties by the following methods:

Original to:

Director Gary Spackman Idaho Department of Water Resources 2735 W. Airport Way Boise, ID 83705 Facsimile: 208.287.6700 (state office) Gary.Spackman@idwr.idaho.gov	_x_ U.S. Mail, postage prepaid ____ Hand Delivery _x_ Facsimile ____ Overnight Mail _x_ Email

Copies to the following:

City of Nampa 411 3rd St. South Nampa, Idaho 83651	_x_ U.S. Mail, postage prepaid ____ Hand Delivery ____ Facsimile ____ Overnight Mail ____ Email
Christopher Meyer Michael P. Lawrence Givens Pursley 601 W. Bannock Street P.O. Box 2720 Boise, ID 83701-2720 chrismeyer@givenspursley.com mpl@givenspursley.com *Attorneys for City of Nampa*	____ U.S. Mail, postage prepaid ____ Hand Delivery ____ Facsimile ____ Overnight Mail _x_ Email
Abigail Germaine City of Boise Boise City Attorney's Office 150 N. Capitol Blvd. P.O. Box 500 Boise, ID 83701-0500 agermaine@cityofboise.org *Attorney for City of Boise*	____ U.S. Mail, postage prepaid ____ Hand Delivery ____ Facsimile ____ Overnight Mail _x_ Email

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Attorney for Pioneer Irrigation District

John K. Simpson

Idaho Department of Water Resources Receipt

Receipt ID: W048224

Payment Amount	$25.00	Date Received	4/22/2020	Region	WESTERN
Payment Type	Check	Check Number	27008		
Payer	BARKER ROSHOLT & SIMPSON LLP				
Comments	PETITION TO INTERVENE FROM IDAHO POWER COMPANY REUSE PRMT NO: M-255-01				

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
$25.00	PROTESTS	62103	0229	21		1155

Signature Line (Department Representative)

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER RESUE PERMIT NO. M-225-01	Docket No. P-DR-2020-001 **PIONEER IRRIGATION DISTRICT'S PETITION TO INTERVENE**

Petitioner Pioneer Irrigation District ("Pioneer" or the "District"), by and through undersigned counsel of record and pursuant to Rules 350 through 354 of the Rules of Procedure of the Idaho Department of Water Resources (IDAPA 37.01.01.350 – 354) ("Procedure Rules") and the Department's *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (Mar. 16, 2020), hereby petitions the Department for an order granting the District full party status without condition given its direct, substantial, and unique interests in this matter.

I.
BACKGROUND

On March 7, 2018, Pioneer and the City of Nampa ("Nampa") entered into a *Recycled Water Discharge and Use Agreement* ("Agreement") concerning Nampa's proposed discharge of Class A recycled wastewater from the city's municipal wastewater treatment plant into Pioneer's Phyllis Canal. Absent the Agreement, Nampa's treated wastewater would discharge (as it does

currently) to Indian Creek. The Agreement embodies Nampa's preferred alternative for meeting Clean Water Act-based water quality regulatory requirements, while also providing it and project partner Pioneer the opportunity to recycle and reuse the city's wastewater for irrigation purposes. The Agreement resulted from the collaborative effort and vetting of Nampa and Pioneer officials, as well as Nampa citizens during the city's wastewater treatment facilities planning process.

The Agreement triggered the parties' pursuit and Nampa's receipt of Idaho Department of Environmental Quality ("DEQ") Reuse Permit No. M-255-01 ("Permit") on January 21, 2020. Riverside Irrigation District, Ltd. ("Riverside") objected to the Permit, alleging injury to its natural flow water rights in Indian Creek downstream of Nampa's wastewater treatment plant. Riverside lodged its objections in formal petitions filed both with DEQ and with the Department. While the DEQ proceeding has been dismissed with prejudice upon the stipulated agreement of Nampa, Pioneer, Riverside, its *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* (Feb. 24, 2020) ("Petition") remains pending before the Department. In short, Riverside contends that Pioneer and/or Nampa must apply for (and receive) a new water right authorizing Nampa's proposed discharge of its treated wastewater to Pioneer's Phyllis Canal for subsequent irrigation reuse within the Phyllis Canal system. Riverside believes that Nampa's redirection of wastewater for subsequent irrigation reuse absent a new water right (or water rights) constitutes the illegal diversion and use of water.

By removing its wastewater stream from Indian Creek during the irrigation season, Nampa is able to avoid several millions of dollars of capital improvement costs associated with meeting Phosphorus and Temperature discharge limits contained in its governing NPDES Permit (Permit No. ID0022063), while also gaining the benefit of re-using that wastewater within its municipal pressurized irrigation system, which system is supplied irrigation water by Pioneer.

Consequently, the Nampa-Pioneer partnership is born of Nampa's need to collect, treat, and dispose of effluent from its publicly owned treatment works in direct response to state and federal environmental regulatory requirements. The proposal also provides Pioneer (and Nampa) a valuable source of supplemental irrigation water within a portion of the District's Phyllis Canal system burdened by physical operational constraints upstream (lava rock pinch points and declining drain-based feeder canal inputs) allowing Pioneer greater operational flexibility within its larger water diversion and distribution system.

II.
ARUGMENT

A. Legal Standards

Riverside's Petition seeking a declaratory ruling is somewhat unique in that it is a much broader proceeding than a traditional contested case with a better defined universe of parties (*i.e.*, applicants, complainants, or respondents). Recognizing that petitions for a declaratory ruling have broader scope and implication, Procedure Rule 401 provides the Department the opportunity to issue notice "in a manner designed to call [the petition's] attention to persons likely to be interested in the subject matter of the petition." IDAPA 37.01.01.401. The Department did so, via publication of notice of the Petition in various newspapers of regular circulation and by letter to association groups including the Idaho Water Users Association and the Association of Idaho Cities. The Department's notice set an intervention deadline of April 23, 2020, coinciding with the Director's *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (Mar. 16, 2020) ("Order").

Regarding intervention, Procedure Rule 350 provides that persons or entities not applicants, claimants, appellants, petitioners, complainants, protestants, or respondents to a contested case proceeding, but who have a "direct and substantial interest in the proceeding,"

may petition to intervene and become a party in the proceeding. IDAPA 37.01.01.350. Under Procedure Rule 353, a petition to intervene should be granted if: (a) it is timely; (b) the petitioner shows a direct and substantial interest in the matter; and (c) the petitioner does not seek to unduly broaden the issues in the proceeding. IDAPA 37.01.01.353. While the Department (or hearing officer) can deny or conditionally grant petitions upon determination that the petitioner's interests would be adequately represented by existing parties, the context and overlay of Procedure Rule 401's broad notice provisions in this declaratory proceeding suggest that intervention should be liberally granted in this matter.

B. Pioneer's Petition is Timely

Procedure Rule 352 prescribes various timeliness deadlines governing intervention petitions. In this instance, the Department provided a deadline of April 23, 2020 in its March 16, 2020 Order. Order, p. 3. Having filed its petition on April 22, 2020, Pioneer's petition to intervene is timely under Procedure Rule 352. IDAPA 37.01.01.352.

C. Pioneer Has a Direct and Substantial Interest in This Matter—One That Cannot be Adequately Represented by Others

Already acknowledging Pioneer's direct and substantial interest in this matter, the Department served Pioneer counsel with a courtesy copy of the Director's March 16, 2020 Order. Pioneer was one of only three direct recipients, Riverside and Nampa being the others.

As discussed above, while not the permittee under the Permit, Pioneer is a partner with Nampa in the Permit project. Pioneer and Nampa entered into a formal contract solidifying this partnership and Pioneer is the proposed recipient of the Class A recycled wastewater discharge governed by the Permit. Pioneer is the "recipient" of the Class A recycled wastewater predominantly in terms of physical infrastructure (*i.e.*, Pioneer's ownership, operation, and maintenance of the Phyllis Canal). End use of the recycled wastewater will largely remain with

Nampa via delivery of the same through Pioneer's 15.0 Lateral system to Nampa municipal pressurized irrigation system pump stations.

Though Nampa and its citizens will continue to be the primary end users of the recycled wastewater under the Permit, Pioneer will also benefit through the wastewater input operationally. Nampa is one of Pioneer's largest water delivery accounts. Reuse of Nampa's recycled water will lessen Nampa delivery demand from other sources/inputs to Pioneer's Phyllis Canal system which, in turn, will provide Pioneer greater operational flexibility in the redistribution and delivery of those other preexisting inputs/sources of water.

This is particularly beneficial to Pioneer because significant deliveries to Nampa pump stations and other Nampa citizens at large occur downstream of a lava rock pinch point in the Phyllis Canal constraining the maximum quantity of water that can safely pass through the area. The Nampa recycled wastewater will also serve as robust and reliable source of water offsetting and mitigating declining drain water sources Pioneer uses to supplement Phyllis Canal flows through a feeder canal and pump locations.

The relationship between Nampa and Pioneer, and the operational flexibility the Permit project will provide, are unique to Pioneer. They establish not only Pioneer's direct and substantial interest in this matter, but also the fact that Pioneer's interests cannot be adequately represented by any other parties to the proceeding. Likewise, should Riverside's Petition result in the need for Pioneer to secure a water right before exercise of the DEQ Permit, that water right application process (and assured contested case in light of Riverside's Petition) constitutes a regulatory and financial burden unique to Pioneer. Pioneer should be granted intervention as a party in this matter accordingly.

D. Pioneer's Interests and Intervention Will Not Broaden the Issues Before the Department

Pioneer's participation will not broaden the issues before the Department in this matter because Pioneer's issues and anticipated arguments ***are*** the issues pending before the Department under Riverside's Petition. Riverside contends that one or both of Nampa and Pioneer must obtain a new water right to discharge and use the Class A recycled wastewater contemplated in the DEQ Permit. Pioneer and Nampa disagree for a variety of reasons, including well-settled legal principles of wastewater recapture and reuse and application of Idaho Code Section 42-201(8), among others. The nature and scope of this proceeding are fixed by Riverside's Petition, and Pioneer intends to participate and proceed accordingly.

III.
CONCLUSION

For the foregoing, Pioneer respectfully requests that its intervention request be granted because its petition is timely, and Pioneer has shown a direct and substantial interest in the subject matter of Riverside's Petition—one that is unique to Pioneer and that cannot be adequately represented by any other parties (intervenor or otherwise) in this contested case proceeding.

DATED this 22nd day of April, 2020.

SAWTOOTH LAW OFFICES, PLLC

By _____
Andrew J. Waldera
Attorneys for Pioneer Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of April, 2020, I caused a true and correct copy of the foregoing **PIONEER IRRIGATION DISTRICT'S PETITION TO INTERVENE** to be served by the method indicated below, and addressed to the following:

Director Gary Spackman
Idaho Department Of Water Resources
PO Box 83720
Boise, ID 83720
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Attorneys for the City of Bellevue

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **PETITION TO INTERVENE** Fee Category: Exempt (I.C. § 67-2301)

COMES NOW the City of Bellevue ("Bellevue"), by and through its counsel of record McHugh Bromley, PLLC, and pursuant to IDAPA 37.01.01.350 *et seq.*, hereby files this *Petition to Intervene* in the above-captioned matter.

I. BACKGROUND

On February 24, 2020, Riverside Irrigation District ("Riverside") filed a *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* ("Petition") with the Director of the Idaho Department of Water Resources ("Director" or "IDWR"). The Petition was filed in response to a water reuse permit issued by the Idaho Department of Environmental Quality ("DEQ") authorizing the City of Nampa ("Nampa") to discharge some amount of treated waste water into Pioneer Irrigation District's ("Pioneer")

Phyllis Canal, as opposed to Indian Creek. Riverside alleges the discharge of treated waste water into Indian Creek must continue unless Nampa and/or Pioneer obtain a water right from IDWR. *Petition* at 3.

IDWR issued a notice with a statement that petitions to intervene must be filed by April 23, 2020. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (March 16, 2020). A prehearing conference is scheduled to occur on April 30, 2020.

II. ARGUMENT

In order to grant a petition to intervene, the moving party must demonstrate it is "timely" filed, IDAPA 37.01.01.352, and that it has a "direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues . . . ." IDAPA 37.01.01.353. Bellevue meets these requirements.

First, Bellevue's petition to intervene is timely. The Director set a deadline to intervene scheduled for April 23, 2020 with a pre-hearing conference for April 30, 2020. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene*. Because Bellevue is petitioning the Director to intervene in the above-captioned proceeding prior to the April 23, 2020 deadline, Bellevue's petition to intervene is timely, and intervention should be granted. See too, IDAPA 37.01.01.352.

Second, Bellevue has a direct and substantial interest in the outcome of this matter. Bellevue is located in the Wood River Valley and uses surface water and groundwater to meet the needs of the City. Bellevue's groundwater pumping is located within the Big Wood River Ground Water Management Area and Bellevue's groundwater pumping has been included in delivery calls from downstream senior users in the past few years. The City also land-applies treated municipal wastewater on lands south of the City. The City's use of its treated municipal

wastewater is critical to its operations and will likely only increase in importance when environmental concerns increase or if groundwater levels decline. Thus, the City has a direct and substantial interest in the issues raised in Riverside's Petition.

III. CONCLUSION

Bellevue's petition to intervene is timely. Bellevue's direct and substantial interest in the outcome of this matter concerns its use of treated municipal wastewater. Therefore, based on the foregoing, Bellevue's petition to intervene should be granted.

DATED this 23rd day of April, 2020.

Candice McHugh
McHugh Bromley, PLLC
Attorneys for City of Bellevue

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April 2020, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

Director Gary Spackman Idaho Department Of Water Resources PO Box 83720 Boise, ID 83720 gary.spackman@idwr.idaho.gov	☐ Via US Mail, Postage Paid ☐ Via Facsimile X Hand-Delivered – Western Region X Via Electronic Mail
Garrick L. Baxter Deputy Attorney General Idaho Department Of Water Resources PO Box 83720 Boise, ID 83720-0098 garrick.baxter@idwr.idaho.gov kimberle.english@idwr.idaho.gov	☐ Via US Mail, Postage Paid ☐ Via Facsimile ☐ Hand-Delivered X Via Electronic Mail
Albert P. Barker Barker Rosholt & Simpson LLP PO Box 2139 Boise, ID 83701-2139 apb@idahowaters.com	X Via US Mail, Postage Paid ☐ Via Facsimile ☐ Hand-Delivered X Via Electronic Mail
Christopher H. Meyer Michael P. Lawrence Givens Pursley LLP PO Box 2720 Boise, ID 83701-2720 chrismeyer@givenspursley.com mpl@givenspursley.com	X Via US Mail, Postage Paid ☐ Via Facsimile ☐ Hand-Delivered X Via Electronic Mail
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Candice McHugh

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Attorneys for the City of Jerome

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **PETITION TO INTERVENE** Fee Category: Exempt (I.C. § 67-2301)

COMES NOW the City of Jerome ("Jerome"), by and through its counsel of record McHugh Bromley, PLLC, and pursuant to IDAPA 37.01.01.350 *et seq.*, hereby files this *Petition to Intervene* in the above-captioned matter.

I. BACKGROUND

On February 24, 2020, Riverside Irrigation District ("Riverside") filed a *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* ("Petition") with the Director of the Idaho Department of Water Resources ("Director" or "IDWR"). The Petition was filed in response to a water reuse permit issued by the Idaho Department of Environmental Quality ("DEQ") authorizing the City of Nampa ("Nampa") to discharge some amount of treated waste water into Pioneer Irrigation District's ("Pioneer")

Phyllis Canal, as opposed to Indian Creek. Riverside alleges the discharge of treated waste water into Indian Creek must continue unless Nampa and/or Pioneer obtain a water right from IDWR:

> Pursuant to Idaho Code § 67-5232(1), Riverside hereby petitions the Department of a declaratory ruling as to the applicability of I.C. § 42-201(2) to Reuse Permit No. M-255-01. Specifically, and without limitation, Riverside seeks a declaratory ruling that:
>
> a. Pioneer cannot divert or accept water from the City or apply any of that water to land in the Pioneer district boundaries under this Reuse Permit without first obtaining a water right.
>
> b. Any attempt by Pioneer or the City to divert water under the Permit to Pioneer without applying for a water right is in contravention to Idaho Law.

Petition at 3.

The Petition was noticed by IDWR with a statement that petitions to intervene must be filed by April 23, 2020. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (March 16, 2020). A prehearing conference is scheduled to occur on April 30, 2020.

II. ARGUMENT

In order to grant a petition to intervene, the moving party must demonstrate it is "timely" filed, IDAPA 37.01.01.352, and that it has a "direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues . . . ." IDAPA 37.01.01.353. Jerome meets these requirements.

First, Jerome's petition to intervene is timely. A petition to intervene is timely if it is "filed at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier unless a different time is provided by order or notice." IDAPA 37.01.01.352. Here, the Director has scheduled the prehearing conference to take place on April 30, 2020, with a deadline to intervene scheduled for April 23, 2020. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene*. Because Jerome is

petitioning the Director to intervene in the above-captioned proceeding prior to the April 23, 2020 deadline, Jerome's petition to intervene is timely, and intervention should be granted.

Second, Jerome has a direct and substantial interest in the outcome of this matter. Jerome is located in the Magic Valley and pumps ground water from the Eastern Snake Plain Aquifer to meet the needs the city's needs. Jerome holds National Pollutant Discharge Elimination System ("NPDES") Permit No. ID-0020168 for waste water discharge into the Northside Canal Company's J8 Canal. Jerome relies on the NPDES Permit to safely treat and dispose its waste water. Given its location and the terms of its NPDES Permit, only Jerome can represent its interests that allow it to discharge into the J8 Canal. Thus, based on Jerome's substantial interest, and the fact that it will not unduly broaden the issues, Jerome should be granted intervention.

III. CONCLUSION

Jerome's petition to intervene is timely, with Jerome having a direct and substantial interest in the outcome of this matter. Therefore, based on the foregoing, Jerome's petition to intervene should be granted.

DATED this 23rd day of April, 2020.

Chris M. Bromley
McHugh Bromley, PLLC
Attorneys for City of Jerome

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April 2020, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

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Attorneys for the City of Post Falls

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **PETITION TO INTERVENE** Fee Category: Exempt (I.C. § 67-2301)

COMES NOW the City of Post Falls ("Post Falls"), by and through its counsel of record McHugh Bromley, PLLC, and pursuant to IDAPA 37.01.01.350 *et seq.*, hereby files this *Petition to Intervene* in the above-captioned matter.

I. BACKGROUND

On February 24, 2020, Riverside Irrigation District ("Riverside") filed a *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* ("Petition") with the Director of the Idaho Department of Water Resources ("Director" or "IDWR"). The Petition was filed in response to a water reuse permit issued by the Idaho Department of Environmental Quality ("DEQ") authorizing the City of Nampa ("Nampa") to discharge some amount of treated waste water into Pioneer Irrigation District's ("Pioneer")

Phyllis Canal, as opposed to Indian Creek. Riverside alleges the discharge of treated waste water into Indian Creek must continue unless Nampa and/or Pioneer obtain a water right from IDWR:

> Pursuant to Idaho Code § 67-5232(1), Riverside hereby petitions the Department of a declaratory ruling as to the applicability of I.C. § 42-201(2) to Reuse Permit No. M-255-01. Specifically, and without limitation, Riverside seeks a declaratory ruling that:
>
> a. Pioneer cannot divert or accept water from the City or apply any of that water to land in the Pioneer district boundaries under this Reuse Permit without first obtaining a water right.
>
> b. Any attempt by Pioneer or the City to divert water under the Permit to Pioneer without applying for a water right is in contravention to Idaho Law.

Petition at 3.

The Petition was noticed by IDWR with a statement that petitions to intervene must be filed by April 23, 2020. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (March 16, 2020). A prehearing conference is scheduled to occur on April 30, 2020.

II. ARGUMENT

In order to grant a petition to intervene, the moving party must demonstrate it is "timely" filed, IDAPA 37.01.01.352, and that it has a "direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues . . . ." IDAPA 37.01.01.353. Post Falls meets these requirements.

First, Post Falls' petition to intervene is timely. A petition to intervene is timely if it is "filed at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier unless a different time is provided by order or notice." IDAPA 37.01.01.352. Here, the Director has scheduled the prehearing conference to take place on April 30, 2020, with a deadline to intervene scheduled for April 23, 2020. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene*. Because Post Falls

is petitioning the Director to intervene in the above-captioned proceeding prior to the April 23, 2020 deadline, Post Falls' petition to intervene is timely, and intervention should be granted.

Second, Post Falls has a direct and substantial interest in the outcome of this matter. Post Falls is located in northern Idaho and pumps ground water from the Rathdrum Prairie aquifer to meet the city's needs. Post Falls holds National Pollutant Discharge Elimination System ("NPDES") Permit No. ID-0025852 for waste water discharge into the Spokane River below Post Falls dam. Post Falls relys on the NPDES Permit to safely treat and dispose its waste water. In the future, Post Falls plans to recyle more water than it discharges into the Spokane River. Given its location, the terms of its NPDES Permit, and its plan to recyle water, only Post Falls can represent its interests. Thus, based on Post Falls' substantial interest, and the fact that it will not unduly broaden the issues, Post Falls should be granted intervention.

III. CONCLUSION

Post Falls' petition to intervene is timely, with Post Falls having a direct and substantial interest in the outcome of this matter. Therefore, based on the foregoing, Post Falls' petition to intervene should be granted.

DATED this 23rd day of April, 2020.

Chris M. Bromley
McHugh Bromley, PLLC
Attorneys for City of Post Falls

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April 2020, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

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Attorneys for the City of Rupert

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **PETITION TO INTERVENE** Fee Category: Exempt (I.C. § 67-2301)

COMES NOW the City of Rupert ("Rupert"), by and through its counsel of record McHugh Bromley, PLLC, and pursuant to IDAPA 37.01.01.350 *et seq.*, hereby files this *Petition to Intervene* in the above-captioned matter.

I. BACKGROUND

On February 24, 2020, Riverside Irrigation District ("Riverside") filed a *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* ("Petition") with the Director of the Idaho Department of Water Resources ("Director" or "IDWR"). The Petition was filed in response to a water reuse permit issued by the Idaho Department of Environmental Quality ("DEQ") authorizing the City of Nampa ("Nampa") to discharge some amount of treated waste water into Pioneer Irrigation District's ("Pioneer")

Phyllis Canal, as opposed to Indian Creek. Riverside alleges the discharge of treated waste water into Indian Creek must continue unless Nampa and/or Pioneer obtain a water right from IDWR:

> Pursuant to Idaho Code § 67-5232(1), Riverside hereby petitions the Department of a declaratory ruling as to the applicability of I.C. § 42-201(2) to Reuse Permit No. M-255-01. Specifically, and without limitation, Riverside seeks a declaratory ruling that:
>
> a. Pioneer cannot divert or accept water from the City or apply any of that water to land in the Pioneer district boundaries under this Reuse Permit without first obtaining a water right.
>
> b. Any attempt by Pioneer or the City to divert water under the Permit to Pioneer without applying for a water right is in contravention to Idaho Law.

Petition at 3.

The Petition was noticed by IDWR with a statement that petitions to intervene must be filed by April 23, 2020. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* (March 16, 2020). A prehearing conference is scheduled to occur on April 30, 2020.

II. ARGUMENT

In order to grant a petition to intervene, the moving party must demonstrate it is "timely" filed, IDAPA 37.01.01.352, and that it has a "direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues . . . ." IDAPA 37.01.01.353. Rupert meets these requirements.

First, Rupert' petition to intervene is timely. A petition to intervene is timely if it is "filed at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier unless a different time is provided by order or notice." IDAPA 37.01.01.352. Here, the Director has scheduled the prehearing conference to take place on April 30, 2020, with a deadline to intervene scheduled for April 23, 2020. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene*. Because Rupert is

petitioning the Director to intervene in the above-captioned proceeding prior to the April 23, 2020 deadline, Rupert' petition to intervene is timely, and intervention should be granted.

Second, Rupert has a direct and substantial interest in the outcome of this matter. Rupert is located in the Magic Valley and pumps ground water from the regional Eastern Snake Plain Aquifer, as well as ground water from a shallow perched aquifer to meet the city's needs. Rupert holds DEQ Reuse Permit No. M-001-04 that allows it to safely treat and reuse waste water. Upon treatment, Rupert pipes the water approximately seven miles north of the city where the water is stored in lagoons during the winter and land applied during the growing season. In an emergency and pursuant to Consent No. 17-07-14-L0950, Rupert is authorized by the United States Bureau of Reclamation to temporarily discharge Class B reuse water into a federal facility in Minidoka County. In the future, Rupert may want to exercise the flexibility that is provided to cities under Idaho law for discharge of treated waste water into a canal system. Given its location, the terms of its Reuse Permit, its consent agreement, and its interest in maintaining the flexibility provided by Idaho law, only Rupert can represent its interests. Thus, based on Rupert' substantial interest, and the fact that it will not unduly broaden the issues, Rupert should be granted intervention.

III. CONCLUSION

Rupert' petition to intervene is timely, with Rupert having a direct and substantial interest in the outcome of this matter. Therefore, based on the foregoing, Rupert' petition to intervene should be granted.

DATED this 23rd day of April, 2020.

Chris M. Bromley
McHugh Bromley, PLLC
Attorneys for City of Rupert

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of April 2020, I served a true and correct copy of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **CITY OF NAMPA'S OPPOSITION TO IDAHO POWER COMPANY'S PETITION TO INTERVENE**

The City of Nampa ("City"), by and through its counsel of record, hereby opposes the April 22, 2020 *Petition to Intervene* ("*Petition*") filed by Idaho Power Company ("Idaho Power") in the above-captioned proceeding. The ground for this opposition are stated below.

1. On March 16, 2020, the City filed its *Petition to Intervene* in the above-captioned matter. On the same day, the Director of the Idaho Department of Water Resources ("IDWR" or "Department") designated the City a respondent in this proceeding. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* ("*Notice*") at 1 n.1 (Mar. 16, 2020).

2. Department Rule of Procedure 350 provides that "Persons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party, if a formal hearing is required by statute to be held in the proceeding." IDAPA 37.01.01.350.

3. Department Rule of Procedure 354 provides that any party opposing a petition to intervene by motion must file the motion within seven days after receipt of the petition to intervene. IDAPA 37.01.01.354. The City received Idaho Power's *Petition* by email om April 22, 2020.

4. Department Rule of Procedure 353 provides that a petition to intervene may be granted where the petitioner has demonstrated a direct and substantial interest and intervention will not unduly broaden the issues, unless the petitioner's interests are adequately represented by existing parties. IDAPA 37.01.01.353.

5. Idaho Power has not demonstrated a direct and substantial interest in this proceeding. As Idaho Power acknowledges, the water rights at its hydroelectric facilities are subordinated. *Petition* at 3. This means that Idaho Power cannot seek curtailment or otherwise limit the exercise of other water rights or uses, such as the City's proposed use of its water rights. Accordingly, Idaho Power has no direct and substantial interest in this proceeding, which involves only the City's use of water and the exercise of its water rights.

6. If allowed to intervene, Idaho Power would unduly broaden the issues. This proceeding is not about whether Idaho Power has standing to challenge other water uses that Idaho Power alleges are injurious to its subordinated water rights. But that is exactly the issue that will have to be addressed if Idaho Power is granted intervention. Also, this case is not about

any "analysis of the minimum flows pursuant to the Swan Falls Settlement," as proposed by Idaho Power. *Petition* at 3. As the Director has stated, this proceeding is about whether Pioneer Irrigation District can "divert or accept reuse water from the City or apply the City's reuse water to land in the Pioneer boundaries under the [City's] reuse permit without first obtaining a water right" and whether "[a]ny attempt by Pioneer or the City to divert water under the permit to Pioneer without first applying for a water right is in contravention to [sic] Idaho law." *Notice* at 1. Idaho Power's *Petition* clearly demonstrates it would expand the proceeding beyond these issues, and it made no effort to explain how it would not. It is too late now for Idaho Power to make that argument.

For these reasons, the City requests the Department to deny Idaho Power's request for intervention. If intervention is granted, the City requests the Department impose conditions on Idaho Power's intervention to prevent the broadening of issues raised in the original petition for declaratory ruling.

Respectfully submitted this 29th day of April, 2020.

GIVENS PURSLEY LLP

Michael P. Lawrence

Attorneys for City of Nampa

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of April, 2020, the foregoing was filed, served, and copied as shown below.

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Attorney for Riverside Irrigation District Ltd.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	)	Docket No. P-DR-2020-01 **RESPONSE TO PETITIONS TO INTERVENE**

COMES NOW, Riverside Irrigation District, by and through its attorneys, Barker Rosholt & Simpson LLP, and hereby files this response to the various petitions to intervene in this matter pursuant to IDAPA 37.01.01.354.

BACKGROUND

Riverside Irrigation District, Ltd. (hereinafter "Riverside") filed a *Petition for Declaratory Ruling* ("Riverside's Petition") on February 24, 2020. Several municipal entities submitted Petitions to Intervene: City of Nampa, City of Boise, Hayden Area Regional Sewer Board, City of Meridian, City of Caldwell, the Association of Idaho Cities, City of Idaho Falls, City of Bellevue, City of Jerome, City of Post Falls, and the City of Rupert. Pioneer Irrigation District and Idaho Power also filed motions to intervene. Only the City of Nampa and Pioneer Irrigation District truly allege a direct and substantial interest to their operations by virtue of Riverside's Petition. Idaho

Power raises interests related to its downstream power plants that are different from interests of the other parties, including the municipal entities. The other municipal entities seeking intervention are simply "piling on." Their intervention motions should be denied under Rule 353, or their participation should be consolidated requiring them to speak with one voice to expedite the proceeding and manage the burden upon the parties and the Department under Rule 200 and Rule 560.

ARGUMENT

I. The Hearing Officer Should Deny the Municipalities' Petitions to Intervene for Unduly Broadening the Issues and Because Their Interests Adequately Represented by the City of Caldwell.

Under the Rules of Procedure of the Idaho Department of Water Resources (Department) , only persons who have a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention. IDAPA 37.01.01.350. The petition to intervene must show direct and substantial interest in any part of the subject matter of the proceeding, and must not unduly broaden the issues. IDAPA 37.01.01.353. The presiding officer should not grant intervention if an applicant's interest is adequately represented by existing parties. IDAPA 37.01.01.353.

Idaho Department of Environmental Quality (DEQ) issued the City of Nampa a water reuse permit, which directly implicates Pioneer Irrigation District, because the City of Nampa proposes to discharge its waste-water to Pioneer's canal for Pioneer to use as Pioneer sees fit on Pioneer's lands. Riverside does not oppose Nampa's or Pioneer's petitions to intervene as both parties have alleged a direct and substantial interest in Riverside's Petition. As for the other municipal petitions, if they intend to raise issues beyond the legal question raised by Riverside,

granting those petitions would unduly broaden the issues. If they merely intend to respond to Riverside's petition with respect to Nampa's reuse permit, any interests these other municipalities may have are adequately represented by Nampa and Pioneer, and the hearing officer should deny the other municipalities' motions to intervene.

Riverside's Petition seeks a declaratory ruling on a question of law. The question of law is whether Pioneer is required to apply for a water right permit under Idaho Code § 42-101(2) to take water from Nampa's waste water plant into its canal system and put that water to beneficial use on land in Pioneer's place of use. Riverside's petition does not ask the Director to declare that Nampa is required to obtain a water right.

The City of Idaho Falls' Petition to Intervene claims that Idaho Falls holds a NPDES permit for wastewater discharge, and might want to apply for a reuse permit with DEQ in the future. *Petition* at 3. This Petition is a near carbon copy of the Bellevue's, Jerome's, Post Falls', and Rupert's, and claims only a potential future interest in a potential reuse permit. Idaho Falls also claims Riverside does not represent Idaho Falls' interests but Idaho Falls and the municipalities do not contend that Nampa does not represent their interests. Idaho Falls does not have a direct and substantial interest in this proceeding, and any interests Idaho Falls does have are represented by Nampa. Post Falls' and Rupert's Petitions to Intervene also raise possible future plans like Idaho Falls, those interests are already adequately represented by Nampa. The hearing officer should deny all these cities' Petitions to Intervene for failure to meet the requirements of Rule 353. The City of Bellevue's petition should similarly be denied. Its Petition claimed that because Bellevue "land-applies treated municipal wastewater on lands south of the City" that they have a direct and substantial interest in these proceedings. *Petition* at 2. But Riverside's petition does not ask Nampa (or Bellevue) to acquire a water right. Bellevue's petition is virtually identical

to other potential intervenor's and Nampa's interests.

The City of Jerome's Petition to Intervene raises a different issue involving an NPDES permit to discharge into North Side Canal Company's J8 canal. To the extent this is a different issue than addressed in Riverside's Petition, raising this tangential issue would unduly expand the legal question presented by Riverside's Petition. There is no claim that Jerome has a DEQ reuse permit, has applied or will apply for such a permit. Hence, Jerome does not have a direct and substantial interest in this proceeding, and if they do, its interests are adequately represented by Nampa.

If these other cities want to raise the specifics of their water right ownership or location, doing so improperly expands the scope of this proceeding. The hearing officer should deny these municipalities' petitions for unduly broadening the issues, for failing to have a direct or substantial interest, and because the interests they do have are adequately represented by the City of Nampa.

II. The Hearing Officer Should Limit the Number of Parties to Expedite the Proceeding and Reasonably Manage the Burden of Service.

The vast majority of municipal intervenors are concerned these proceedings may impact "future reuse permits within the State of Idaho." *See City of Boise Petition to Intervene* at 2. Should the hearing officer grant any of these other municipalities' petitions to intervene, it is clear that these other municipal users raise similar or identical issues involving Idaho Code § 42-201(8). Under IDAPA 37.01.01.200, "[i]f two (2) or more parties or persons file identical or substantially like initial pleadings, the presiding officer may limit the number of parties or persons required to be served with official documents in order to expedite the proceeding and reasonably manage the burden of service upon the parties and the agency." Under Rule 560, "[i]f two (2) or more parties or persons have substantially like interests or positions, to expedite the proceeding and avoid

duplication, the presiding officer may limit the number of them who testify, examine witnesses, *or make and argue motions and objections.*" IDAPA 37.01.01.560 (emphasis added).

All the municipalities who have petitioned to intervene agree that they share substantially like interests or positions. In fact, the City of Boise states the "basis of [their Petition] centers around the same issues brought by Riverside's Petition and answered by Nampa's Petition [] and its Answer." *Petition* at 4. (emphasis added) The activity alleged by Hayden Area Regional Sewer Board is substantially similar as the public entity operates a publicly owned treatment works land applying water under a DEQ reuse permit. *Petition* at 2. Other cities, like Meridian and Caldwell claim they "do not seek to in any way broaden the issues in this proceeding [and] are concerned with the same issues raised by Riverside Irrigation District, and by the City of Nampa." *Joint Petition* at 3.[1](emphasis added) Finally, the Association of Idaho Cities (AIC) states its interest is in "safeguarding and representing the rights of all cities, large or small to have the utmost flexibility of their water rights," which is a substantially like position to the respective cities . *AIC Petition* at 3.

If the hearing officer grants any of these municipal petitions to intervene, the order should limit the number of parties who are able to "make and argue motions and objections," and who are required to be served with official documents. Otherwise, the parties and the agency would be overburdened with duplicative documents wasting times and resources. Those parties whose issues are direct and different from one another are Riverside, Nampa, Pioneer and Idaho Power. The other petitions to intervene are identical except for minor factual differences. The nature of this proceeding involves a question of law. Individual motions and briefing from every potential

[1] Meridian and Caldwell also tacitly admit that the City of Nampa would be able to adequately represent their interests stating "no currently named party in these proceedings is able to adequately represent the [Cities'] interests because currently there is no party to this matter other than Riverside Irrigation District." *Joint Petition* at 3.

intervenor would be rehashing the same case law and statutory interpretations over and over again when one presentation would have sufficed. The hearing officer should consolidate these other municipal intervenors and require them to appear through a single voice – either consolidated with Nampa or consolidated all other municipalities into one group that would be limited to a single filing. IDAPA 37.01.01.200, 37.01.01.560.

CONCLUSION

The hearing officer should deny the municipal Petitions to Intervene, as all fail to allege a direct and substantial interest in these proceedings, or would unduly broaden the issues to reflect unique factual situations of the respective cities, or in the alternative because all the cities are adequately represented by Nampa. Should the hearing officer grant any of the municipal petitions, those petitions should be consolidated into one group to submit and argue motions and objections and for service purposes.

DATED this 29th day of April 2020.

BARKER, ROSHOLT & SIMPSON LLP

Albert P. Barker
Attorneys for Riverside Irrigation District Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of April, 2020, I caused to be served a true and correct copy of the foregoing ***RESPONSE TO PETITIONS TO INTERVENE*** by the method indicated below, and addressed to each of the following:

Original to:

Director Gary Spackman Idaho Department of Water Resources 322 E. Front St. P.O. Box 83720 Boise, ID 83700-0098	_____ U.S. Mail, Postage Prepaid _____ Hand Delivery _____ Overnight Mail ___X_ Facsimile ___X Email

Copies to the following:

Andrew J. Waldera Sawtooth Law 1101 W River St. Ste.110 Boise, ID83702	_____ U.S. Mail, Postage Prepaid _____ Hand Delivery _____ Overnight Mail _____ Facsimile ___X_ Email
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Abigail R. Germaine Boise City Attorney's Office P.O. Box 500 Boise, ID 83701	_____ U.S. Mail, Postage Prepaid _____ Hand Delivery _____ Overnight Mail _____ Facsimile ___X_ Email
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Attorneys for City of Nampa

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01

Docket No. P-DR-2020-01

REVISED CERTIFICATE OF SERVICE FOR CITY OF NAMPA'S OPPOSITION TO IDAHO POWER COMPANY'S PETITION TO INTERVENE

On the 29th day of April, 2020, the City of Nampa ("City") filed and served *City of Nampa's Opposition to Idaho Power Company's Petition to Intervene* ("*Opposition*") in the above-captioned proceeding.

As indicated on the Certificate of Service attached to the *Opposition*, the document was filed initially by fax at the Idaho Department of Water Resources' ("IDWR") Headquarters (208-287-6700). Though not indicated on the Certificate of Service, courtesy copies were provided by email to all counsel for proposed intervenors.

Our record of the fax to IDWR Headquarters reflected a 5:01 pm receipt. In order to avoid any question as to whether the *Opposition* was timely filed, the City then filed the same

document again by fax at IDWR's Northern Office (208-762-2819), which filing occurred before close of business (Pacific time). The *Opposition* was filed, and service and courtesy copies were served, as indicated below.

DOCUMENT FILED:

IDAHO DEPARTMENT OF WATER RESOURCES P.O. Box 83720 Boise, ID 83720-0098 Hand delivery or overnight mail: 322 East Front Street Boise, ID 83702 Fax: 208.287.6700 Email: Gary.Spackman@idwr.idaho.gov	☒ ☐ ☐ ☒ ☒	U. S. Mail Hand Delivered Overnight Mail Fax E-mail
IDAHO DEPARTMENT OF WATER RESOURCES Northern Regional Office 7600 N Mineral Dr, Ste 100 Coeur d'Alene, ID 83815-7763 Fax: 208-762-2819	☐ ☐ ☐ ☒ ☐	U. S. Mail Hand Delivered Overnight Mail Fax E-mail

SERVICE COPY:

Albert P. Barker, Esq. BARKER ROSHOLT & SIMPSON LLP PO Box 2139 Boise, ID 83701-2139 Email: apb@idahowaters.com Fax: 208-344-6034 Hand delivery or overnight mail: 1010 W Jefferson St, Ste 102 Boise, ID 83702 *(For Petitioner Riverside Irrigation District Ltd.)*	☒ ☐ ☐ ☐ ☒	U. S. Mail Hand Delivered Overnight Mail Fax E-mail

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Respectfully submitted this 30th day of April, 2020.

GIVENS PURSLEY LLP

Michael P. Lawrence
Attorneys for City of Nampa

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of April, 2020, the foregoing was filed, served, and copied as shown below.

DOCUMENT FILED:

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **WITHRAWAL OF PETITION TO INTERVENE** Fee Category: Exempt (I.C. § 67-2301)

COMES NOW the City of Bellevue ("Bellevue"), by and through its counsel of record McHugh Bromley, PLLC, and hereby files this *Withdrawal of Petition to Intervene* in the above-captioned matter.

Bellevue filed its original petition to intervene in accordance with the original timeline in order to preserve its ability to participate. Upon further consideration, Bellevue hereby withdraws its Petition to Intervene.

DATED this 4th day of May, 2020.

Candice McHugh
McHugh Bromley, PLLC
Attorneys for City of Bellevue

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of May 2020 I served a true and correct copy via email and US mail postage paid of the foregoing document on the person(s) whose names and addresses appear below by the method indicated:

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Candice McHugh

English, Kimberle

From: Christopher H Meyer <ChrisMeyer@givenspursley.com>
Sent: Monday, May 4, 2020 7:50 PM
To: Spackman, Gary; Barker, Albert (IWRB Member); John K. Simpson Esq. (jks@idahowaters.com); Andrew J. Waldera Esq. (andy@sawtoothlaw.com)
Cc: Baxter, Garrick; English, Kimberle; Abigail R. Germaine Esq. (agermaine@cityofboise.org); Candice M. McHugh (cmchugh@mchughbromley.com); Charles L. Honsinger Esq. (honsingerlaw@gmail.com); Chris M. Bromley Esq. (cbromley@mchughbromley.com); Nancy Stricklin Esq. (nancy@mslawid.com); Robert L. Harris Esq. (rharris@holdenlegal.com); Sarah A. Klahn, Esq. (sklahn@somachlaw.com); Jerry D. Mason Esq. (jerry@mslawid.com); Johanna M. Bell (jbell@idahocities.org); John Bunn; Michael P. Lawrence; Mark Richard Hilty (mhilty@nampalaw.com); Nate Runyan (runyann@cityofnampa.us); Sheri Murray (murrays@cityofnampa.us); Tom Points (pointst@cityofnampa.us)
Subject: RE: IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01 (Docket No. P-DR-2020-01) [IWOV-GPDMS.FID996091]

Director Spackman,

I apologize to all for going too fast.

I copied the municipal intervenor group, but failed to add Messrs. Barker, Simpson, and Waldera.

Respectfully,

-Chris

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From: Christopher H Meyer <ChrisMeyer@givenspursley.com>
Sent: Monday, May 4, 2020 7:45 PM
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Cc: Garrick L. Baxter (garrick.baxter@idwr.idaho.gov) <garrick.baxter@idwr.idaho.gov>; Kimberle W. English (kimberle.english@idwr.idaho.gov) <kimberle.english@idwr.idaho.gov>; Abigail R. Germaine Esq. (agermaine@cityofboise.org) <agermaine@cityofboise.org>; Candice M. McHugh (cmchugh@mchughbromley.com) <cmchugh@mchughbromley.com>; Charles L. Honsinger Esq. (honsingerlaw@gmail.com) <honsingerlaw@gmail.com>; Chris M. Bromley Esq. (cbromley@mchughbromley.com) <cbromley@mchughbromley.com>; Nancy Stricklin Esq. (nancy@mslawid.com) <nancy@mslawid.com>; Robert L. Harris Esq. (rharris@holdenlegal.com) <rharris@holdenlegal.com>; Sarah A. Klahn, Esq. (sklahn@somachlaw.com) <sklahn@somachlaw.com>; Jerry D. Mason Esq. (jerry@mslawid.com) <jerry@mslawid.com>; Johanna M. Bell (jbell@idahocities.org) <jbell@idahocities.org>; John Bunn <JohnBunn@givenspursley.com>; Michael P. Lawrence <mpl@givenspursley.com>; Mark Richard Hilty (mhilty@nampalaw.com) <mhilty@nampalaw.com>; Nate Runyan (runyann@cityofnampa.us) <runyann@cityofnampa.us>; Sheri Murray (murrays@cityofnampa.us)

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Subject: IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01 (Docket No. P-DR-2020-01) [IWOV-GPDMS.FID996091]

To: Hearing Officer

From: Chris Meyer (for City of Nampa)

Copies: Counsel for Petitioner and all Potential Intervenors, Garrick Baxter, Kimberly English, client, and others

Dear Director Spackman,

I hope that this informal communication is not inappropriate.

I am authorized by counsel for Petitioner and all Potential Intervenors to inform you that all parties and potential parties stipulate to accept service by email rather than U.S. mail or other means.

Accordingly, if you deem it appropriate, we ask for an order to that effect.

If you would like me to submit a proposed order, or to submit a formal pleading memorializing this stipulation, please advise.

The parties would also welcome the opportunity to make email filings of briefs and other documents.

However, my expectation, based on my understanding of the Department's rules, is that the Department is not authorized to allow that.

Respectfully submitted,

-Chris Meyer

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER REUSE PERMIT NO. M-225-01	Docket No. P-DR-2020-001 **ORDER SETTING DEADLINE FOR RESPONSES; NOTICE OF CONTINUED PREHEARING CONFERENCE**

BACKGROUND

On February 24, 2020, Riverside Irrigation District ("Riverside") submitted a *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* ("Petition") to the Idaho Department of Water Resources ("Department"). Subsequently, a dozen petitions to intervene were timely filed with the Department. On April 29, 2020, Riverside filed its *Response to Petitions to Intervene* and the City of Nampa filed *City of Nampa's Opposition to Idaho Power Company's Petition to Intervene*.

A telephonic prehearing conference was held on April 30, 2020. At the prehearing conference, potential intervenors requested time to respond to the filings submitted by Riverside and the City of Nampa. The Director verbally ordered that written responses to the filings submitted by Riverside and Nampa be filed with the Department no later than May 14, 2020. The Director verbally ordered that no replies be submitted. The participants and the Director also verbally agreed to continue the prehearing conference to July 8, 2020. This order documents the deadlines discussed at the prehearing conference.

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that potential intervenors that want to respond to the filings submitted by Riverside and the City of Nampa file responses with the Department no later than May 14, 2020. IT IS FURTHER ORDERED that no replies be submitted.

NOTICE OF CONTINUED PREHEARING

A prehearing conference will be held in the above-captioned matter on **July 8, 2020, at 2:00 p.m.** at the Department's state office, located at 322 E. Front Street, 6th Floor Conference

Rooms, Boise, Idaho. The presiding officer at the hearing will be the Director, Gary Spackman. The purpose of the prehearing conference will be to discuss hearing dates and other items listed in the Department's Rules of Procedure 510. *See* IDAPA 37.01.01.510.

Riverside, City of Nampa and all potential intervenors must be present. If participating by telephone, **please dial 1-720-279-0026 and enter the following guest code when prompted: 234278#**.

The prehearing conference will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the Department's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department or at https://adminrules.idaho.gov/rules/current/37/370101.pdf.

The prehearing conference will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please contact Kimberle English at (208) 287-4815, no later than five (5) days prior to the conference.

DATED this 7th day of May 2020.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of May 2020, I served a true and correct copy of the foregoing document on the following by the method(s) indicated:

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **STIPULATION REGARDING INTERVENTION**

On February 24, 2020, Riverside Irrigation District ("Riverside") filed a *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* ("Petition") with the Director of the Idaho Department of Water Resources ("Director" or "IDWR"). Riverside seeks a ruling on whether the water reuse permit issued by the Idaho Department of Environmental Quality ("DEQ") authorizing the City of Nampa ("Nampa") to discharge treated waste water into Pioneer Irrigation District's ("Pioneer") Phyllis Canal, as opposed to Indian Creek, requires Pioneer to obtain a water right to put that water to beneficial use on Pioneer's lands.

The following entities timely petitioned to intervene: Idaho Power Company, the cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Nampa, Pocatello, Post Falls, and Rupert, the

Association of Idaho Cities; the Hayden Area Regional Sewer Board and Pioneer Irrigation District also timely petitioned for intervention. Riverside opposes the interventions of the municipal petitioner-intervenors and in the alternative requested that the municipal intervenors be required to consolidate their participation in the proceeding. Riverside did not object to the interventions of the City of Nampa, Pioneer Irrigation District or Idaho Power Company.

In order to resolve Riverside's opposition to the municipalities' intervention petitions and request for consolidation, the Parties to this Stipulation agree to the following:

1. Riverside withdraws its opposition to the interventions of the Cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Pocatello, Post Falls, and Rupert, the Association of Idaho Cities, and Hayden Area Regional Sewer Board (the "Intervenors") and agrees that they may participate in the above captioned matter in the manner and on the conditions described below.

2. With respect to any briefing permitted by the hearing officer as to any issue in this proceeding, Nampa shall be able to file a brief, Pioneer shall be able to file a brief, and the municipal Intervenors shall file no more than two additional briefs collectively. If the municipal intervenors or any of them file more than one joint brief, the municipal intervenors shall avoid undue duplication of any of the arguments or positions articulated in the municipal intervenors' main brief.

3. In any other proceedings in this matter, including discovery, hearings and argument, the hearing officer shall establish a process for the municipal intervenors to consolidate their positions, activities and presentations to avoid undue duplication and burden on the Petitioner Riverside, the Department and the other parties.

4. The Parties agree to stipulate to essential facts relating to the Nampa and Pioneer re-use project which are necessary for the determination of the issues raised by Riverside's Petition. Facts specific to the other Intervenors' projects or proposed projects will not be included in the record as essential facts necessary to resolving issues raised by Riverside's Petition, but specific intervenors may provide examples of the impacts a determination on the essential facts may have on those intervenors.

DATED this 11th day of May, 2020

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Attorneys for Riverside Irrigation District Ltd.

GIVENS PURSLEY LLP

Christopher H. Meyer
Michael P. Lawrence
Attorneys for City of Nampa

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Andrew J. Waldera
Attorneys for Pioneer Irrigation District

4. The Parties agree to stipulate to essential facts relating to the Nampa and Pioneer re-use project which are necessary for the determination of the issues raised by Riverside's Petition. Facts specific to the other Intervenors' projects or proposed projects will not be included in the record as essential facts necessary to resolving issues raised by Riverside's Petition, but specific intervenors may provide examples of the impacts a determination on the essential facts may have on those intervenors.

DATED this 11th day of May, 2020

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I HEREBY CERTIFY that on this 11th day of May, 2020, the foregoing was filed, served, and copied as shown below.

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-001 **IDAHO POWER COMPANY'S RESPONSE TO OPPOSITION TO IDAHO POWER COMPANY'S PETITION TO INTERVENE**

COMES NOW, Idaho Power Company, by and through its attorneys of record, and pursuant to the Director's *Order Setting Deadlines for Responses; Notice of Continued Prehearing Conference* dated May 7, 2020, hereby responds to the oppositions filed by Riverside Irrigation District ("Riverside") and the City of Nampa ("City") to interventions filed by a number of cities and Idaho Power Company.

INTRODUCTION

At the prehearing conference held in the above captioned matter on April 30, 2020, the hearing officer identified that potential intervenors may file a response to the oppositions to intervention pleadings filed by Riverside and the City of Nampa just prior to the prehearing. Specifically, the scheduling order dated May 7, 2020 stated "that written responses to the filings submitted by Riverside and Nampa be filed with the Department no later than May 14, 2020. The

Director verbally ordered that no replies be submitted." *Order Setting Deadline for Responses,* p. 1. In accordance with the above cited order, Idaho Power Company ("Company") files this response to said pleadings filed by Riverside and the City of Nampa.

ARGUMENT

As to the opposition to intervention filed by Riverside, Idaho Power Company recognizes Riverside's concern over the number of city intervenors and the Company is willing to coordinate and if possible, not duplicate the efforts by other intervenors in this proceeding. Further, the Company recognizes Riverside's acknowledgment that the Company's interests are distinct from those of other potential intervenors. Moreover, the Company is in receipt of a stipulation signed and filed by Riverside and the city intervenors executed recently. *See* Stipulation regarding Intervention between Riverside and Intervenors, dated May 12, 2020. Upon review of the stipulation for intervention, the Company has reviewed paragraph 4 of said stipulation and agrees in principal with the conditions set forth in said paragraph.

Essentially, the Company agrees that the facts of the City of Nampa's water rights and the reuse permit are the factual issues that frame the legal issues in this proceeding. In its petition to intervene, the Company identifies the fact that a number of its hydroelectric facilities are downstream of discharges from a number of water rights and uses, and those discharges potentially become the source of water for the exercise of the Company's water rights. This description was for illustrative purposes and as examples of how and why the Company has a substantial interest in the outcome of this proceeding. Therefore, consistent with the stipulation entered into between Riverside and the city intervenors, the Company would agree with the conditions of paragraph 4 and further confirm that facts related to the

Company's water rights and operations "will not be included in the record as essential facts."

Given the above explanation and the Company's willingness to recognize the conditions of paragraph 4 of the stipulation identified above, the Company believes the City's opposition to the Company's intervention are without merit. The Company has no intentions of injecting factual circumstances surrounding the Swan Falls Agreement into the proceedings of this matter. As recognized in the above-referenced May 12, 2020 stipulation, external facts identified by intervenors would only be used for purposes of describing the potential impacts from an outcome of the legal issues. The City's cites to the Company's references to Swan Falls were misplaced given the review of the pleading and the arguments herein. Further, the Company's intervention and position in this proceeding is no different than the city intervenors, given all intervenors' concessions.

In summary, it is important to recognize that Riverside filed this petition seeking a legal determination that it framed through the petition. The City is a respondent. All other entities that filed pleadings have yet to attain formal party status. In response to the Company's petition to intervene, Riverside did not oppose said intervention. In fact, Riverside recognized the Company's unique interests in this proceeding. It appears from the stipulation entered into between the city intervenors and Riverside, that Riverside's concerns over additional intervenors have been resolved. The Company acknowledges the terms of said stipulation as it would apply to the facts of this case. Given the Company's willingness to abide by the factual circumstances of the City's water rights and reuse permit the sole basis for the City's concerns apparently surround the Company's water rights and subordination provisions. While water rights are subordinated, they still are recognized as a property interest and the Company still has a right to protect those interests through participation in

these proceedings. Although some entities may not believe those interests satisfy the criteria enumerated in the Rules of Procedure, the Company does and certainly the ratepayers within its service territory do as well. Finally, as recognized in this pleading the Company does not intend to and will not expand the factual issues beyond those presented in the water rights of the City, the facts surrounding the reuse permit and the facts surrounding Riverside's use of water discharged from the City.

CONCLUSION

For the above referenced reasons, the Hearing Officer should enter an order granting the Company's intervention.

DATED this 14th day of May, 2020.

BARKER ROSHOLT & SIMPSON LLP

John K. Simpson
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of May, 2020, I caused a true and correct copy of the foregoing **IDAHO POWER COMPANY'S RESPONSE TO OPPOSITION TO PETITION TO INTERVENE** to be served on the following parties by the following methods:

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DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER REUSE PERMIT NO. M-225-01	**Docket No. P-DR-2020-001** **CITIES OF POCATELLO, IDAHO FALLS, AND RUPERT'S OPPOSITION TO IDAHO POWER'S PETITION TO INTERVENE** **Fee Category: Exempt** **Idaho Code § 67-2301**

COMES NOW, the Cities of Pocatello, Idaho Falls, and Rupert ("the Cities") to oppose Idaho Power's Petition to Intervene ("Petition"). Contrary to the standards laid out in IDAPA 37.01.01.353 and 37-01.01.354, Idaho Power does not have a "direct and substantial interest" in

the captioned matter and its participation will unduly broaden the issues. As grounds therefor, the Cities would show the Director:

1. The Cities join in the "City of Nampa Opposition to Idaho Power Petition to Intervene," filed April 29, 2020.
2. In addition to Nampa's arguments, the Cities note that Idaho Power's Petition alleges potential injury to Idaho Power's operations via declines in reach gains (while its hydroelectric water rights are "subordinated, the Company does depend upon reach gains in the source identified in the water rights to generate power." Petition at 3). Idaho Power does not describe how this is remediable injury, but in any event, this is outside of the scope of the proceeding.
3. Idaho Power acknowledges that the activities of Nampa under its reuse permit are downstream of the Swan Falls dam; however, it argues "similar discharges are present upstream of Swan Falls Dam and may trigger some analysis of the minimum flows pursuant to the Swan Falls Settlement depending upon the outcome of the issues raised in the present proceeding." Petition at 3. Idaho Power does not identify the "similar discharges" upstream of Swan Falls, nor does it connect the dots between this declaratory judgment regarding Pioneer's ability to rely on effluent discharged under the Nampa Reuse permit and future "analysis of minimum flows" under the Swan Falls settlement. Nonetheless, allowing Idaho Power to introduce potential impacts of its operations under the Swan Falls Agreement into this matter would substantially broaden the issues.
4. Given these deficiencies, and as noted in the Director's "Order Denying Idaho Power's Petition for Hearing" entered in the Surface Water Coalition Delivery Call on July 25, 2005, it is not even clear that Idaho Power has standing to participate in this matter. Idaho

Idaho Power stated only generalized concerns regarding reach gains and evaluation of its Swan Falls Agreement, which arguably are shared by many other Idaho citizens and entities.

5. However, the Director need not reach the issue of Idaho Power's standing, because Idaho Power does not satisfy the basic showings required for intervention.

For these reasons, the Cities request that the Director reject Idaho Power's Petition to Intervene.

Respectfully submitted this 14th day of May, 2020.

SOMACH SIMMONS & DUNN

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By _____
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I hereby certify that on this 14th day of May, 2020, I caused to be served a true and correct copy of the foregoing **THE CITIES' OPPOSITION TO IDAHO POWER'S PETITION TO INTERVENE** by the method indicated below and addressed to the following:

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER RESUE PERMIT NO. M-225-01	Docket No. P-DR-2020-001 **PIONEER IRRIGATION DISTRICT'S OPPOSITION TO IDAHO POWER COMPANY'S PETITION TO INTERVENE**

Proposed Intervenor Pioneer Irrigation District ("Pioneer" or "District"), by and through undersigned counsel of record and pursuant to the Director's *Order for Setting Deadline for Responses; Notice of Continued Prehearing Conference* (May 7, 2020), hereby responds in opposition to Idaho Power Company's ("Idaho Power") *Petition to Intervene* (Apr. 22, 2020) ("Petition").

Pioneer opposes Idaho Power's Petition on the following grounds:

1. As Idaho Power correctly states in its Petition, the substantive standard of review governing its intervention request is two-fold: (a) demonstration of a "direct and substantial interest" in the matter; and (b) participation that "does not unduly broaden the issues" pending in the matter. IDAPA 37.01.01.353.

2. Idaho Power asserts six (6) reasons why it believes it has a "direct and substantial interest" in this proceeding. Petition, p. 3. Pioneer addresses each of them in turn:

a. Idaho Power states that it operates 17 hydroelectric facilities in the Snake River Basin, with corresponding hydropower generation water rights, "[a] number of [which]" are downstream of the Boise River Basin. Idaho Power does not explain how these facts comprise a direct and substantial interest in *this* proceeding. The seeming implication of Idaho Power's assertion is that the City of Nampa's ("Nampa") proposed discharge to Pioneer's Phyllis Canal would injure or diminish Idaho Power's hydropower generation potential at some unidentified "number" of facilities located downstream of the Boise River Basin. But, as Idaho Power later acknowledges, its hydropower generation rights are subordinate to the exercise of upstream consumptive rights (including those of Nampa). Petition, p. 3; *see also*, I.C. § 42-203B. Thus, to the extent an injury allegation can be read into Idaho Power's otherwise generalized statement, Idaho Power has no colorable injury claim to make during this proceeding.

b. Next, Idaho Power cites to "other water rights throughout its service territory" that "aid in the delivery of electricity and in [its] operations." Again, Idaho Power does not explain how these otherwise unidentified water rights located within its larger "service territory" stand to be impacted by the outcome of *this* proceeding—more specifically, Nampa's discharge of its municipal wastewater to Pioneer's Phyllis Canal rather than to Indian Creek. Likewise, Idaho Power identifies no generation facility it operates on Indian Creek, or water rights sourced therefrom, and Idaho Power neglects to mention that typical Riverside Irrigation District, Ltd. ("Riverside") operations intercept the entirety of Indian Creek flows where the Creek and the Riverside Canal intersect. In other words, Idaho Power fails to

substantiate any tributary relationship between the Creek and its unidentified water rights throughout its larger "service territory," let alone tributary to its unidentified "number" of facilities "downstream of the Boise River Basin."

c. After acknowledging the subordinated nature of its hydropower generation water rights, Idaho Power states that its power generation operations depend, in part, on "reach gains" in the various "source[s]" identified in its water rights portfolio. Like subparagraph (a) above, the implication of Idaho Power's generalized statement is seemingly one of alleged injury. But, Idaho Power does not expressly state as much, let alone contend that it has colorable injury claims given its subordinated water rights and the well-settled rule that water users cannot compel others to continue wasting water for their benefit.

d. Idaho Power next states that many of its water rights are "downstream of municipal, industrial, and irrigation returns . . . similar to the discharge described in the Riverside petition." That may be, but Idaho Power fails to explain why this matters. Perhaps, Idaho Power benefits from the waste streams of others (*e.g.*, operational spills of irrigation entities or the wastewater discharges of municipalities). So do countless other water users, including Pioneer and its drain-based water rights. But absent some modicum of substantive explanation, or colorable injury assertions, the mere downstream location of some unidentified subset of Idaho Power water rights throughout its massive service territory is irrelevant and incredibly vague.

e. After acknowledging that the tributary hydrology in this proceeding (or, more accurately, the lack thereof) has no bearing on Swan Falls operations and associated minimum stream flows upstream of the dam, Idaho Power nonetheless alleges that this proceeding "may" trigger minimum stream flow analysis under the Swan Falls Agreement. The hydrology of this proceeding has no bearing upon Swan Falls minimum stream flows of concern

to Idaho Power, and any attempt Idaho Power might make to inject that issue or potential into this proceeding unduly broadens the issues in this proceeding in derogation of Procedure Rule 353 (IDAPA 37.01.01.353). If and when other proceedings with a direct bearing on Swan Falls minimum stream flows arise, Idaho Power is welcome to pursue those issues there. This proceeding is not the proper place or time.

f. Finally, Idaho Power asserts that the outcome of this proceeding "may impact the Company's generation and planning." As with its other assertions, it offers no explanation supporting this "may impact" assertion. For the reasons discussed above, Pioneer fails to see or understand *how this particular proceeding, and Nampa's specific, proposed discharge to Pioneer's Phyllis Canal* will have any bearing on Idaho Power operations. And that is the problem, all involved are left speculating over what Idaho Power's connection to this matter is (or can be) given the Company's dearth of explanation and substantiation.

3. Even taken together as a whole, Idaho Power's generalized statements do not demonstrate a direct and substantial interest as required by Procedure Rule 353 (IDAPA 37.01.01.353). Idaho Power nakedly concludes that it "meets the requirements as specified in the Department's Rules." Pioneer disagrees.

If granted intervention Idaho Power should be required to better and fully explain its "direct and substantial interest" in *this* particular proceeding: located on a creek not tributary to the Boise or Snake Rivers during the Reuse Permit irrigation season of use (due to Riverside's interception of the Indian Creek at its canal for its own irrigation uses); located on a creek without connection to Swan Falls Dam operations or minimum stream flow requirements upstream of the dam; and absent the ability to assert colorable injury concerns owing to its subordinated power generation rights and inability to compel Nampa to continue wasting water

for its benefit (assuming there ever was a benefit). And, therein lies Idaho Power's threshold failing—any clarifying statement(s) of direct and substantial interest solicited later necessarily concedes the Company's failure to meet the applicable legal standards on the frontend.

Pioneer respectfully submits that Idaho Power Company's Petition be denied for its failure to satisfy the applicable "direct and substantial interest" test, and for its stated potential to inject issues (*e.g.*, reach gains and/or minimum stream flow analyses) unduly broadening the scope of this proceeding.

DATED this 13th day of May, 2020.

SAWTOOTH LAW OFFICES, PLLC

By _____
Andrew J. Waldera
Attorneys for Pioneer Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of May, 2020, I caused a true and correct copy of the foregoing **PIONEER IRRIGATION DISTRICT'S OPPOSITION TO IDAHO POWER COMPANY'S PETITION TO INTERVENE** to be served by the method indicated below, and addressed to the following:

Director Gary Spackman Idaho Department Of Water Resources PO Box 83720 Boise, ID 83720 gary.spackman@idwr.idaho.gov	( ) U.S. Mail, Postage Prepaid (X) Hand Delivered ( ) Overnight Mail ( ) Facsimile ( ) Email / CM/ECF
Garrick L. Baxter Deputy Attorney General Idaho Department Of Water Resources PO Box 83720 Boise, ID 83720-0098 garrick.baxter@idwr.idaho.gov kimberle.english@idwr.idaho.gov	( ) U.S. Mail, Postage Prepaid (X) Hand Delivered ( ) Overnight Mail ( ) Facsimile ( ) Email / CM/ECF
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Andrew J. Waldera

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER REUSE PERMIT NO. M-225-01	Docket No. P-DR-2020-001 **ORDER GRANTING MOTIONS TO INTERVENE; ORDER AUTHORIZING EMAIL SERVICE**

BACKGROUND

On February 24, 2020, Riverside Irrigation District ("Riverside") submitted a *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* ("Petition") to the Idaho Department of Water Resources ("Department"). Riverside petitions the Department for a declaratory ruling as to the applicability of Idaho Code § 42-201(2) to Reuse Permit No. M-255-01 ("Permit"). *Petition* at 3. The Permit was issued by the Idaho Department of Environmental Quality to the City of Nampa ("Nampa") on January 21, 2020. The Petition alleges that under the Permit, Nampa intends to deliver reuse water to Pioneer Irrigation District ("Pioneer") and that Pioneer intends to supply the reuse water to its patrons. *Id.* at 2.

Riverside seeks a declaratory ruling that:

1) Pioneer cannot divert or accept reuse water from Nampa or apply Nampa's reuse water to land in the Pioneer boundaries under the reuse permit without first obtaining a water right.

2) Any attempt by Pioneer or Nampa to divert water under the permit to Pioneer without first applying for a water right is in contravention to Idaho law.

Petition at 3.

Petitions to intervene were timely filed by Nampa, Pioneer, and Idaho Power Company ("IPC"). Timely petitions to intervene were also filed by the Association of Idaho Cities ("AIC"), the Hayden Area Regional Sewer Board ("Hayden Sewer Board"), and the Cities of

Boise, Caldwell, Idaho Falls, Jerome, Meridian, Pocatello, Post Falls, and Rupert ("Cities").[1] AIC, Hayden Sewer Board and the Cities will be referred to collectively as "Municipal Intervenors."

On April 29, 2020, Riverside filed its *Response to Petitions to Intervene* and Nampa filed *City of Nampa's Opposition to Idaho Power Company's Petition to Intervene*.

A prehearing conference was held on April 30, 2020. At the conference, potential intervenors requested time to respond to the filings submitted by Riverside and Nampa. The Director ordered that responses be filed with the Department no later than May 14, 2020. *Order Setting Deadline for Responses; Notice of Continued Prehearing Conference* at 1. The Director ordered that no replies be submitted. *Id.*

On May 11, 2020, a *Stipulation Regarding Intervention* ("Stipulation") was filed by Riverside, Nampa, Pioneer, and the Municipal Intervenors.

On May 13, 2020, Pioneer filed *Pioneer Irrigation District's Opposition to Idaho Power Company's Petition to Intervene*. On May 14, 2020, the Cities of Idaho Falls, Pocatello and Rupert filed *Cities of Pocatello, Idaho Falls and Rupert's Opposition to Idaho Power's Petition to Intervene* and IPC filed *Idaho Power Company's Response to Opposition to Idaho Power Company's Petition to Intervene*.

ANALYSIS OF PETITIONS TO INTERVENE

The Department's Rule of Procedure 353 states:

> If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

IDAPA 37.01.01.353.

On March 16, 2020, the Director designated Nampa a respondent in this matter because Nampa is the entity that holds the reuse permit involved in this contested case. *Notice of Prehearing Conference; Order Setting Deadline for Petitions to Intervene* at 1. Because Nampa has been designated a respondent, Nampa's petition to intervene is moot.

[1] The City of Bellevue filed a petition to intervene but subsequently withdrew its petition.

In its petition to intervene, Pioneer alleges a direct and substantial interest in this proceeding. It states "Pioneer is a partner with Nampa" in the reuse project and has "entered into a formal contract" with Nampa such that Pioneer is "the proposed recipient of the Class A recycled wastewater discharge governed by the Permit." *Pioneer Irrigation District's Petition to Intervene* at 4. Pioneer asserts "[t]he relationship between Nampa and Pioneer, and the operational flexibility the Permit project will provide, are unique to Pioneer. They establish not only Pioneer's direct and substantial interest in this matter, but also the fact that Pioneer's interests cannot be adequately represented by any other parties to the proceeding." *Id.* Pioneer also asserts its participation will not unduly broaden the issues because "Pioneer's issues and anticipated arguments ***are*** the issues pending before the Department under Riverside's Petition." *Id.* at 6 (emphasis in original). No party opposes Pioneer's intervention. The Director concludes that Pioneer has a direct and substantial interest in this matter and will not unduly broaden the issues. The Director further concludes that Pioneer's interests are not adequately represented by existing parties. Accordingly, the Director will grant Pioneer's petition to intervene.

In their petitions to intervene, the Municipal Intervenors allege a direct and substantial interest in this proceeding and that their participation will not unduly broaden the issues. In its *Response to Petitions to Intervene*, Riverside opposed the Municipal Intervenors' participation and in the alternative requested that the Municipal Intervenors be required to consolidate their participation in the proceeding. *Response to Petition to Intervene* at 2. However, Riverside, Nampa, Pioneer and the Municipal Intervenors subsequently filed a stipulation wherein they agreed as follows:

1. Riverside withdraws its opposition to the interventions of the [Municipal Intervenors] and agrees that they may participate in the above captioned matter in the manner and on the conditions described below.

2. With respect to any briefing permitted by the hearing officer as to any issue in this proceeding, Nampa shall be able to file a brief, Pioneer shall be able to file a brief, and the Municipal Intervenors shall file no more than two additional briefs collectively. If the Municipal Intervenors or any of them file more than one joint brief, the Municipal Intervenors shall avoid undue duplication of any of the arguments or positions articulated in the Municipal Intervenors' main brief.

3. In any other proceedings in this matter, including discovery, hearings and arguments, the hearing officer shall establish a process for the Municipal Intervenors to consolidate their positions, activities and presentations to avoid undue duplication and burden on the Petitioner Riverside, the Department and the other parties.

4. The Parties agree to stipulate to essential facts relating to the Nampa and Pioneer re-use project which are necessary for the determination of the issues raised by

Riverside's Petition. Facts specific to the other intervenors' projects or proposed projects will not be included in record as essential facts necessary to resolving issues raised by Riverside's Petition, but specific intervenors may provide examples of the impacts a determination on the essential facts may have on those intervenors.

Stipulation at 2-3.

The Director concludes that the Municipal Intervenors have a direct and substantial interest in this matter. If the Municipal Intervenors comply with the terms of the Stipulation, the Director concludes the Municipal Intervenors will not unduly broaden the issues. The Director further concludes that the Municipal Intervenors' interests are not adequately represented by existing parties. Accordingly, the Director will grant the Municipal Intervenors' petitions to intervene subject to the terms of the Stipulation.

In its petition to intervene, IPC alleges a direct and substantial interest in this proceeding. IPC states it has numerous hydroelectric facilities in the Snake River Basin with water rights to generate power at each of the facilities and a number of these facilities are downstream of the Boise River Basin. *Idaho Power Company Petition to Intervene* at 3. IPC states it has other water rights throughout its service territory which aid in the delivery of electricity and in operations. *Id.* IPC states that many of its water rights are downstream of municipal, industrial and irrigation returns to the water source similar to the discharge described in the Riverside petition. *Id.* IPC states that while the source (Indian Creek) raised in the Riverside petition is not tributary to the Snake River above Swan Falls Dam, similar discharges are present upstream of Swan Falls Dam and may trigger some analysis of the minimum flows pursuant to the Swan Falls Settlement depending upon the outcome of the issues raised in the present proceeding. *Id.* IPC states that a determination of the legal issues described in the petition, or other determinations by the Director, may impact the Company's generation and planning. *Id.*

Nampa, Pioneer and the Cities of Pocatello, Rupert and Idaho Falls oppose IPC's intervention. Nampa asserts IPC's water rights are subordinated and, as a result, IPC "cannot seek curtailment or otherwise limit the exercise of other water rights or uses… ." *City of Nampa's Opposition to Idaho Power Company's Petition to Intervene* at 2. Nampa states that if IPC is allowed to intervene, it will have to be determined whether IPC has standing to challenge other water uses that it alleges are injurious to its subordinated water rights. *Id.* Nampa argues that this will unduly broaden the issues in the case. *Id.* at 3. Pioneer similarly argues that IPC's hydropower rights "are subordinate to the exercise of upstream consumptive rights" and thus IPC "has no colorable injury claim to make during this proceeding." *Pioneer Irrigation District's Opposition to Idaho Power Company's Petition to Intervene* at 2. Pioneer argues that IPC fails to explain how its allegations of injury are relevant to a case that is located on a creek without connection to Swan Falls Dam operations or has the minimum stream flow requirement upstream of Swan Falls dam. The Cities of Pocatello, Rupert and Idaho Falls add that IPC fails to describe how a decline in reach gains is injury to IPC or how that alleged injury could be remedied if IPC is allowed to participate. *Cities of Pocatello, Idaho Falls, and Rupert's Opposition to Idaho*

Power's Petition to Intervene at 2. They add that "allowing [IPC] to introduce potential impacts of its operations under the Swan Falls Agreement into this matter would substantially broaden the issues." *Id.*

In IPC's response to the opposition to its intervention, IPC agrees to certain limitations on its participation. IPC states that it agrees to be bound by the conditions of paragraph 4 of the stipulation between Riverside and the Municipal Intervenors. *Idaho Power Company's Response to Opposition to Petition to Intervene* at 2-3. IPC agrees "that facts related to [IPC's] water rights and operations 'will not be included in the record as essential facts.'" *Id.* IPC states that it "does not intend to and will not expand the factual issues beyond those presented in the water rights of [Nampa], the facts surrounding the reuse permit and the facts surrounding Riverside's use of water discharged from [Nampa]." *Id.* at 4. In response to the arguments that IPC's water rights are subordinated, IPC argues that its water rights "still are recognized as a property interest and [IPC] still has a right to protect those interests through participation in these proceedings." *Id.* 3-4.

The wastewater reuse issues presented in this contested case are issues of first impression and could set important precedent for wastewater reuse throughout the state. The importance of these issues is reflected in the fact that municipal entities from every corner of the state are seeking to participate. While most of Idaho Power's water rights are subordinated, not all of their water rights are completely subordinated. *See* Idaho Power Water Right No. 2-100. The Director concludes IPC does have a direct and substantial interest in this matter because the wastewater reuse actions of municipalities downstream from Milner dam (like the City of Jerome) could reduce return flows, which would impact IPC's water rights and operations. So long as IPC complies with paragraph 4 of the Stipulation, the Director concludes IPC will not unduly broaden the issues. The Director further concludes that IPC's interests are not adequately represented by existing parties. Accordingly, the Director will grant IPC's petition to intervene subject to paragraph 4 of the Stipulation.

ANALYSIS OF REQUEST TO SERVE DOCUMENTS ELECTRONICALLY

On May 4, 2020, counsel for Nampa emailed the Director stating that Nampa, Riverside, Pioneer, Idaho Power and the Municipal Intervenors have stipulated to accept service by email rather than by U.S. Mail or other means. Counsel for Nampa requested that the Director issue an Order authorizing the parties to serve documents on each other and file document with the Department by email. The Director agrees to enter an order authorizing the parties to serve each other by email. However, while the parties can serve a courtesy copy on the Department by email, the parties must also serve the Department by U.S. Mail, hand delivery or by fax as allowed under the Department's Rules of Procedure.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the petition to intervene filed by Pioneer is GRANTED.

IT IS FURTHER ORDERED that the petitions to intervene filed by AIC, the Hayden Sewer Board, and the Cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Pocatello, Post Falls, and Rupert are GRANTED conditioned upon the terms set forth in the *Stipulation Regarding Intervention.*

IT IS FURTHER ORDERED that the petition to intervene filed by IPC is GRANTED conditioned upon the terms set for in paragraph 4 of the *Stipulation Regarding Intervention.*

IT IS FURTHER ORDERED that the parties can serve documents on each other by email to the email addresses listed on the certificate of service in this order without a copy being served by U.S. mail. If parties wish to change or update their email address for service, they must submit an updated email address to the other parties and the Department. The parties may serve a courtesy copy of any document they file with the Department by email but they must also file the original document with the Department by U.S. Mail, hand delivery or by fax as allowed under the Department's Rules of Procedure.

DATED this 11th day of June 2020.

Gary Spackman

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of June 2020, I served a true and correct copy of the foregoing document on the following by the method(s) indicated:

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **REUSE PROPONENTS' STIPULATION OF FACTS**

STIPULATION

Pursuant to the Department's Rule 557 (IDAPA 37.01.01.557), this Stipulation is submitted jointly by the Cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Nampa, Pocatello, Post Falls, and Rupert, the Association of Idaho Cities ("AIC"), and the Hayden Area Regional Sewer Board ("HARSB") (collectively, "Municipal Intervenors") and Pioneer Irrigation District ("Pioneer"). Municipal Intervenors and Pioneer are referred to collectively as "Reuse Proponents."[1]

Reuse Proponents have shared drafts of this Stipulation with Riverside Irrigation District ("Riverside") and Idaho Power Company ("Idaho Power") (collectively, "Reuse Opponents"). In doing so, Reuse Opponents sought input from Reuse Opponents and invited them to join in

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[1] This and other submissions by the Reuse Proponents employ the following shorthand definitions:

"AF"	acre-feet
"AFA"	acre-feet per annum (year)
"AIC"	Association of Idaho Cities
"Boise-Kuna"	Boise-Kuna Irrigation District
"Bureau"	U.S. Bureau of Reclamation
"DMR"	Discharge Monitoring Report
"EPA"	U.S. Environmental Protection Agency
"HARSB"	Hayden Area Regional Sewer Board
"IDWR" or "Department"	Idaho Department of Water Resources
"IDEQ"	Idaho Department of Environmental Quality
"Idaho Power"	Idaho Power Company
"Municipal Intervenors"	The cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Nampa, Pocatello, Post Falls, and Rupert, AIC and HARSB.
"Nampa" or "City"	City of Nampa
"Nampa WWTP"	Nampa's wastewater treatment plant
"NMID"	Nampa Meridian Irrigation District
"NPDES Permit"	Nampa's National Pollution Discharge Elimination System Permit No. ID0022063
"Party" or "Parties"	Any or all of the Reuse Proponents and Reuse Opponents
"PI System"	Nampa's non-potable pressurized irrigation water delivery system
"Pioneer"	Pioneer Irrigation District
"Potable System"	Nampa's potable water delivery system
"Reuse Agreement"	The agreement between Pioneer and Nampa known as *Recycled Water Discharge and Use Agreement* dated 3/7/2018
"Reuse Opponents"	Riverside Irrigation District and Idaho Power Company
"Reuse Permit"	Reuse Permit No. M-255-01 issued to Nampa by IDEQ
"Reuse Project"	The project authorized by Nampa's *Reuse Permit*
"Reuse Proponents"	Municipal Intervenors and Pioneer
"Riverside"	Riverside Irrigation District
"WWTP"	Wastewater treatment plant

the Stipulation or a revision thereof. Although discussions continue, as of this time, Reuse Opponents have not elected to join in this Stipulation. Accordingly, Reuse Proponents submit this Stipulation (together with the associated submissions of exhibits) in advance of the upcoming status conference in the interest of facilitating discussions aimed at identifying areas of agreement or disagreement. This Stipulation is not intended to discontinue further efforts to reach agreements with Reuse Opponents aimed at narrowing and clarifying the issues before the Department.

I. PURPOSE AND EFFECT OF THE STIPULATION

The objective of this Stipulation is to clarify and resolve the underlying potentially material facts in an effort to reduce or eliminate the need for the submission of contested evidence and a factual hearing.

Consistent with Rule 557, the Reuse Proponents stipulate to the submission of the exhibits described in section II beginning on page 4 and to the facts set out in section III beginning on page 5. (Due to their size, the exhibits will be submitted separately.) The Reuse Proponents agree that the facts contained in the section II exhibits and the facts set out in section III are potentially material to the Department's declaratory ruling and may form the basis of that ruling.

In setting out the facts and documents in sections II and III, the Reuse Proponents have endeavored to identify those facts and documents that are potentially relevant and material and could provide a sufficient factual basis to allow the Department to issue a declaratory ruling. However, it is not always possible to recognize at the outset every fact that may be relevant and material. Accordingly, this Stipulation does not preclude any Party from seeking to establish

additional relevant and material facts through the timely offer of evidence during the course of this proceeding.

In addition to these stipulated facts, Reuse Proponents reserve the right to lay out in briefing, by affidavit, or otherwise additional background facts that do not pertain to Nampa and Pioneer's actions pursuant to the *Reuse Permit*, but instead describe Reuse Proponents' water rights, their use of water, and/or their current or anticipated approaches to the disposal of wastewater. The Reuse Proponents agree that such background facts that are not directly relevant or material to the *Reuse Permit* shall be offered for the limited purpose of providing context to the Department (or to a reviewing court) to aid in understanding how the precedent established by the declaratory ruling might be applied in other situations. The Reuse Proponents agree that facts offered for this limited purpose shall not form the basis of the declaratory order unless the Reuse Proponents are put on notice by the Hearing Officer that such facts may be deemed material to the decision and the Reuse Proponents are afforded an opportunity to contest such facts.

II. STIPULATED SUBMISSION OF EXHIBITS

In separate submissions, the Reuse Proponents will submit the following exhibits by stipulation:

Exhibit A	Map showing Canyon County irrigation districts (Reuse Application, Figure 5)
Exhibit B	Map showing Nampa's area of city impact and the district boundaries of irrigation districts
Exhibit C	Map showing proposed alternatives for discharge of recycled water to Phyllis Canal (Attachment to Reuse Agreement)

Exhibit D	Map of Recycled Water Flow through Pioneer (Reuse Application, Figure 8)
Exhibit E	Map of Recycled Water Flow through Pioneer: Focus on Upper Portion of Area of Analysis (Reuse Application, Figure 9)
Exhibit F	Reuse Agreement (3/7/2018)
Exhibit G	Reuse Permit (1/21/2020)
Exhibit H	IDEQ's Staff Analysis of Nampa's Reuse Permit Application (10/10/2019)
Exhibit I	EPA Fact sheet: Nampa's NPDES Permit (2015)
Exhibit J	Application for Reuse Permit (including cover letter, Preliminary Technical Report, Plan of Operations, Figures 1-13, and Appendices A-F) (3/19/2019)

Exhibit A, Exhibit D, Exhibit E, and Exhibit J were submitted by Nampa to IDEQ under signature of its Public Works Director, Tom Points, attesting to their truth and accuracy. Exhibit I is an official document of the EPA. Exhibit G and Exhibit H are official documents issued by IDEQ. Exhibit C and Exhibit F are a private agreement between Pioneer and Nampa which is central to this matter. Exhibit B is a figure from Nampa's *2014 Irrigation Master Plan*, which is on file with IDWR.

III. STIPULATED FACTS

Pursuant to Rule 557, the Reuse Proponents stipulate to the following facts:

1. Pioneer is a duly organized and operating Idaho irrigation district providing irrigation water to approximately 34,000 acres of land within its district boundary.

2. The land served by Pioneer includes north and northwest Nampa and much of the City of Caldwell.

3. A map showing the overlap of the district boundaries of Pioneer and other irrigation districts within Nampa's area of city impact is submitted separately as Exhibit B.

4. Riverside is a duly organized and operating non-profit ditch company providing irrigation water to approximately 10,000 acres within its authorized water right place of use located primarily west of Greenleaf, Idaho.

5. Nampa is a duly organized and operating Idaho municipal corporation with a population of approximately 100,000.

6. Nampa is a "municipality" within the definition of Idaho Code § 42-202B(4) and is a "municipal water provider" within the meaning of Idaho Code § 42-202B(5).

7. Nampa owns and operates two municipal water delivery systems, one for potable water ("Potable System") and one for non-potable pressurized irrigation water ("PI System").

8. Nampa's delivery systems were historically separate systems. In recent years, they have been substantially integrated through cross-connections that allow water from Nampa's historically Potable System wells to be used in either the Potable or PI Systems.

9. Nampa's integrated Potable System relies on a system of municipal wells, owned and operated by Nampa, from which it diverts ground water under the municipal water rights shown in Table 1 below.

Table 1: Nampa's Integrated Potable System Ground Water Rights

Water Right No.	Nominal Diversion Rate (cfs	Priority	Authorized Purpose	Basis
63-02779	2.00	9/2/1949	Municipal	Decree (SRBA)
63-02781	3.00	9/2/1949	Municipal	Decree (SRBA)
63-05258	2.10	7/20/1954	Municipal	Decree (SRBA)
63-07567	2.79	3/6/1972	Municipal	Decree (SRBA)
63-08324	3.00	6/1/1976	Municipal	Decree (SRBA)
63-09180	4.00	9/27/1978	Municipal	Decree (SRBA)
63-10212	2.23	6/28/1983	Municipal	Decree (SRBA)
63-11729	2.68	3/6/1992	Municipal	License (Post-SRBA)
63-12463	3.00	6/25/1998	Municipal	License (Post-SRBA)
63-12474	3.50	10/1/1998	Municipal	License (Post-SRBA)
63-12506	3.50	2/2/1999	Municipal	License (Post-SRBA)
63-12543	4.00	7/30/1999	Municipal	License (Post-SRBA)
63-12591	3.50	8/21/2000	Municipal	License (Post-SRBA)
63-28219	1.22	12/24/1937	Municipal	Decree (SRBA)
63-28220	1.93	12/1/1949	Municipal	Decree (SRBA)
63-31243	2.60	5/14/2001	Municipal	License (Post-SRBA)
63-33022	4.50	3/31/2008	Municipal	License (Post-SRBA)
63-32835	5.00	6/15/2018	Municipal	License (Post-SRBA)
TOTAL	**54.55**			

10. Each of the water rights set out in Table 1 in Paragraph 9 is authorized for "municipal purposes" in accordance with Idaho Code § 42-202B(6).

11. Each of the water rights set out in Table 1 in Paragraph 9 has a place of use corresponding to Nampa's expanding service area, in accordance with Idaho Code § 42-202B(9).

12. Nampa's PI System relies on a combination of ground water and surface water.

13. Nampa obtains surface water for its PI System from three irrigation districts: Pioneer, NMID, and Boise-Kuna. A map showing the service areas of these and other irrigation districts serving Canyon County is submitted separately as Exhibit A.

14. Pioneer delivers surface water to Nampa's PI System from its Phyllis Canal and laterals. These deliveries from Pioneer serve 2,985 acres within Nampa's PI System (as documented in Pioneer's "2019 Irrigation Assessments – Pioneer Account #7777" dated October

10, 2019). At 4.5 AF/acre, that equates to 13,432.5 AF/year. Pioneer also makes additional, non-pressurized deliveries to Nampa residents and businesses separate from its deliveries to Nampa's PI System. Some of these additional, non-pressurized deliveries include the City itself.

15. Nampa supplements its surface water supply for its PI System with ground water pumped from a number of municipal wells, owned and operated by Nampa, under a number of municipal water rights.

16. Municipal water that is delivered by Nampa to its municipal customers via Nampa's Potable System generates sewage wastewater (aka effluent) that is collected by Nampa's sewage system.

17. That wastewater derives from Nampa's Potable System, not from its PI System. Accordingly, the wastewater is composed virtually entirely of ground water originally diverted under Nampa's municipal water rights.

18. That wastewater is collected, treated, stored, and disposed of by Nampa in publicly owned treatment works, the Nampa WWTP.

19. At this time, the wastewater collected by Nampa is treated and then discharged from Nampa's WWTP to Indian Creek at a point just north of the Union Pacific Railroad tracks and just west of Northside Boulevard.

20. The WWTP discharge point is upstream of Riverside's point of diversion.

21. Currently, the City discharges approximately 18.6 cfs (6,825 acre-feet) of wastewater to Indian Creek during the 185-day irrigation season and 17.0 cfs (6,069 acre-feet) during the 180-day non-irrigation season. These numbers are based on recent Discharge Monitoring Reports ("DMRs") submitted by Nampa to IDEQ. Monthly data for the years 2017-2019 is presented in Table 2 below.

TABLE 2: EFFLUENT DATA - Based on DMR reports submitted by Nampa to IDEQ
(Available at https://www.cityofnampa.us/1021/Monthly-Reporting)
(See DRM line labeled "flow, in conduit or thru treatment plant")

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2017 Effluent Flow - Average (GPD)	11.406	11.895	10.869	10.985	11.339	11.754	11.638	12.000	12.095	11.571	10.502	10.028
2017 Effluent Flow - Average (cfs)	17.648	18.405	16.817	16.997	17.544	18.187	18.007	18.567	18.714	17.903	16.249	15.516
2018 Effluent Flow - Average (GPD)	9.833	9.525	9.505	9.682	10.154	11.084	11.275	11.148	11.122	10.927	10.416	10.489
2018 Effluent Flow - Average (cfs)	15.214	14.738	14.707	14.981	15.711	17.150	17.445	17.249	17.209	16.907	16.116	16.229
2019 Effluent Flow - Average (GPD)	10.470	10.764	10.589	10.636	12.037	12.224	11.840	11.555	12.047	11.434	11.039	10.632
2019 Effluent Flow - Average (cfs)	16.200	16.655	16.384	16.457	18.624	18.914	18.320	17.879	18.640	17.691	17.080	16.451

22. Wastewater currently discharged by Nampa to Indian Creek is comingled with other waters of the State. That wastewater has historically been diverted and put to use by downstream water right holders, including Riverside.

23. Indian Creek is a source of water for Riverside.

24. Riverside water right sources also include the Boise River, Mammen Gulch Creek/Drain, West End Drain, East Arena Drain, Christian Gulch Wasteway, and Guess Gulch Creek/Drain.

25. Riverside diverts water from Indian Creek at the Riverside Canal west of the City of Caldwell. Riverside has the right to divert approximately 180 cfs of water sourced from Indian Creek under Water Right Nos. 63-2279 and 63-2374 with 1915 and 1922 priority dates.

26. As a result of the *Reuse Permit*, Nampa will reduce the amount of wastewater it releases to Indian Creek during certain times of the year.

27. Pioneer does not hold a water right, nor has it sought a water right, that expressly authorizes it to accept recycled water from Nampa pursuant to its agreement with Nampa.

28. Nampa's WWTP discharges are governed by NPDES Permit No. ID0022063 issued to Nampa pursuant to the Clean Water Act. The most recent permit was issued by EPA on September 20, 2016 (effective November 1, 2016). A copy of the NPDES Permit is set out in Appendix A to Nampa's Application for Reuse Permit (a copy of which is submitted separately as Exhibit J). The NPDES Permit requires Nampa to provide pollution control and treatment of

its wastewater stream based on numeric criteria (discharge limits) prior to discharge to Indian Creek. Among others, the NPDES Permit contains discharge limits for nutrients (Phosphorus) and temperature.

29. Nampa is in compliance with the NPDES Permit standards in effect today. In the coming years, stricter standards will apply for phosphorus (in 2026) and for temperature (in 2031). If Nampa continues to discharge its WWTP wastewater into Indian Creek, compliance with these future standards will require pollution control system upgrades costing roughly $210 million.

30. In contrast, pollution control upgrades based on irrigation season delivery of water to the Phyllis Canal (generally April 1 through November 1) under the *Reuse Permit* will entail net costs of roughly $190 million (reflecting savings of roughly $40 million offset by additional costs of roughly $20 million) yielding net savings of roughly $20 million. These savings are explained further in the following three paragraphs.

31. Roughly $20 million of the $210 million upgrade cost corresponds to the cost of meeting future temperature limits in Indian Creek, which will be more stringent during the summer irrigation season. IDEQ's water quality standards treat irrigation canals as manmade waterbodies with a water quality standard of "agricultural water supply." Accordingly, the future summertime temperature requirements applicable to Indian Creek are not applicable to discharges to the Phyllis Canal.

32. The future summertime tertiary treatment standard for phosphorus in Indian Creek will be 0.1 ppm (or mg/l), while the wintertime tertiary treatment standard for Indian Creek will be 0.35 ppm (or mg/l). Under the *Reuse Permit*, Nampa will treat year-round (Phyllis Canal in

the summer and Indian Creek in the winter) to 0.35 ppm (or mg/l), saving another roughly $20 million, bringing the savings to $40 million.

33. The roughly $40 million in savings will be offset by an additional roughly $20 million in costs entailed in constructing the Class A water recycling system, including delivery to the Phyllis Canal, necessitated by the *Reuse Permit.* The net result ($40 million in savings less $20 million in additional costs) will be savings of $20 million to Nampa and its customers achieved by implementing the recycled water program authorized by the *Reuse Permit.*

34. In many respects, the Class A recycled water discharged to the Phyllis Canal will be of higher quality than the background quality of the irrigation water in the Phyllis Canal.

35. Nampa's wastewater discharge to the Phyllis Canal has been approved by IDEQ pursuant to the *Reuse Permit.*

36. On March 7, 2018, Nampa and Pioneer entered into a *Reuse Agreement* whereby Nampa would seek a recycled water reuse permit from IDEQ authorizing Nampa to discharge up to 41 cfs of Class A Recycled Wastewater to Pioneer's Phyllis Canal as supplemental irrigation water supply. (The 41 cfs number is larger than the 31 cfs authorized under the *Reuse Permit*, reflecting longer-term water reuse goals beyond the 20-year timeframe of the permit.) A copy of the agreement is submitted separately as Exhibit F. (It also appears as Appendix B to the *Application for Reuse Permit*, which is submitted separately as Exhibit J.)

37. On March 9, 2019, Nampa, with Pioneer's support, filed its reuse permit application package with IDEQ. A copy of the application is submitted separately as Exhibit J. IDEQ ultimately approved the application and issued *Reuse Permit No. M-255-01* to Nampa on January 21, 2020. The *Reuse Permit* expires on January 21, 2030.

38. The *Reuse Permit* authorizes Nampa to discharge to the Phyllis Canal (for subsequent redelivery to the City's PI System) up to 31 cfs of Class A Recycled Water from the Nampa WWTP between May 1 and September 30 each year.

39. Nampa will continue to discharge its WWTP effluent to Indian Creek during the non-irrigation season.

40. A map showing five alternative paths for discharge of wastewater from Nampa's WWTP to the Phyllis Canal (options 1A, 1B, 2A, 2B, and 3) is submitted separately as Exhibit C. (It is also set out as an attachment to the *Reuse Agreement*, a copy of which is submitted separately as Exhibit F.)

41. Two maps showing the locations at which Pioneer delivers irrigation water to Nampa are submitted separately as Exhibit D and Exhibit E.

42. Nampa's delivery of wastewater under the *Reuse Permit* will benefit Nampa and Pioneer by offsetting in part declining Phyllis Canal sources upstream of Nampa (notably the declining Fivemile Feeder Canal inputs into the Phyllis Canal, caused by declining drain flows in Fivemile Drain).

43. The cooperative endeavor by Nampa and Pioneer under the *Reuse Permit* will further maximize water delivery efficiency and reduce operational spills of water by linking and coordinating operations of Nampa's Eaglecrest and Moss Point pump stations with the Crestwood and Asbury Park pump stations, also owned, operated and maintained by Nampa as part of its PI System. The other two PI System pump stations served by the Phyllis Canal on or upstream of the McCarthy Lateral are the Horton and Orchard Heights pump stations. Nampa also owns and operates a PI System pump station on the Phyllis Canal just downstream of the Canal's crossing of the Jonah Drain (the Midway Park pump station).

44. As explained further in paragraphs 45 through 49, Nampa will recover and put to beneficial use the entire quantity of wastewater that it delivers to Phyllis Canal.

45. Within approximately three miles downstream of Nampa's WWTP discharge into the Phyllis Canal, Pioneer delivers irrigation water to six PI System pump stations operated by Nampa. In addition, Pioneer makes a number of deliveries to others within Nampa's area of city impact (older subdivisions using non-pressurized irrigation systems as well as individuals using water for residential or agricultural irrigation).

46. These deliveries downstream of the WWTP discharge are located on the Phyllis Canal, the 15.0 Lateral, Hatfield Lateral, Stevens Lateral, Stone Lateral, the McCarthy Lateral, and branches thereof. The 15.0 Lateral system alone, located within a mile downstream of the proposed WWTP discharge point, diverts 32 cfs from the Phyllis Canal (slightly more than the 31 cfs authorized in the *Reuse Permit*) for use on approximately 1,600 acres of lands located within Nampa's service area, including two of Nampa's PI System pump stations (Eaglecrest and Moss Point). (This number appears in Table 7-2 of the Preliminary Technical Report submitted by Nampa as part of its Reuse Permit Application, see separately submitted Exhibit J, page 61).

47. In aggregate, Nampa and other Pioneer landowners within Nampa's area of city impact are served by approximately 138 cfs of Phyllis Canal diversions located between the proposed Nampa WWTP discharge point and the McCarthy Lateral. This number is the sum of the eight laterals and headgate deliveries listed in Table 7-2 (Phyllis Canal Diversions and Inputs) on page 7-8 of the Preliminary Technical Report submitted by Nampa as part of its Reuse Permit Application, see separately submitted Exhibit J, page 61. This number is more than four times the 31 cfs that Nampa will discharge into the Phyllis Canal.

48. While the terminal ends of the 15.0 Lateral, Stevens Lateral, and Stone Lateral cross over into and serve some Caldwell lands, the vast majority of this water is used by Nampa residents and businesses.

49. Looking solely to Pioneer's deliveries to Nampa's PI System (excluding deliveries to other Pioneer landowners), Pioneer delivers approximately 60 cfs to Nampa's PI System from its Phyllis Canal and laterals.

Respectfully submitted this 30th day of June, 2020.

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **REUSE PROPONENTS' SUBMISSION REGARDING LEGAL ISSUES**

This Submission is offered jointly by the Cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Nampa, Pocatello, Post Falls, and Rupert, the Association of Idaho Cities ("AIC"), and the Hayden Area Regional Sewer Board ("HARSB") (collectively, "Municipal Intervenors") and Pioneer Irrigation District ("Pioneer"). Municipal Intervenors and Pioneer are referred to collectively as "Reuse Proponents."[1]

Reuse Proponents have shared drafts of this Submission with Riverside Irrigation District ("Riverside") and Idaho Power Company ("Idaho Power") (collectively, "Reuse Opponents"). In doing so, Reuse Opponents sought input from Reuse Opponents and invited them to join in the Submission or a revision thereof. Although discussions continue, as of this time, Reuse Opponents have not elected to join in this Submission. Accordingly, Reuse Proponents make

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[1] This and other submissions by the Reuse Proponents employ the following shorthand definitions:

"AF"	acre-feet
"AFA"	acre-feet per annum (year)
"AIC"	Association of Idaho Cities
"Boise-Kuna"	Boise-Kuna Irrigation District
"Bureau"	U.S. Bureau of Reclamation
"DMR"	Discharge Monitoring Report
"EPA"	U.S. Environmental Protection Agency
"HARSB"	Hayden Area Regional Sewer Board
"IDWR" or "Department"	Idaho Department of Water Resources
"IDEQ"	Idaho Department of Environmental Quality
"Idaho Power"	Idaho Power Company
"Municipal Intervenors"	The cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Nampa, Pocatello, Post Falls, and Rupert, AIC and HARSB.
"Nampa" or "City"	City of Nampa
"Nampa WWTP"	Nampa's wastewater treatment plant
"NMID"	Nampa Meridian Irrigation District
"NPDES Permit"	Nampa's National Pollution Discharge Elimination System Permit No. ID0022063
"Party" or "Parties"	Any or all of the Reuse Proponents and Reuse Opponents
"PI System"	Nampa's non-potable pressurized irrigation water delivery system
"Pioneer"	Pioneer Irrigation District
"Potable System"	Nampa's potable water delivery system
"Reuse Agreement"	The agreement between Pioneer and Nampa known as *Recycled Water Discharge and Use Agreement* dated 3/7/2018
"Reuse Opponents"	Riverside Irrigation District and Idaho Power Company
"Reuse Permit"	Reuse Permit No. M-255-01 issued to Nampa by IDEQ
"Reuse Project"	The project authorized by Nampa's *Reuse Permit*
"Reuse Proponents"	Municipal Intervenors and Pioneer
"Riverside"	Riverside Irrigation District
"WWTP"	Wastewater treatment plant

this Submission in advance of the upcoming status conference in the interest of facilitating discussions aimed at identifying areas of agreement or disagreement. This Submission is not intended to discontinue further efforts to reach agreements with Reuse Opponents aimed at narrowing and clarifying the issues before the Department.

This outline of legal issues is not intended to (nor could it) limit, shape, or control the Department's consideration of the issues as it perceives them. The goal of the Submission is simply to inform the Department of the Reuse Proponents' positions and expectations.

I. POINTS OF LAW ON WHICH THE REUSE PROPONENTS AGREE AND SEEK A DECLARATORY RULING

The Reuse Proponents agree on the following points of law and seek a declaratory ruling to that effect:

1. As a municipal water provider, Nampa is authorized to use and reuse to extinction water it lawfully diverts, delivers to municipal customers, and collects as wastewater in its sewage system.

2. Riverside may not compel Nampa to continue Nampa's discharge of municipal wastewater to Indian Creek.

3. Nampa's decision to stop or reduce the wasting of water to Indian Creek does not result in injury to Riverside or other entities that may have diverted and used such wastewater in the past.

4. Idaho Code § 42-201(8) authorizes municipalities and certain other entities to collect, treat, store, and dispose of effluent from a publicly owned treatment works without obtaining a water right when such action is undertaken in response to state or federal regulatory requirements.

5. Nampa's delivery of some of its wastewater to Pioneer's Phyllis Canal, pursuant to an agreement with Nampa, and pursuant to a Reuse Permit obtained from IDEQ, falls within the scope of Idaho Code § 42-201(8).

6. Accordingly, Nampa does not need a new water right in order to undertake its Reuse Project in accordance with its Reuse Permit.

7. Consistent with the Prior Appropriation doctrine, Idaho Code § 42-101 provides that it is the duty of the State to supervise the appropriation and allotment of all "waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes."

8. Consistent with the Prior Appropriation doctrine, the second sentence of Idaho Code § 42-201(2) provides, "No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so."

9. Pioneer's acceptance of Nampa's delivery of wastewater to the Phyllis Canal does not constitute a "diversion" of water by Pioneer within the meaning of Idaho Code §§ 42-101, 42-201(2), or the Prior Appropriation Doctrine.

10. Consistent with the Prior Appropriation Doctrine, the last sentence of Idaho Code § 42-110 provides, "Water diverted from its source pursuant to a water right is the property of the appropriator while it is lawfully diverted, captured, conveyed, used, or otherwise physically controlled by the appropriator."

11. Pursuant to Idaho Code § 42-110, Nampa is authorized to utilize Pioneer's Phyllis Canal, by agreement with Pioneer, in order to deliver Nampa's recycled municipal wastewater to its non-potable water delivery system. In other words, such water delivered to the Phyllis Canal

and then re-delivered to Nampa remains "physically controlled by the appropriator" within the meaning of Idaho Code § 42-110.

12. If the Department determines—because the statements in paragraph 1 through 12 are incorrect or for any other reason—that Pioneer or Nampa is required to obtain a new water right before Nampa delivers and Pioneer accepts wastewater in the Phyllis Canal, neither Pioneer nor Nampa is required to mitigate for the reduction in wastewater available to Riverside resulting from Nampa's decision to stop wasting water to Indian Creek.

II. LEGAL ISSUES THAT REUSE PROPONENTS BELIEVE ARE AND SHOULD BE BEYOND THE SCOPE OF THIS PROCEEDING

13. In the event that the Department were to rule to the contrary of the statement in paragraph 12, Reuse Proponents do not seek or expect the Department to quantify or more specifically evaluate the extent or nature of what mitigation would be required. Such a determination should be left for a contested case involving a future water right application.

14. The Reuse Proponents agree that the Department need not address or resolve in the declaratory ruling how the law applies to the circumstances of any entity other than Nampa and Pioneer.

15. The Reuse Proponents understand that the declaratory ruling may establish a non-binding administrative or judicial precedent with respect to the water rights or wastewater reuse or disposal actions of entities other than Nampa and Pioneer.

Respectfully submitted this 30th day of June, 2020.

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01

Docket No. P-DR-2020-01

REUSE PROPONENTS' SUBMISSION OF EXHIBITS A-F

Pursuant to *Reuse Proponents' Stipulation of Facts*, the Association of Idaho Cities ("AIC"), the Cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Nampa, Pocatello, Post Falls, and Rupert, and the Hayden Area Regional Sewer Board ("HARSB") (collectively, "Municipal Intervenors") and Pioneer Irrigation District ("Pioneer") hereby submit true and correct copies of the documents identified below. Municipal Intervenors and Pioneer are referred to collectively as "Reuse Proponents."

Respectfully submitted this 30th day of June, 2020.

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Christopher H. Meyer

Exhibit A **MAP SHOWING CANYON COUNTY IRRIGATION DISTRICTS (REUSE APPLICATION, FIGURE 5)**

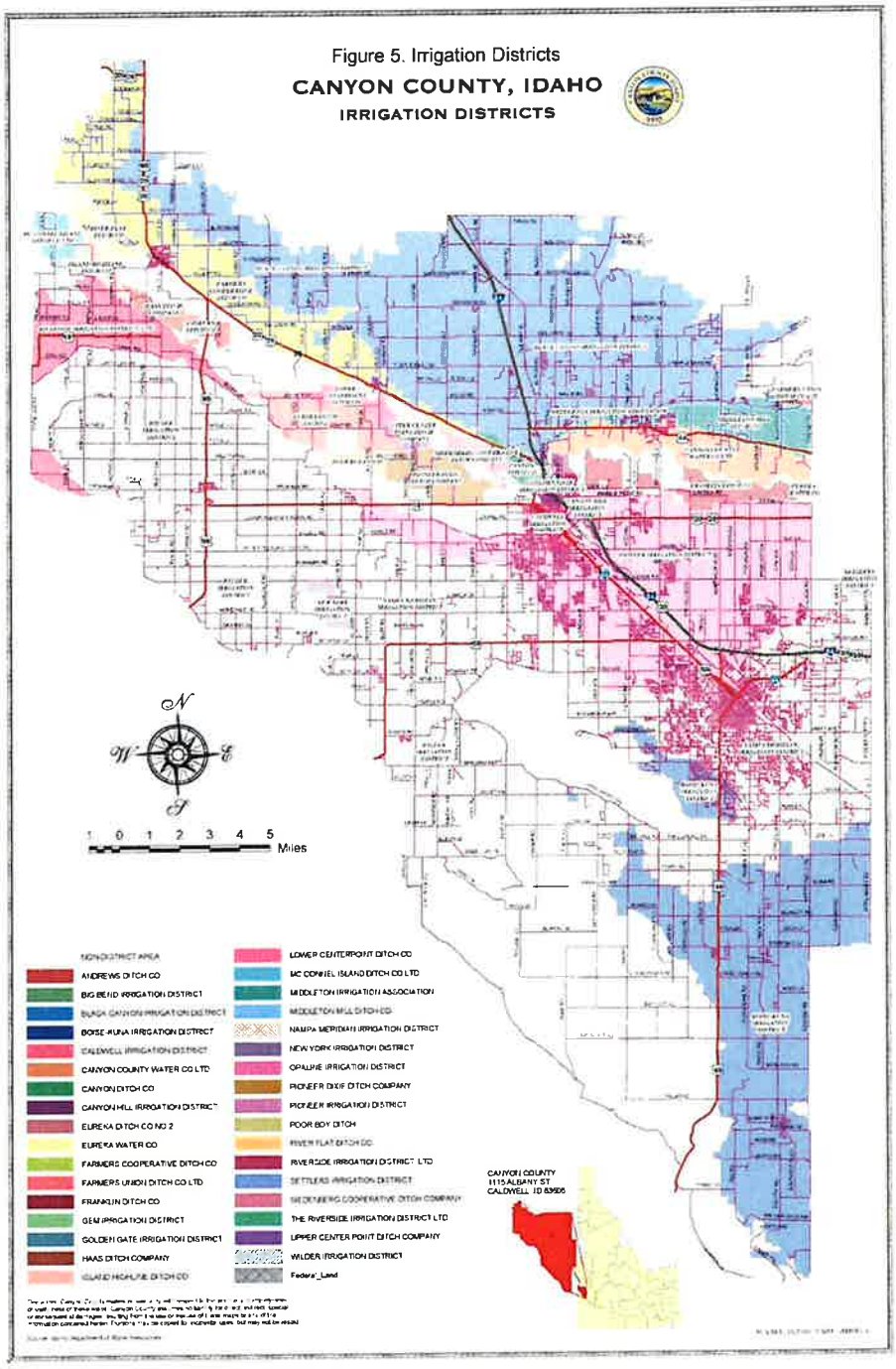
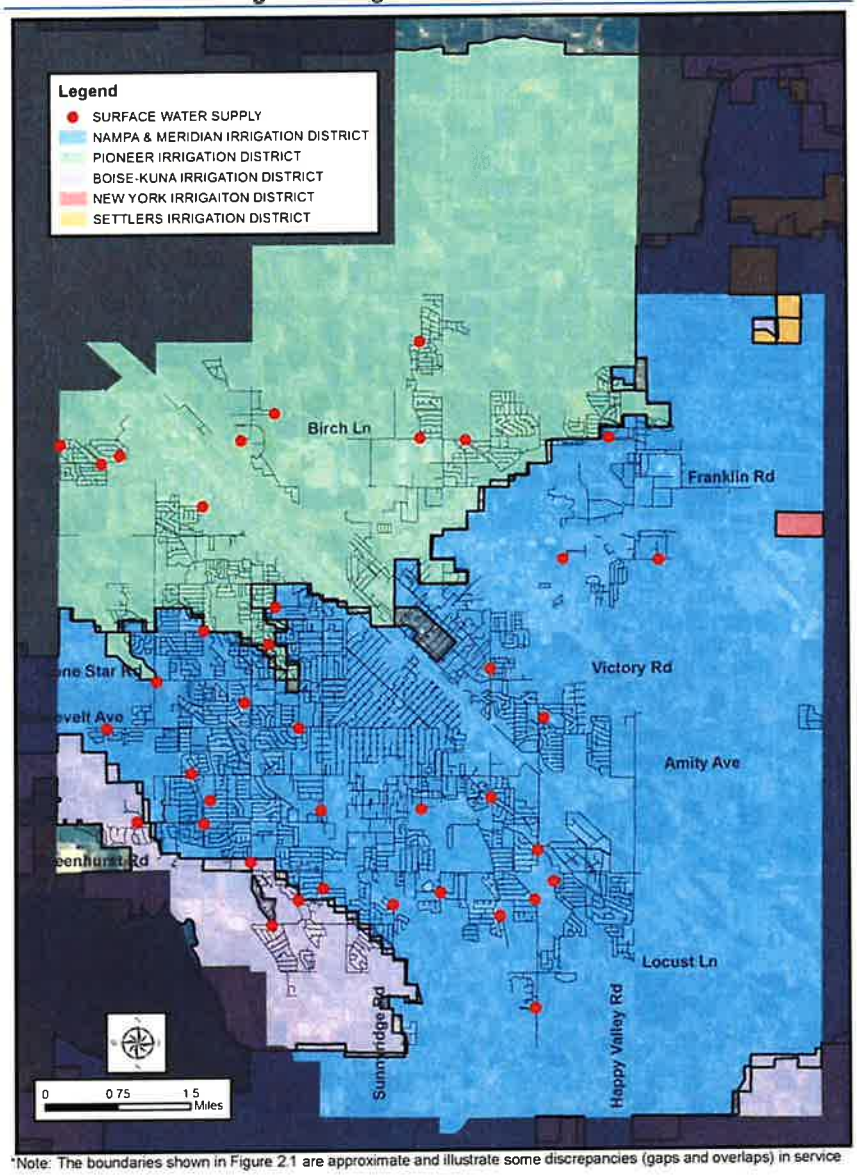


Figure 5 from *Recycled Water Reuse Permit Application Plan* of *Operations* (3/19/2019)

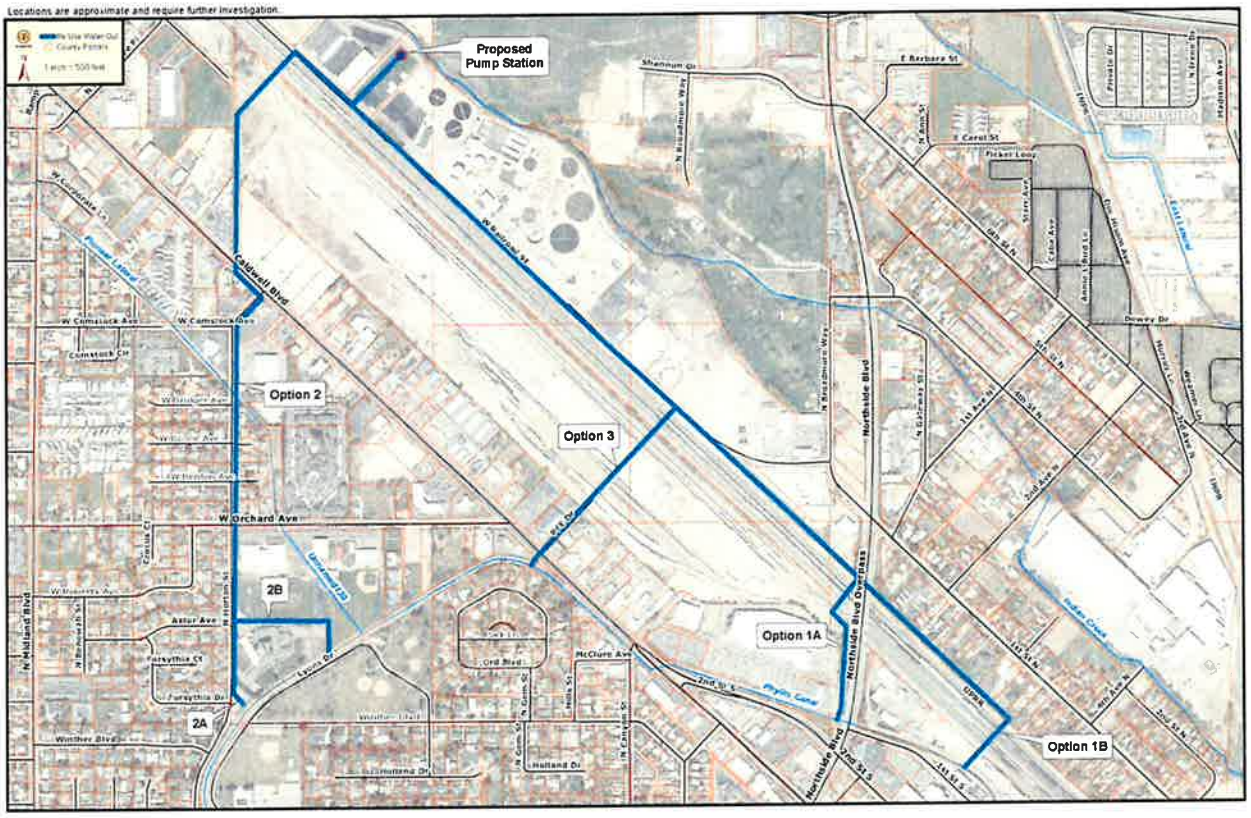
Exhibit B **MAP SHOWING NAMPA'S AREA OF CITY IMPACT AND THE DISTRICT BOUNDARIES OF IRRIGATION DISTRICTS**

Figure 2.1: Irrigation District Boundaries



*Note: The boundaries shown in Figure 2.1 are approximate and illustrate some discrepancies (gaps and overlaps) in service areas.

Exhibit C **MAP SHOWING PROPOSED ALTERNATIVES FOR DISCHARGE OF RECYCLED WATER TO PHYLLIS CANAL (ATTACHMENT TO REUSE AGREEMENT)**



Attachment to the *Pioneer/Nampa Reuse Agreement* (Exhibit F) showing options 1A, 1B, 2A, 2B, and 3

Exhibit D **MAP OF RECYCLED WATER FLOW THROUGH PIONEER (REUSE APPLICATION, FIGURE 8)**

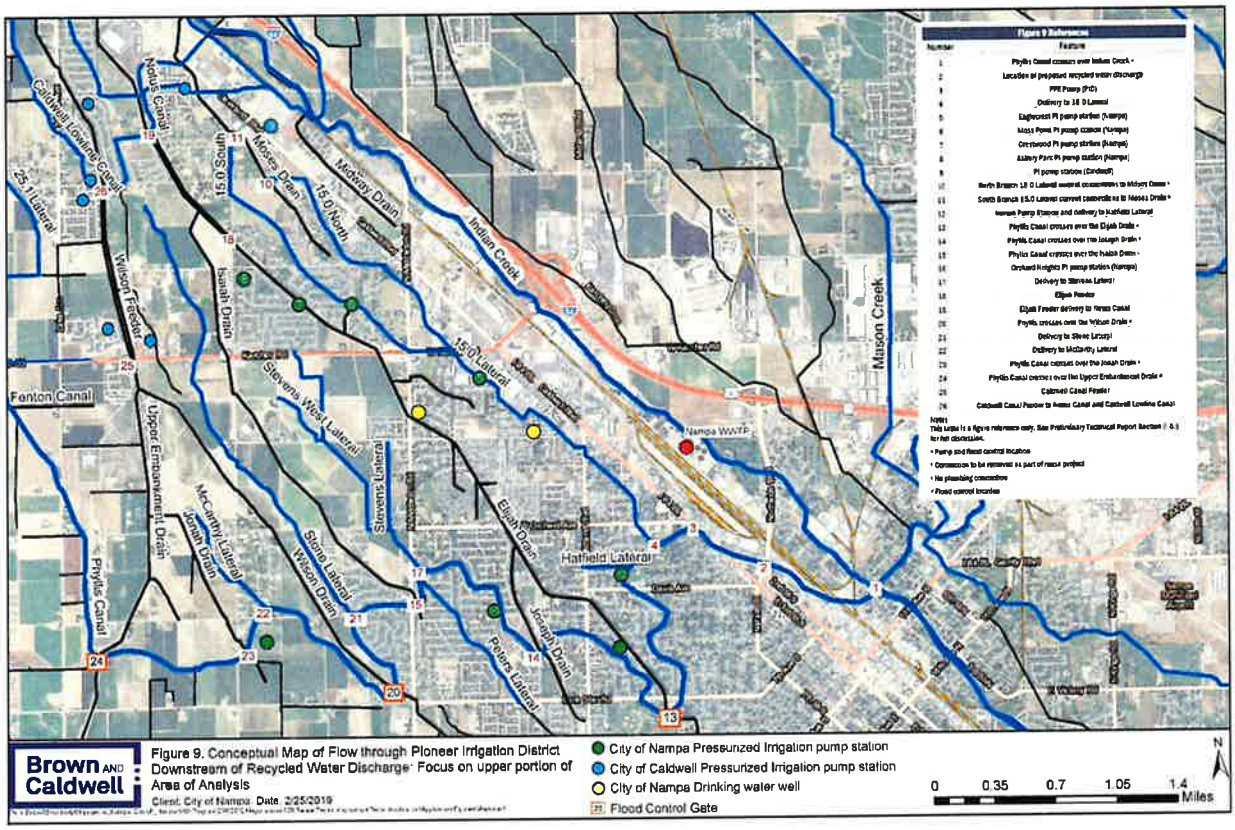


Figure 8 from *Recycled Water Reuse Permit Application Plan* of *Operations* (3/19/2019)

Exhibit E **MAP OF RECYCLED WATER FLOW THROUGH PIONEER: FOCUS ON UPPER PORTION OF AREA OF ANALYSIS (REUSE APPLICATION, FIGURE 9)**

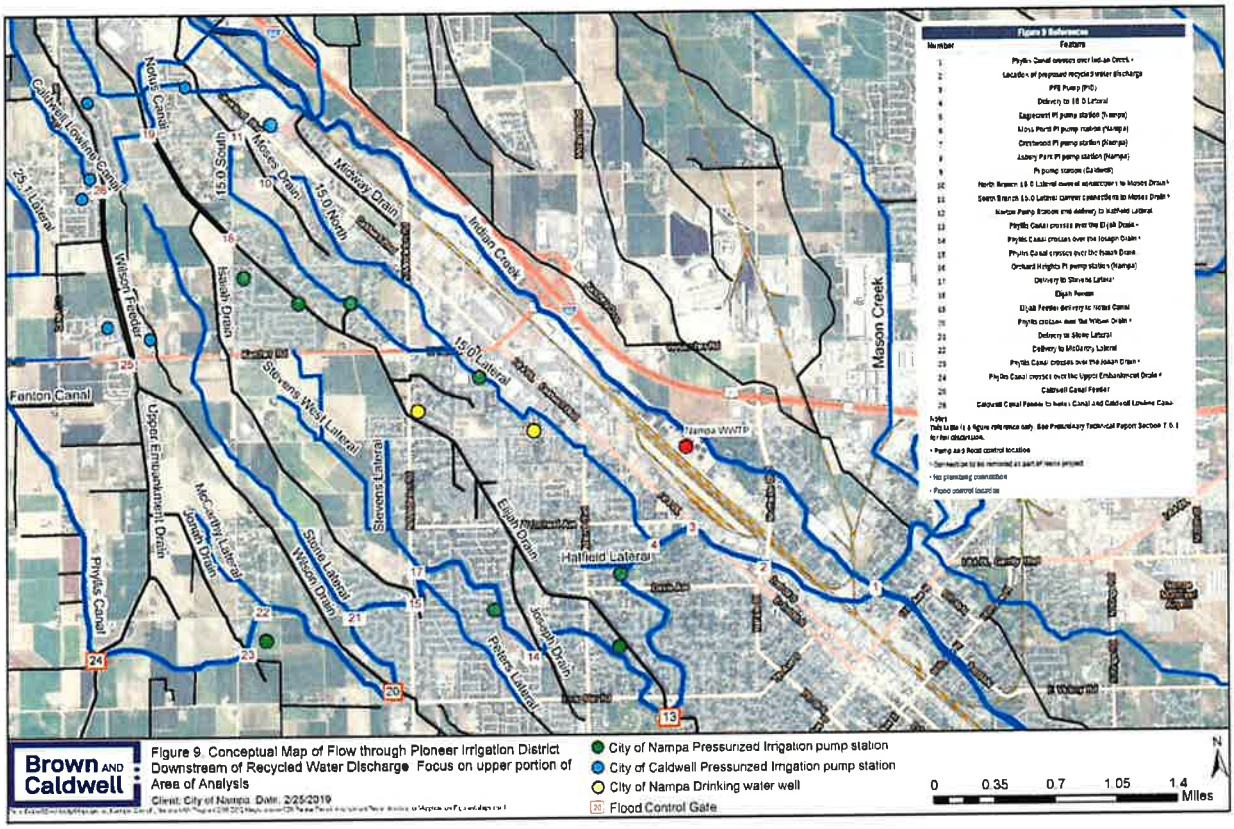


Figure 9 from *Recycled Water Reuse Permit Application Plan* of *Operations* (3/19/2019)

Exhibit F REUSE AGREEMENT (3/7/2018)

RECYCLED WATER DISCHARGE AND USE AGREEMENT

This RECYCLED WATER DISCHARGE AND USE AGREEMENT ("Agreement") is made and entered into as of the date of the latest signature on the signature pages of this Agreement, by and between the City of Nampa ("City") and Pioneer Irrigation District ("Pioneer") for the purpose of allowing the discharge of recycled water from the Nampa Wastewater Treatment Plant to Pioneer's Phyllis Canal.

WHEREAS, City owns, operates and maintains a public wastewater collection and treatment system which provides wastewater and collection services for City customers; and

WHEREAS, City owns and operates the Nampa Wastewater Treatment Plant ("NWWTP") located at 340 W Railroad St., Nampa, Idaho 83687, to treat collected wastewater; and

WHEREAS, Pioneer owns and operates the Phyllis Canal, passing within approximately one-half (1/2) mile from the NWWTP, which provides irrigation water to lands located within the Pioneer service area; and

WHEREAS, City currently discharges treated wastewater from the NWWTP to Indian Creek pursuant to an NPDES discharge permit issued by the U.S. Environmental Protection Agency ("EPA"), Permit No. ID0022063, which permit is current and in good standing; and

WHEREAS, the City desires to have the option to seasonally discharge Class A recycled water to Pioneer's Phyllis Canal ("Recycled Water") as necessary to provide NPDES permit compliance flexibility related to City's Indian Creek discharges; and

WHEREAS, Pioneer desires to seasonally receive Recycled Water from the City as a supplemental source of irrigation water supply; and

WHEREAS, City and Pioneer agree that it is in the best interests of the citizens and landowners of both entities to enter into a long-term agreement providing terms for the discharge and use of Recycled Water from the NWWTP to the Phyllis Canal.

NOW, THEREFORE, in consideration of the foregoing, it is mutually agreed by the parties that:

SECTION A -CITY OBLIGATIONS

1. City, at its sole cost, shall design, construct and maintain necessary improvements to connect the outflow of the NWWTP to the Phyllis Canal. City shall obtain written approval of piping and connection plans and designs from Pioneer prior to beginning construction of the improvements necessary to make the connection.

2. Upon connection, the City shall be authorized to discharge up to 41 cfs (annual average) of Recycled Water, or more if approved in subsequent writing by Pioneer. The timing of discharges shall be governed by the following provisions:

a. For discharges that occur during times when Pioneer is using the Phyllis Canal for irrigation water delivery ("Irrigation Season"), City shall forecast and provide Pioneer the estimated flow rates and duration of any anticipated Recycled Water discharge to the Phyllis Canal on a weekly basis for the upcoming week so that Pioneer can coordinate its canal operations accordingly.

b. If City desires to discharge Recycled Water at times other than during the Irrigation Season such discharges shall be coordinated with, and approved in advance by, Pioneer so as to ensure compatibility with Pioneer's canal operations, maintenance schedules and obligations. Provided, however, that in the absence of an emergency beyond Pioneer and City's reasonable control, Pioneer shall plan its canal operations, maintenance schedules and obligations to accommodate the discharge of Recycled Water to the Phyllis Canal under this Agreement every year between May 1 and October 1.

c. City may commence discharges as soon as the 2026 Irrigation Season but cannot commit to any specific commencement date. City anticipates at this time that discharges will be underway by, or before, the Irrigation Season for the year 2031.

3. Unless otherwise agreed to in writing by the parties and approved by the Idaho Department of Environmental Quality ("DEQ"), all Recycled Water discharged to Pioneer's Phyllis Canal shall meet or exceed the water quality requirements for Class A Recycled Water as specified in IDAPA 58.01.17, Recycled Water Rules. However, it is understood that all non-water quality-related requirements such as signage, setbacks and recycled water piping will not be applicable. The City shall also be responsible for meeting any more stringent requirements, if required, by DEQ.

4. City, at its sole cost, will be responsible for operation and maintenance of all piping, pumping and other conveyance facilities from the NWWTP to the point of discharge to the Phyllis Canal. City shall ensure that at all times a functioning and accurate measurement device is installed, maintained and operating downstream of the NWWTP but upstream from the point of connection to the Phyllis Canal for purposes of measuring discharges. The measuring device shall be automated, capable of sending Pioneer flow data in real time so that Pioneer can detect and track/monitor discharge flow fluctuations and coordinate its canal operation and maintenance activities accordingly. Pioneer shall have the right to inspect and verify the functionality and accuracy of the measuring device upon request. City also agrees to explore additional discharge automation opportunities in the future in cooperation with Pioneer, which automation may, for example, link instantaneous City Recycled Water discharge data with Pioneer Phyllis Canal diversions at the Boise River and other canal input locations effectively mitigating canal flow fluctuations.

5. City shall comply with any and all applicable local, state, and/or federal laws, rules

and regulations, including obtaining any and all permits necessary, concerning the construction and maintenance of the connection facilities and the discharge of Recycled Water to the Phyllis Canal.

6. The City shall conduct effluent testing in accordance with all applicable laws, rules, regulations and permits concerning its discharge of Recycled Water to the Phyllis Canal. The test results shall be shared with Pioneer via electronic media on a monthly basis. The City shall notify Pioneer within 24 hours of determination that the City is out of compliance with any Class A Recycled Water quality requirement and shall take steps reasonably necessary to cease all discharges into the Phyllis Canal until City has established it is able to discharge consistent with Class A water quality requirements/criteria. City shall immediately cease discharge if the City or Pioneer determines that City's discharge fails to meet Class A Recycled Water standards in accordance with IDAPA 58.01.17, or otherwise presents an immediate health risk to Pioneer patrons.

7. Up to a maximum amount of $5,000, City agrees to pay all attorney fees, and any other fees and costs incurred by Pioneer from and after October 1, 2017 in connection with the negotiation, preparation and execution of this Agreement and any related agreements and other documents, within forty five (45) days of the City receiving itemized invoices. The billing shall be sent directly to the City, attention Public Works Director.

8. City shall use its best efforts to obtain all necessary discharge permits and upon obtaining said permits shall complete design and construction of piping and other construction necessary to enable it to discharge into the Phyllis Canal. City anticipates construction shall be complete no later than March 15, 2031.

9. City reserves the right to serve itself and its own municipal irrigation system customers with Recycled Water, provided such use is compliant with all applicable laws, rules and regulations, including Idaho Code Sections 67-6537 and 31-3805.

10. City shall comply with any request by Pioneer to suspend discharges in the event of an emergency or other circumstance which requires Pioneer to dewater or reduce flows in its canal system.

SECTION B -PIONEER OBLIGATIONS

1. Subject to the provisions of this Agreement, Pioneer agrees to allow the City to do all things reasonably necessary to connect the Recycled Water outflow of the NWWTP to the Phyllis Canal at the point(s) shown on **Exhibit A** attached hereto and incorporated by reference herein. Pioneer shall review and provide written comment and/or approval of City-prepared piping and connection plans and designs prior to the City beginning construction of the improvements necessary to make the connection. Pioneer will grant the City all necessary licenses and easements to allow for construction and maintenance of the connection consistent with its (Pioneer's) review of facility encroachments under Idaho Code Section 42-1209.

2. Upon connection, Pioneer authorizes the City to discharge up to 41 cfs (annual

average) of Recycled Water to the Phyllis Canal each year consistent with Section A.2, above.

3. Pioneer acknowledges that the City is not obligated, nor does it guarantee, to provide any Recycled Water flow to Pioneer. Pioneer also acknowledges that the City needs the use of the Phyllis Canal for effluent temperature mitigation and that Pioneer will handle, manage and convey discharged Recycled Water as an integrated part of its irrigation operations.

4. Pioneer shall actively cooperate with City in obtaining all permits and approvals from DEQ necessary for the discharge contemplated under this Agreement. It is the parties' intent under this Agreement to obtain a recycled wastewater re-use permit from DEQ under IDAPA 58.01.17. The parties are not obligated to seek or obtain an NPDES permit authorizing the discharge of Recycled Water to the Phyllis Canal contemplated herein. To the contrary, the parties find any NPDES permit requirement unnecessary and inconsistent with Idaho's Water Quality Standards.

SECTION C -MISCELLANEOUS PROVISIONS

1. This Agreement shall continue in force until terminated by either party as provided herein.

2. Due to the substantial up-front costs incurred by the City in making the connection from its NWWTP to the Phyllis Canal and City's corresponding long-term NPDES Permit compliance requirements, during the first twenty-five (25) years of this Agreement Pioneer may only terminate this Agreement if: 1) the City is determined to be in material breach; or 2) the discharge of Recycled Water into the Phyllis Canal will require Pioneer to obtain and comply with an NPDES permit for its operations; or 3) the acceptance of the Recycled Water imposes additional requirements or restrictions upon Pioneer, including water quality monitoring or reporting not otherwise currently required of it that cannot or will not be performed by City or by mutual agreement between City and Pioneer; or 4) termination is required pursuant to an administrative or judicial order; or 5) the discharge of Recycled Water causes (or threatens to cause) Pioneer to be in violation of any law, rule or regulation of any governmental agency having or asserting jurisdiction over Pioneer and its facilities and activities. After twenty-five (25) years, Pioneer may terminate this Agreement with or without cause by providing at least five (5) years written notice to the City of intent to terminate. At termination, City will take all necessary steps, at its own expense, to cease the Recycled Water discharge and disconnect the City piping from the Phyllis Canal.

3. The City may terminate this Agreement if Pioneer is determined to be in material breach of this Agreement, or without cause by providing at least ten (10) years written notice to Pioneer of its intent to terminate. In the event either party claims a material breach of this Agreement, the parties shall enter into a dispute resolution process, which shall include good faith negotiations attempting to resolve the dispute in a manner saving and continuing the terms of this

Agreement.

4. This Agreement shall be declared null and void should the City and Pioneer fail to obtain any necessary approvals, including permits, licenses or easements, for the discharge of Recycled Water to the Phyllis Canal.

5. The City shall defend, indemnify and save and hold harmless Pioneer from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses arising or resulting from the City's discharge of Recycled Water under this Agreement not caused by or arising out of the negligent conduct of Pioneer or its agents, contractors or employees. Pioneer shall defend, indemnify and save and hold harmless City from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses arising or resulting from the conveyance of the Recycled Water following its discharge into the Phyllis Canal not caused by or arising out of the negligent conduct of City or its agents, contractors or employees. Nothing herein shall be construed as a waiver of the parties' respective rights, claims, or defenses under the Idaho Tort Claims Act.

6. If necessary or desired, and expressly agreed to by the parties, Pioneer and City shall cooperatively educate and inform the public and Pioneer patrons of the benefits and advantages realized by Pioneer and City as a result of this Agreement.

7. No waiver or modification of this Agreement shall be valid unless it is in writing and signed by each of the parties hereto.

8. This Agreement shall be binding upon, and inure to the benefit of, the parties and their heirs, successors, and assigns.

9. If either party hereto shall be determined to be in material breach of any of the terms hereof, such party shall pay to the non-defaulting party all of the non-defaulting party's costs and expenses, including reasonable attorneys' fees, incurred by such party in enforcing the terms of this Agreement, subject to the good faith dispute resolution requirements of Section C.3, above.

10. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any and all other Agreements, whether or not in writing, between the parties with respect to the subject matter hereof.

11. This Agreement shall be subject to and governed by the law of the State of Idaho. Exclusive jurisdiction and venue for the interpretation and enforcement of this Agreement lies in

the District Court for the Third Judicial District, Canyon County, Idaho.

12. The headings in this Agreement are inserted for convenience only and shall not be considered in interpreting the provisions hereof. The recitals are a part of this Agreement and contractual.

13. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

14. The failure of a party to insist on the strict performance of any provision of this Agreement or to exercise any right or remedy upon a breach hereof shall not constitute a waiver of any provision of this Agreement or limit such party's right to enforce any provision or exercise any right.

15. City shall not allow any liens as a result of any labor performed or materials supplied in connection with its activities under this Agreement to attach to the Phyllis Canal, its corresponding irrigation easement and right-of-way, or to any other adjacent lands or easements held by Pioneer.

16. The parties hereto agree that nothing herein contained shall be construed to create a joint venture, partnership, or other similar relationship which might subject any party to liability for the debts and/or obligations of the other, except as otherwise expressly agreed in this Agreement. No director, officer, staff member, agent, or designee of either party hereto shall incur any liability hereunder to the other party hereto, or to any other party in such person's individual capacity by reason of such person's actions hereunder or execution hereof.

17. Notwithstanding anything to the contrary in this Agreement, City acknowledges and agrees that it is solely responsible for the operation and maintenance of the NWWTP, and all related infrastructure, including the Recycled Water discharge pipeline contemplated in this Agreement. City also acknowledges and agrees that it is solely responsible for achieving and maintaining any and all applicable regulatory compliance regarding the operation of the NWWTP including, without limitation, NPDES Permit No. ID0022063. Pioneer shall not be liable for any costs or expenses associated with the NWWTP or its related infrastructure, or for any costs or expenses related to the regulatory burdens thereof including, without limitation, any fines, penalties, expenses, fees or costs arising from any regulatory enforcement actions commenced against City in relation thereto.

18. All notices shall be given in writing to the other party at their address set forth

below, and shall be effective upon receipt:

Pioneer: Pioneer Irrigation District
P.O. Box 426
Caldwell, ID 83606
Attn: Superintendent

Nampa: City of Nampa
411 3rd Street So.
Nampa, Idaho 83651
Attention: Public Works Director

19. This Agreement shall not be used or construed as creating or establishing, or entitling any third party to create or establish, any water right in connection with the Recycled Water.

20. The parties represent and warrant that the person signing this Agreement on behalf of each party has been duly authorized to do so, and is fully vested with the authority to bind that party in all respects.

THE PARTIES hereto have executed this Agreement effective as of the latest date of execution set forth below.

THE CITY OF NAMPA, IDAHO

By _____
Deborah Kling, Mayor
Dated 3-5-18

ATTEST:

_____
City Clerk

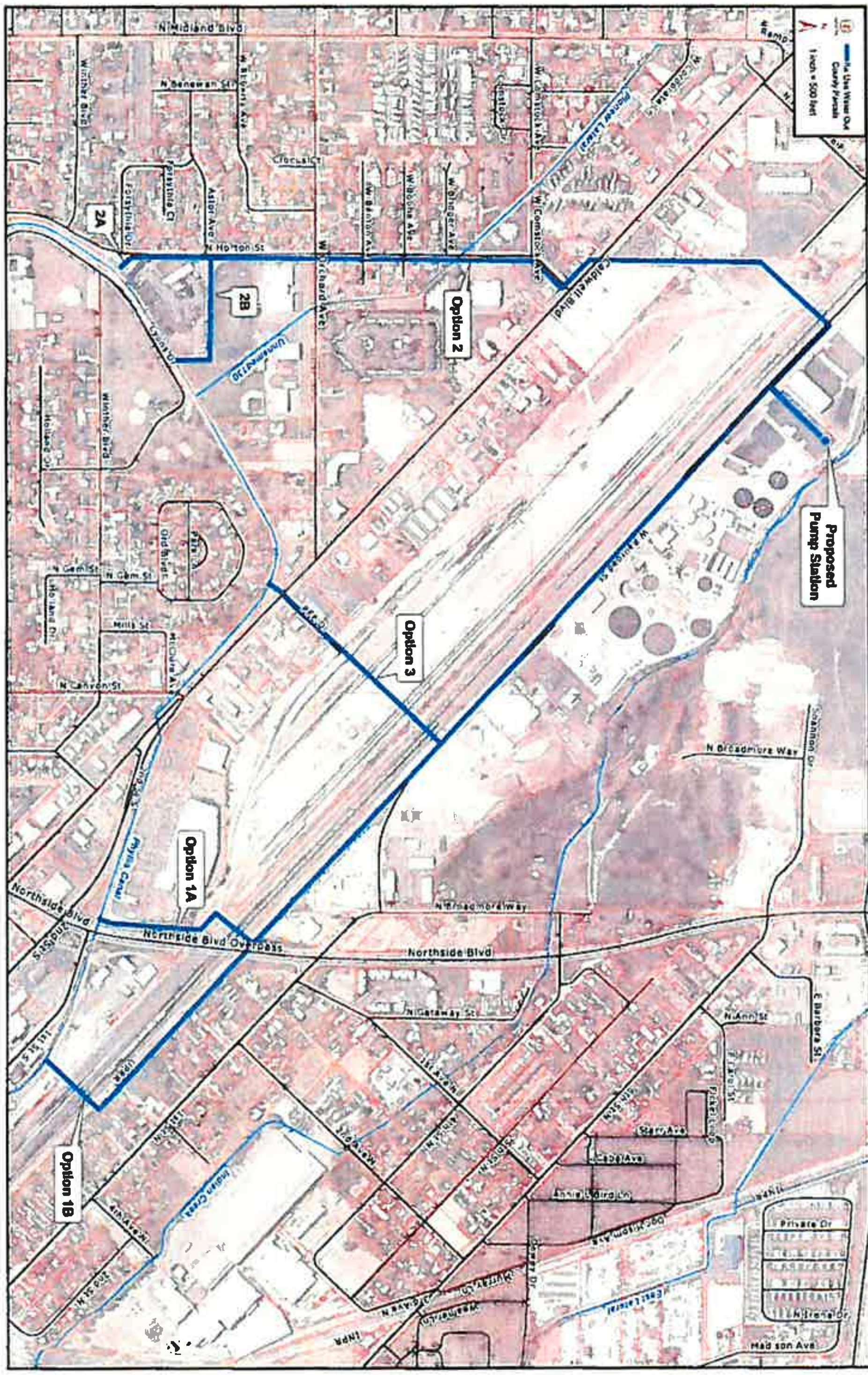
PIONEER IRRIGATION DISTRICT

By _____
Alan Newbill President
Dated 3/7/2018

ATTEST:

_____
Secretary

RECYCLED WATER DISCHARGE AND USE AGREEMENT, Page 7


Option 2
2A
2B
Option 3
Option 1A
Option 1B
Proposed Pump Station
Northside Blvd
Northside Blvd Overpass

Andrew J. Waldera [ISB No. 6608]
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Attorneys for City of Nampa

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01

Docket No. P-DR-2020-01

REUSE PROPONENTS' SUBMISSION OF EXHIBIT G

Pursuant to *Reuse Proponents' Stipulation of Facts*, the Association of Idaho Cities ("AIC"), the Cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Nampa, Pocatello, Post Falls, and Rupert, and the Hayden Area Regional Sewer Board ("HARSB") (collectively, "Municipal Intervenors") and Pioneer Irrigation District ("Pioneer") hereby submit true and correct copy of the documents identified below. Municipal Intervenors and Pioneer are referred to collectively as "Reuse Proponents."

Respectfully submitted this 30th day of June, 2020.

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SOMACH SIMMONS & DUNN

Sarah A. Klahn
Attorneys for City of Pocatello

HOLDEN KIDWELL HAHN & CRAPO, PLLC

Robert L. Harris

Robert L. Harris
Attorneys for City of Idaho Falls

I HEREBY CERTIFY that on this 30th day of June, 2020, the foregoing was filed, served, and copied as shown below.

DOCUMENT FILED:

IDAHO DEPARTMENT OF WATER RESOURCES
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Boise, ID 83702
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Christopher H. Meyer

Idaho Department of Environmental Quality
Reuse Permit
M-255-01

City of Nampa (hereafter "permittee") is hereby authorized to construct, install, and operate a reuse facility in accordance with (1) this permit; (2) IDAPA 58.01.17 "Recycled Water Rules"; (3) an approved plan of operation; and (4) all other applicable federal, state, and local laws, statutes, and rules. This permit is effective from the date of signature and expires on January 21, 2030.

Signature

1/21/2020
Date

Aaron Scheff
Regional Administrator
Boise Regional Office
Idaho Department of Environmental Quality

Idaho Department of Environmental Quality
Boise Regional Office
1445 N. Orchard
Boise, ID 83706
208-373-0550

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Table of Contents

1. Common Acronyms/Abbreviations and Definitions

BOD_5	5 day biochemical oxygen demand
CA	compliance activity
COD	chemical oxygen demand
cfs	cubic feet per second
cwt	a unit of weight measurement equal to 100 pounds
DEQ	Idaho Department of Environmental Quality
director	DEQ director or designee unless otherwise specified
E_i	irrigation efficiency
EPA	United States Environmental Protection Agency
FM	prefix for flow measurement/monitoring location, device, or method reporting serial number
growing season	May 1 through September 30
GW	prefix for ground water reporting serial number
IDAPA	Numbering designation for all administrative rules in Idaho promulgated according to the Idaho Administrative Procedure Act
IDWR	Idaho Department of Water Resources
IPDES	Idaho Pollutant Discharge Elimination System
IWR	irrigation water requirement — any combination of wastewater and supplemental irrigation water applied at rates commensurate to the moisture requirements of the crop, and calculated monthly during the growing season.
lb	pound
LG	prefix for lagoon reporting serial number
material change	a change in a document required by this permit that would impact DEQ's ability to ensure compliance and protect human health and the environment
µmhos/cm	micromhos per centimeter
MG	million gallons
mg/kg	milligram per kilogram
mg/L	milligram per liter
mJ/cm^2	millijoules per square centimeter
mL	milliliter
mW/cm^2	milliwatt per square centimeter

MU	management unit, prefix for management unit reporting environmental serial number
nm	nanometers
NPDES	National Pollutant Discharge Elimination System
NTU	nephelometric turbidity unit
N	nitrogen
ppm	parts per million
P	phosphorus
PO	plan of operation
QAPP	quality assurance project plan
responsible official	facility contact person authorized by the permittee to communicate with DEQ on behalf of the permittee on any matter related to the permit, including without limitation, the authority to communicate with and receive notices from DEQ regarding notices of violation or non-compliance, permit violations, permit enforcement, and permit revocation. The responsible official provides written certification of permit application materials, annual report submittals, and other information submitted to DEQ as required by the permit. Any notice to or communication with the responsible official is considered a notice to or communication with the permittee. The responsible official may designate an authorized representative to act as the facility contact person for any of the activities or duties related to the permit, except signing and certifying the permit application, which must be done by the responsible official. The authorized representative shall act as the responsible official and shall bind the permittee as described in this definition. Designation of the authorized representative shall follow the requirements specified in section 6.1.3 of the permit.
reuse guidance	Guidance for the Reclamation and Reuse of Municipal and Industrial Wastewater, or as updated
SU	prefix for soil monitoring unit reporting serial number
SW	prefix for supplemental irrigation water reporting serial number
WW	prefix for wastewater reporting serial number
yr	year

2. Facility Information

Information Type	Information Specific to This Permit
Type(s) of recycled water	Class A Municipal Water
Method of treatment and reuse	Headworks, primary clarification, activated sludge secondary treatment, tertiary filtration, disinfection Reuse: Irrigation Water Supply Augmentation, Industrial Water Supply 3065 MG, 31 cfs, based on a maximum monthly flow, proposed for addition to the Phyllis Canal (part of the Pioneer Irrigation District) Distribution to the Pioneer Irrigation District service area below the discharge point; see maps in Section 11.2. 2 MG/day proposed for future industrial reuse
Collection and treatment system classification	Wastewater collection system classification: Class IV Wastewater treatment system classification: Class IV
Facility location	340 W Railroad St., Nampa, ID 83867 T3N, R2W, Section 16
Facility mailing address	411 3rd St S, Nampa, ID 83651
Facility responsible official and authorized representative	Responsible Official: Tom Points, Public Works Director, 411 3rd St S. Nampa, ID 83651, 208-465-2200 Authorized Representative: Andy Zimmerman, Wastewater Superintendent, 411 3rd St S. Nampa, ID 83651, 208-465-2200 Notify DEQ within 30 days if a change in personnel occurs for any of the facility contacts. DEQ will issue a minor permit modification to confirm the change.
Ground water	Depth to seasonal high ground water: 5-35 ft below ground surface Shallow aquifer generally flows west Much of the area served by Pioneer Irrigation District is within the Ada Canyon Nitrate Priority Area
Surface water	Lower Boise River, HUC 17050114, SW-1, designated beneficial uses are cold water aquatic life and primary contact recreation Indian Creek, tributary to the Boise River, HUC 17050114, SW-2, designated beneficial uses are cold water aquatic life and secondary contact recreation. Agricultural water supply, industrial water supply, wildlife habitats, and aesthetics also apply (IDAPA 58.01.02.100.03, 04, and 05).

3. Compliance Schedule for Required Activities

Compliance Activity (CA) Number and Completion Due Date	Compliance Activity Description
CA-255-01 DEQ approval required prior to commencement of Class A water production	**Filtration Technology:** Submit to DEQ for review and approval documentation showing that the proposed Class A filtration technology meets IDAPA 58.01.17.610. **UV Disinfection Technology:** Submit to DEQ for review and approval documentation showing that the proposed UV disinfection technology meets the requirements for Class A disinfection in IDAPA 58.01.17.601.01 and the California Water Boards, Alternative Treatment Technology Report for Recycled Water. **Reliability and Redundancy:** Submit to DEQ for review and approval documentation showing how the system meets the requirements of IDAPA 58.01.17.611.
CA-255-02 Submittal required 6 months prior to planned commencement of Class A water production	**Plan of Operation (PO)**: The permittee shall submit to DEQ for review and approval a PO that reflects current operations and incorporates the requirements of this permit. The PO shall comply with the applicable requirements stated in IDAPA 58.01.17.300.05 and shall address applicable items in the most current PO checklist. The PO shall include the following site management plans or the permittee may submit the site management plans individually: 1. Emergency operating plan 2. Procedures to eliminate operational spills to Moses Drain 3. Recording and reporting procedures for emergency use of spillways The PO shall be updated as needed to reflect current operations. The permittee shall notify DEQ of material changes to the PO and copies shall be kept on site and made available to DEQ upon request.

Compliance Activity (CA) Number and Completion Due Date	Compliance Activity Description
CA-255-03 Submittal required 6 months prior to planned commencement of Class A water production	**Quality Assurance Project Plan (QAPP)**: The permittee shall prepare and implement a QAPP that incorporates all monitoring and reporting required by this permit. A copy of the QAPP along with written notice that the permittee has implemented the QAPP shall be provided to DEQ. The Permittee must follow the QAPP when collecting, analyzing, and reporting monitoring data submitted to DEQ. The QAPP shall be designed to assist in planning for collecting, analyzing, and reporting all monitoring in support of this permit and in explaining data anomalies when they occur. At a minimum, the QAPP must include the following: 1. Details on the number of measurements, number of samples, type of sample containers, preservation of samples, holding times, analytical methods, analytical detection and quantitation limits for each target compound, type and number of quality assurance field samples, precision and accuracy requirements, sample preparation requirements, sample shipping methods, and laboratory data delivery requirements 2. Maps indicating the location of each monitoring and sampling point 3. Qualification and training of personnel 4. Names, addresses, and telephone numbers of the laboratories used by or proposed to be used by the permittee 5. Example formats and tables that will be used by the permittee to summarize and present all data in the annual report The format and content of the QAPP should adhere to the recommendations and references in the Quality Assurance and Data Processing sections of the reuse guidance. The permittee shall amend the QAPP whenever there is a modification in sample collection, sample analysis, or other procedure addressed by the QAPP. The permittee shall notify DEQ of material changes to the QAPP and copies shall be kept on site and made available to DEQ upon request.
CA-255-04 Submit within one year of permit issuance	**Public Education Plan:** Submit to DEQ for review and approval a report outlining and describing the aspects of the Public Education Plan and how it has been implemented, and will continue to be implemented into the future. The report shall be provided within one year of permit issuance. The Public Education Program shall include notification of individual users of the origin of the augmentation water, the concept of agronomic rate for applying Class A recycled water, and benefits and responsibilities of using Class A recycled water.

Compliance Activity (CA) Number and Completion Due Date	Compliance Activity Description
CA-255-05 Approvals required prior to connection of an industrial user	**Industrial Reuse Program:** Prior to implementing a program to provide recycled water to industrial users, submit to DEQ for review and approval a general plan for connection of industrial users to the Class A recycled water network. Include a procedure for notifying DEQ of each new industrial user to be connected to the network. As a requirement of IDAPA 58.01.17.607.02.e, industrial users of recycled water are required to sign a utility user agreement. Include this agreement in the submittal. Submittal and DEQ approval of a Preliminary Engineering Report containing the necessary detail for supplying recycled water and providing the connection to the user, and Plans and Specifications for the upgrades, is required prior to any construction.
CA-255-06 18 months prior to permit expiration	**Pre-application Conference:** If the permittee intends to continue operating the reuse facility beyond the expiration date of this permit, the permittee shall contact DEQ and schedule a pre-application conference to discuss the compliance status of the facility and the content required for the reuse permit application package.
CA-255-07 1 year prior to permit expiration	**Renewal Permit Application:** The permittee shall submit to DEQ a complete permit renewal application package that fulfills the requirements specified in CA-255-06 and identified at the pre-application conference.

4. Permit Limits and Conditions

4.1 Management Unit Descriptions

Serial Number	Description	Irrigation System Type and Irrigation Efficiency (E_i)	Maximum Acres Allowed
MU-255-01	Irrigation Water Augmentation – Phyllis Canal	Not Applicable	Not Applicable
MU-255-02	Industrial Reuse	Not Applicable	Not Applicable

4.2 Hydraulic Loading Limits – not applicable

4.3 Constituent Loading Limits – not applicable

4.4 Buffer Zones – not applicable

4.5 Other Permit Limits and Conditions

Category	Permit Limits and Conditions
Growing season	May 1 through September 30 (153 days)
Non-growing season	October 1 through April 30 (212 days)
Reporting year for annual loading rates	October 1 through September 30
Allowable Uses	• Irrigation Water Supply Augmentation. Recycled water may be discharged to Phyllis Canal during the growing season for irrigation water supply augmentation; the requirements herein shall apply to the recycled water until the point where the water is discharged to the Phyllis Canal. • Industrial Water Supply. Recycled water may be provided to industrial users year-round; the requirements herein shall apply to recycled water until the point of connection to the industrial user.
Operator certification and endorsement	The wastewater treatment facility shall be operated by personnel certified and licensed in the State of Idaho wastewater operator training program at the operator class level specified in IDAPA 58.01.16.203 and properly trained to operate and maintain the system.
Disinfection limits in recycled water	The median number of total coliform organisms at the point of compliance (WW-255-03) shall not exceed 2.2 total coliform organisms/100 mL, as determined from the bacteriological results of the last seven days for which analyses have been completed. No sample shall exceed 23 total coliform organisms/100 mL in any confirmed sample. A UV dose of at least 80 mJ/cm^2 (for membrane filtration) or 100 mJ/cm^2 (for media filtration) shall be maintained at all times. This dose shall be evidenced by UV transmittance and intensity data monitored as part of routine operations (WW-255-02). The filtered UV transmittance shall be 55% or greater (for media filtration) or 65% or greater (for membrane filtration) at 254 nm, or as approved by DEQ based on historic operational data.
Turbidity limits in treated effluent prior to disinfection during periods of recycled water production	• Daily arithmetic mean of all measurements of turbidity shall not exceed 2 NTU (if media filters are used) or 0.2 NTU (if membrane filters are used) • Turbidity shall not exceed 5 NTU (if media filters are used) or 0.5 NTU (if membrane filters are used) at any time • When the continuous turbidity measurements are above the instantaneous limit of 5 NTU (if media filters are used) or 0.5 NTU (if membrane filters are used) for more than five minutes, filtered effluent shall be automatically diverted until such time as the effluent is below the instantaneous limit
pH	pH at the point of compliance (WW-255-04) shall be between 6.0 and 9.0
Nitrogen	Total nitrogen at the point of compliance (WW-255-05) shall not exceed 30 mg/L, as a monthly arithmetic mean calculated as the sum of all daily discharges measured for total nitrogen during the calendar month, divided by the number of daily discharges measured for total nitrogen during that month

Category	Permit Limits and Conditions
Phosphorus (irrigation water supply augmentation, growing season only)	Total phosphorus at the point of compliance (WW-255-05) shall not exceed 0.35 mg/L as a seasonal average calculated as the sum of all daily discharges measured for total phosphorus during the season, divided by the number of daily discharges measured for total phosphorus during that season
Five (5) Day Biochemical Oxygen Demand (BOD_5)	BOD_5 at the point of compliance (WW-255-05) shall not exceed 10 mg/L as a monthly arithmetic mean calculated as the sum of all daily discharges measured for BOD_5 during the calendar month, divided by the number of daily discharges measured for total nitrogen during that month
Construction plans	Pursuant to Idaho Code §39-118, IDAPA 58.01.16, and IDAPA 58.01.17, detailed plans and specifications shall be submitted to DEQ for review and approval before construction, modification, or expansion of any wastewater treatment, storage, conveyance structures, ground water monitoring wells, or reuse facility. Inspection requirements shall be satisfied and the permittee shall submit as-built plans or a letter from a professional engineer licensed in the State of Idaho certifying the facilities or structures were constructed in substantial accordance with the approved plans and specifications.
Flow meter calibration/verification	Document the flow measurement calibration/verification of all flow meters and pumps used directly or indirectly to measure recycled water, when such devices are used to assess or demonstrate compliance.
Backflow prevention	Backflow prevention is required to protect surface water and ground water from an unauthorized discharge of recycled water or wastewater. Refer to section 9.1.1 of this permit.
Records retention requirements	Keep records generated to meet the requirements of this permit for the duration of permit, including administrative extensions, plus 2 years.
Pumping facilities identification and signage	• All exposed and above ground piping, risers, fittings, pumps, valves, etc., shall be painted purple color (Pantone 512, 522 or other equivalent product acceptable to DEQ). In addition, all piping shall be identified using an accepted means of labeling reading "Caution: Recycled Water - Do Not Drink" or equivalent signage in both Spanish and English. In a fenced pump station area, signs shall be posted on the fence on all sides. • Designated facilities using Class A recycled water from a pumping facility, such as, but not limited to, controller panels and washdown or blow-off hydrants on water trucks, hose bibs, and temporary construction services, shall have warning labels installed. The labels shall read, "Caution: Recycled Water - Do Not Drink" or equivalent signage, in both Spanish and English.

Category	Permit Limits and Conditions
Distribution system identification and signage	• Permittee shall implement requirements for private piping connecting industrial users to permittee's distribution system. • All new buried pipe conveying Class A Recycled Water, including service lines, valves, and other appurtenances, shall be colored purple, and the precise color used, e.g., Pantone 512, 522 or equivalent, shall be consistently used throughout the system. The precise color proposed for use shall be identified in plans and specifications. If fading or discoloration of the purple pipe is experienced during construction, identification tape or locating wire along the pipe is required. Label piping every ten (10) feet "Caution: Recycled Water - Do Not Drink" or equivalent signage in both Spanish and English. • If identification tape is installed along with the purple pipe, it shall be prepared with white or black printing on a purple color field as approved by DEQ, having the words, "Caution: Recycled Water - Do Not Drink" or equivalent signage in both Spanish and English. The overall width of the tape shall be at least three (3) inches. Identification tape shall be installed eighteen (18) inches above the transmission pipe longitudinally, shall be centered over the pipe, and shall run continuously along the length of the pipe. • All new valves shall have locking valve covers that are non-interchangeable with potable water valve covers, and shall have an inscription cast on the top surface stating "Recycled Water" or equivalent. • All above ground pipes and pumps shall be consistently color coded (purple) and marked to differentiate Class A recycled water facilities from potable water facilities.
User Agreements	Users of industrial water shall be required to sign a user utility agreement; see CA-255-05 and IDAPA 58.01.17.607.02.e

5. Monitoring Requirements

5.1 Recycled Water and Supplemental Irrigation Water Sampling and Analyses

5.1.1 Constituent Monitoring during periods of Class A water production

Monitoring Point Serial Number and Location	Sample Description	Sample Type and Frequency	Constituents (mg/L unless otherwise specified)
WW-255-01 Recycled water prior to disinfection	Recycled water prior to disinfection	Continuous monitoring with recorded value every 15 minutes	Turbidity (NTU)
WW-255-02 Recycled water during disinfection	Recycled water during disinfection	Continuous monitoring with recorded value every 15 minutes	UV Transmittance (%) UV Intensity (mW/cm^2)
WW-255-03 Recycled water following disinfection	Recycled water to MU-255-01 or MU-255-02	Grab/daily	Total coliform (organisms/100 mL)
WW-255-04 Recycled water following disinfection	Recycled water to MU-255-01 or MU-255-02	Grab/daily or continuous monitoring with recorded value every 15 minutes	pH (standard units)
WW-255-05 Recycled water following disinfection	Recycled water to MU-255-01 or MU-255-02	24-hour Composite/weekly (during periods of use)	BOD_5 Total nitrogen
		24-hour Composite/weekly (during periods of discharge to Phyllis Canal)	Total phosphorus
		24-hour Composite/weekly (first growing season of discharge to Phyllis Canal) Composite/monthly (first full year of use only)	Non-volatile dissolved solids

5.1.2 Management Unit and Other Flow Monitoring

Management Unit or Flow Measurement Serial Number and Location	Monitoring Description	Monitoring Type and Frequency	Parameters, each MU or FM
FM-255-01 Flow meter to MU-255-01	Recycled water flow discharged to Phyllis Canal	Daily meter reading Monthly compilation of data	Volume (gallons/day, MG/month)
FM-255-02 Flow meter to MU-255-02	Recycled water flow to industrial users	Daily meter reading Monthly compilation of data	Volume (gallons/day, MG/month)
FM-255-03 Flow Measurement of Phyllis Canal Upstream of the recycled water discharge point	Flow of water in Phyllis Canal	Monthly Flow	Volume (MG/month)

5.2 Ground Water Monitoring – not required

5.3 Soil Monitoring – not required

5.4 Crop Monitoring – not required

5.5 Lagoon Information – not applicable

6. Reporting Requirements

6.1 Annual Report Requirements

The permittee shall submit to DEQ an annual report prepared by a competent environmental professional covering the previous reporting year.

6.1.1 Due Date

The annual report is due no later than December 31 of each year, which shall cover the previous reporting year.

6.1.2 Required Contents

The annual report shall include the following:

1. A brief interpretive discussion of all required monitoring data. The discussion shall address data quality objectives, validation, and verification; and permit compliance. The reporting year for this permit is specified in section 4.5.
2. Results of the required monitoring as described in section 5 of this permit. If the permittee monitors any parameter for compliance purposes more frequently than required by this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the annual report. The report shall present all monitoring data of required parameters from the monitoring points defined in section 5 in organized data summary tables to expedite review.
3. Status of all work described in section 3 of this permit.
4. Results of all backflow testing, repairs, and replacements required by section 9.1.1 of this permit.
5. Discussion of major maintenance activities such as major equipment replacement and wastewater treatment and reuse facility maintenance.
6. A summary of all noncompliance events that occurred during the reporting year. Examples of noncompliance events that must be discussed include, but are not limited to: exceedance of permit limits, missed monitoring events, incorrect monitoring dates or frequencies, uncontained spills causing runoff, construction without DEQ engineering plan approval, construction without engineering inspection, and reporting incorrect acreage.
7. Submittal of the calculations and observations for MUs specified in the following table.
8. Laboratory analytical reports for monitoring specified in section 5 of the permit. Chain of custody forms, supporting information for laboratory analytical reports, and quality assurance documentation shall be available for review upon request by DEQ.
9. The parameters in the following table:

Monitoring Point Serial Number	Parameter	Units
MU-255-01, MU-255-02	BOD_5 concentration in recycled water	mg/L per month
	Total Nitrogen concentration in recycled water	mg/L per month
	Median number of total coliform organisms determined by the bacteriological results of the last 7 days for which analysis has been completed	Total coliform organisms per 100 mL
	Turbidity, daily arithmetic mean	NTU
	UV Disinfection Dose	mJ/cm^2 reported in 15 minute intervals
MU-255-01	Total Phosphorus concentration in recycled water	mg/L per season
Other Reporting Requirements: • Report dates and times of noncompliance with the turbidity and UV Dose requirements of section 4.5, and discuss the cause of, and response to, the noncompliance • Provide a summary and update of Public Education Program activities • Provide a summary and update of industrial users connected, volume of water use, and discuss any issues encountered in providing recycled water for this use • List and discuss uses of diversion gates to spill water from Phyllis Canal to Elijah Drain, Wilson Drain, the Upper Embankment Drain, or Bardsley Gulch Drain, including the cause, time and duration of spills		

6.1.3 Submittals

All applications, annual reports, or information submitted to DEQ as required by this permit shall be signed and certified as follows:

- Permit applications shall be signed by the responsible official as described below:
  - For a corporation by a responsible corporate officer
  - For a partnership or sole proprietorship by a general partner or the proprietor, respectively
  - For a municipality, state, federal, Indian tribe, or other public agency by either the principal executive officer, ranking elected official, or a person of decision-making authority who can legally bind the permittee with respect to the permit.
- Annual reports and other information required by this permit shall be signed by the responsible official or by a duly authorized representative of that person. A person is a duly authorized representative only if all of the following are true:
  - The authorization is made in writing by the responsible official.
  - The authorization specifies either an individual or position having responsibility for the overall operation of the regulated facility, such as the position of plant manager, superintendent, position of equivalent responsibility, or an individual having overall responsibility for environmental matters for the company.
  - The written authorization is submitted to DEQ.

Submit all applications, annual reports, and other information required by this permit to the following DEQ regional office at this address:

Engineering Manager
Idaho Department of Environmental Quality
Boise Regional Office
1445 N. Orchard
Boise, ID 83706

The annual report shall include the following certification statement and be signed, dated, and certified by the permittee's Responsible Official or duly Authorized Representative:

> *"I certify that the information provided in this submittal was prepared in conformance with the Quality Assurance Project Plan required by permit M-255-01 and is to the best of my knowledge, true, accurate and complete and I acknowledge that knowing submission of false or incomplete information may result in permit revocation as provided for in IDAPA 58.01.17.920.01 or other enforcement action as provided for under Idaho law."*

Permit applications shall include the following certification statement and be signed, dated, and certified by the permittee's Responsible Official:

> *"I certify that the information provided in this submittal is, to the best of my knowledge, true, accurate and complete and I acknowledge that knowing submission of false or incomplete information may result in permit revocation as provided for in IDAPA 58.01.17.920.01, non-issuance of the permit, or other enforcement action as provided for under Idaho law."*

Other information submitted to DEQ as required by the permit shall include the above certification statement and be signed, dated, and certified by the permittee's Responsible Official or duly Authorized Representative.

6.2 Emergency and Noncompliance Reporting

Report noncompliance incidents to DEQ's regional office at 208-373-0550 or toll-free at 1-888-800-3480.

In case of public health emergencies, call the 24-hour Idaho Emergency Medical Services Communications Center number at (800) 632-8000.

Section 8 of this permit and IDAPA 58.01.17.500.06 provide the reporting requirements for facilities.

All instances of permit non-compliance that may endanger public health or the environment and unauthorized discharges to surface waters of the State of Idaho shall be reported to DEQ's regional office by telephone (phone numbers provided in this section) within 24 hours from the time the permittee becomes aware of these events at the phone numbers provided in this section.

A written follow-up shall be provided to the DEQ regional office within five days from the time the permittee became aware of the permit non-compliance or unauthorized discharge.

Reporting of unauthorized discharges to surface waters of the State of Idaho program may also

be required. A discharge to Indian Creek under NPDES permit ID0022063, or as renewed, does not constitute an unauthorized discharge under this permit. Contact information for the IPDES program is provided below:

IPDES Compliance, Inspection, and Enforcement Lead
1410 N. Hilton Street
Boise, ID 83706
833-IPDES24 or 833-473-3724

7. Reserved

8. Standard Permit Conditions

The following standard permit conditions are included as terms of this permit as required by the "Recycled Water Rules," (IDAPA 58.01.17.500).

500. STANDARD PERMIT CONDITIONS.
The following conditions shall apply to and be included in all permits. (4-1-88)

01. Compliance Required. The permittee shall comply with all conditions of the permit. (4-1-88)

02. Renewal Responsibilities. If the permittee intends to continue operation of the permitted facility after the expiration of an existing permit, the permittee shall apply for a new permit in accordance with these rules. (4-1-88)

03. Operation of Facilities. The permittee shall at all times properly maintain and operate all structures, systems, and equipment for treatment, control and monitoring, which are installed or used by the permittee to achieve compliance with the permit or these rules. (4-1-88)

04. Provide Information. The permittee shall furnish to the Director within a reasonable time, any information including copies of records, which may be requested by the Director to determine whether cause exists for modifying, revoking, re-issuing, or terminating the permit, or to determine compliance with the permit or these rules. (4-1-88)

05. Entry and Access. The permittee shall allow the Director, consistent with Title 39, Chapter 1, Idaho Code, to: (4-1-88)

a. Enter the permitted facility. (4-1-88)

b. Inspect any records that must be kept under the conditions of the permit. (4-1-88)

c. Inspect any facility, equipment, practice, or operation permitted or required by the permit. (4-1-88)

d. Sample or monitor for the purpose of assuring permit compliance, any substance or any parameter at the facility. (4-1-88)

06. Reporting. The permittee shall report to the Director under the circumstances and in the manner specified in this section: (4-1-88)

a. In writing at least thirty (30) days before any planned physical alteration or addition to the permitted facility or activity if that alteration or addition would result in any significant change in information that was submitted during the permit application process. When the alteration or addition results in a need for a major modification, such alteration or addition shall not be made prior to Department approval issued in accordance with these rules. (4-7-11)

b. In writing thirty (30) days before any anticipated change which would result in noncompliance with any permit condition or these rules. (4-1-88)

c. Orally within twenty-four (24) hours from the time the permittee became aware of any noncompliance which may endanger the public health or the environment at telephone numbers provided in the permit by the Director. (4-1-88)

d. In writing as soon as possible but within five (5) days of the date the permittee knows or should know of any noncompliance unless extended by the Department. This report shall contain: (4-1-88)

i. A description of the noncompliance and its cause; (4-1-88)

ii. The period of noncompliance including to the extent possible, times and dates and, if the noncompliance has not been corrected, the anticipated length of time it is expected to continue; and (4-7-11)

iii. Steps taken or planned, including timelines, to reduce or eliminate the continuance or reoccurrence of the noncompliance. (4-7-11)

e. In writing as soon as possible after the permittee becomes aware of relevant facts not submitted or incorrect information submitted, in a permit application or any report to the Director. Those facts or the correct information shall be included as a part of this report. (4-1-88)

07. Minimize Impacts. The permittee shall take all necessary actions to eliminate and correct any adverse impact on the public health or the environment resulting from permit noncompliance. (4-1-88)

08. Compliance with "Ground Water Quality Rule." Permits issued pursuant to these rules shall require compliance with IDAPA 58.01.11, "Ground Water Quality Rule." (4-7-11)

9. General Permit Conditions

The following general permit conditions are based on the cited rules at the time of issuance and are enforceable as part of this permit. Note that the rules cited in this section, and elsewhere in this permit, are supplemented by the rules themselves. Rules applicable to your facility are enforceable whether or not they appear in this permit.

9.1 Operations

9.1.1 Backflow Prevention

Reuse facilities with existing or planned cross-connections or interconnections between the recycled water system and any water supply (potable or nonpotable) or surface water, shall have backflow prevention assemblies, devices, or methods as required by applicable rule or as specified in this permit and approved by DEQ.

For public water systems, backflow assemblies shall meet the requirements of IDAPA 58.01.08.543. Assemblies shall be adequately maintained and shall be tested annually by a certified backflow assembly tester, and repaired or replaced as necessary to maintain operational status.

For domestic water supply wells, backflow prevention devices shall meet the requirements of IDAPA 07.02.04 and shall be adequately operated and maintained.

Irrigation water supply wells shall meet the requirements of IDAPA 37.03.09.36 for preventing any waste or contamination of the ground water resource. Backflow prevention assemblies or devices used to protect the ground water shall be adequately operated and maintained.

Discharge of recycled water to surface water is regulated by the DEQ IPDES program. An IPDES or NPDES permit is required for any discharge to surface water and backflow prevention shall be implemented to prevent any unauthorized discharge. Backflow prevention assemblies or devices used to protect surface water shall be adequately operated and maintained.

Records of all testable backflow assembly test results, repairs, and replacements shall be kept at the reuse facility along with other operational records, and shall be discussed in the annual report and made available for inspection by DEQ. Other approved means of backflow prevention, such as siphons and air-gap structures that cannot be tested, shall be maintained in operable order.

9.1.2 Restricted to Premises

Wastewaters or recharge waters applied to the land surface must be restricted to the premises of the application site. Wastewater discharges to surface water that require a permit under the Clean Water Act must be authorized by the EPA (IDAPA 58.01.16.600.02).

9.1.3 Health Hazards, Nuisances, and Odors Prohibited

Health hazards, nuisances, and odors are prohibited as follows:

Wastewater must not create a public health hazard or nuisance condition (IDAPA 58.01.16.600.03).

No person shall allow, suffer, cause, or permit the emission of odorous gases, liquids, or solids into the atmosphere in such quantities as to cause air pollution (IDAPA 58.01.01.776.01).

Air Pollution defined as the presence in the outdoor atmosphere of any air pollutant or combination thereof in such quantity of such nature and duration and under such conditions as would be injurious to human health or welfare, to animal or plant life, or to property, or to interfere unreasonably with the enjoyment of life or property (IDAPA 58.01.01.006.06).

9.1.4 Solids Management

Biosolids are the nutrient-rich organic materials resulting from the treatment of sewage sludge. When treated and processed, sewage sludge becomes biosolids that can be safely recycled and applied as fertilizer to sustainably improve and maintain productive soils and stimulate plant growth.

Biosolids generated from sewage sludge are regulated by EPA under 40 CFR Part 503 and require a DEQ approved sludge disposal plan as outlined in IDAPA 58.01.16.650. Contact DEQ before to applying biosolids at any permitted reuse facility.

Sludge is the semi-liquid mass produced and removed by wastewater treatment processes. This does not include grit, garbage, and large solids.

Sludge may be generated by wastewater treatment processes at municipal and industrial facilities. A DEQ-approved sludge disposal plan, as outlined in IDAPA 58.01.16.650, may be required.

Solid waste is any garbage or refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges that are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended.

Solid waste does not include inert wastes, manures and crop residues ultimately returned to the soils at agronomic rates, and any agricultural solid waste that is managed and regulated pursuant to rules adopted by the Idaho Department of Agriculture. DEQ reserves the right to use existing authorities to regulate agricultural waste that impacts human health or the environment.

Solid waste is regulated under the "Solid Waste Management Rules" (IDAPA 58.01.06). Wastes otherwise regulated by DEQ (i.e., this permit) are not regulated under IDAPA 58.01.06.

Waste solids include sludge and wastes otherwise regulated by DEQ according with IDAPA 58.01.06.001.03.a.xii. Waste solids may include vegetative waste, silt and mud containing organic matter, and other non-inert solid wastes.

Inert wastes are defined as non-combustible, nonhazardous, and non-putrescible solid wastes that are likely to retain their physical and chemical structure and have a de minimis potential to generate leachate under expected conditions of disposal, which includes resistance to biological attack.

Waste solids require a DEQ approved sludge disposal plan as outlined in IDAPA 58.01.16.650.

9.1.5 Temporary Cessation of Operations and Closure (IDAPA 58.01.17.801)

Temporary cessation of operations and closure must be addressed as follows:

01. Temporary Cessation. A permittee shall implement any applicable conditions specified in the permit for temporary cessation of operations. When the permit does not specify applicable temporary cessation conditions, the permittee shall notify the Director prior to a temporary cessation of operations at the facility greater than sixty (60) days in duration and any cessation not for regular maintenance or repair. Cessation of operations necessary for regular maintenance or repair of a duration of sixty (60) days or less are not required to notify the Department under this section. All notifications required under this section shall include a proposed temporary cessation plan that will ensure the cessation of operations will not pose a threat to human health or the environment. (4-7-11)

02. Closure. A closure plan shall be required when a facility is closed voluntarily and when a permit is revoked or expires. A permittee shall implement any applicable conditions specified in the permit for closure of the facility. Unless otherwise directed by the terms of the permit or by the Director, the permittee shall submit a closure plan to the Director for approval at least ninety (90) days prior to ceasing operations. The closure plan shall ensure that the closed facility will not pose a threat to human health and the environment. Closure plan approval may be conditioned upon a permittee's agreement to complete such site investigations, monitoring, and any necessary remediation activities that may be required. (4-7-11)

9.1.6 Plan of Operation (IDAPA 58.01.17.300.05)

The PO must comply with the following:

05. Reuse Facility Operation and Maintenance Manual or Plan of Operations. A facility's operation and maintenance manual must contain all system components relating to the reuse facility in order to comply with IDAPA 58.01.16 "Wastewater Rules," Section 425. Manuals and manual amendments are subject to the review and approval provision therein. In addition to the content required by IDAPA 58.01.16.425, manuals for reuse facilities shall include, if applicable: operation and management responsibility, permits and standards, general plant description, operation and control of unit operations, land application site maps, wastewater characterization, cropping plan, hydraulic loading rate, constituent loading rates, compliance activities, seepage rate testing, site management plans, monitoring, site operations and maintenance, solids handling and processing, laboratory testing, general maintenance, records and reports, store room and inventory, personnel, an emergency operating plan, and any other information required by the Department. (4-7-11)

9.1.7 Seepage Testing Requirements (IDAPA 58.01.16.493.02.c)

Subsequent Tests. All lagoons covered under these rules must be seepage tested by an Idaho licensed professional engineer, an Idaho licensed professional geologist, or by individuals under their supervision every ten (10) years after the initial testing. (5-8-09)

9.1.8 Ground Water Quality Rule (IDAPA 58.01.11)

The permittee shall comply with the requirements of the "Ground Water Quality Rule" (IDAPA 58.01.11).

9.2 Administrative

Requirements for administration of the permit are defined as follows.

9.2.1 Permit Modification (IDAPA 58.01.17.700)

01. Modification of Permits. A permit modification may be initiated by the receipt of a request for modification from the permittee, or may be initiated by the Department if one (1) or more of the following causes for modification exist: (4-7-11)

a. Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit. (4-7-11)

b. New standards or regulations. The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. (4-7-11)

c. Compliance schedules. The Department determines good cause exists for modification of a compliance schedule or terms and conditions of a permit. (4-7-11)

d. Non-limited pollutants. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which may cause an adverse impact to surface or ground waters. (4-7-11)

e. To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions. (4-7-11)

f. When a treatment technology proposed, installed, and properly operated and maintained by the permittee fails to achieve the requirements of the permit. (4-7-11)

9.2.2 Permit Transferable (IDAPA 58.01.17.800)

01. General. A permit may be transferred only upon approval of the Department. No transfer is required for a corporate name change as long as the secretary of state can verify that a change in name alone has occurred. An attempted transfer is not effective for any purpose until approved in writing by the Department. (4-7-11)

9.2.3 Permit Revocation (IDAPA 58.01.17.920)

01. Conditions for Revocation. The Director may revoke a permit if the permittee violates any permit condition or these rules, or the Director becomes aware of any omission or misrepresentation of condition or information relied upon when issuing the permit. (4-7-11)

02. Notice of Revocation. Except in cases of emergency, the Director shall issue a written notice of intent to revoke to the permittee prior to final revocation. Revocation shall become final within thirty-five (35) days of receipt of the notice by the permittee, unless within that time the permittee requests an administrative hearing in writing. The hearing shall be conducted in accordance with IDAPA 58.01.23, Rules of Administrative Procedure before the Board of Environmental Quality." (5-3-03)

03. Emergency Action. If the Director finds the public health, safety or welfare requires emergency action, the Director shall incorporate findings in support of such action in a written notice of emergency revocation issued to the permittee. Emergency revocation shall be effective upon receipt by the permittee. Thereafter, if requested by the permittee in writing, the Director shall provide the permittee a revocation hearing and prior notice

thereof. Such hearings shall be conducted in accordance with IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

04. Revocation and Closure. A permittee shall perform the closure requirements in a permit, the closure requirements of these rules, and complete all closure plan activities notwithstanding the revocation of the permit. (4-7-11)

9.2.4 Violations (IDAPA 58.01.17.930)

Any person violating any provision of these rules or any permit or order issued thereunder shall be liable for a civil penalty not to exceed ten thousand dollars ($10,000) or one thousand dollars ($1,000) for each day of a continuing violation, whichever is greater. In addition, pursuant to Title 39, Chapter 1, Idaho Code, any willful or negligent violation may constitute a misdemeanor. (4-1-88)

9.2.5 Severability

The provisions of this permit are severable, and if a provision or its application is declared invalid or unenforceable for any reason, that declaration will not affect the validity or enforceability of the remaining provisions.

10. Other Applicable Laws

DEQ may refer enforcement of the following provisions to the state agency authorized to enforce that rule. The permittee shall comply with all applicable provisions identified in this section. Compliance with this permit does not relieve the permittee from applicable requirements in other federal, state, and local laws, statutes, and rules.

10.1 Owner Responsibilities for Well Use and Maintenance

10.1.1 Well Use

The well owner must not operate any well in a manner that causes waste or contamination of the ground water resource. Failure to operate, maintain, knowingly allow the construction of any well in a manner that violates these rules, or failure to repair or properly decommission (abandon) any well as herein required will subject the well owner to civil penalties as provided by statute. See IDAPA 37.03.09.036.01 and consult the Idaho Department of Water Resources (IDWR) for more information.

10.1.2 Well Maintenance

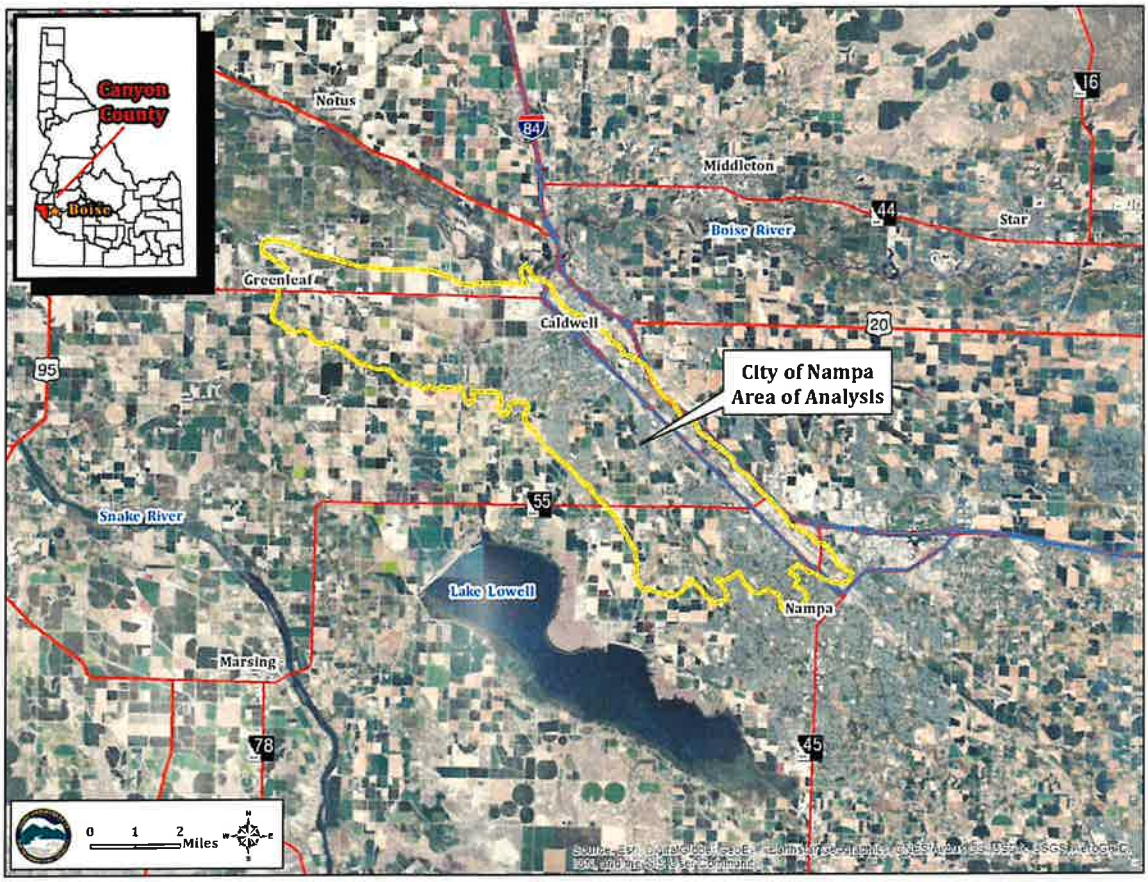
The well owner must maintain the well to prevent waste or contamination of ground waters through leaky casings, pipes, fittings, valves, pumps, seals, or through leakage around the outside of the casings, whether the leakage is above or below the land surface. Any person owning or controlling a noncompliant well must have the well repaired by a licensed well driller under a permit issued by the IDWR director according to the applicable rules. See IDAPA 37.03.09.036.02 and consult IDWR for more information.

10.1.3 Wells Posing a Threat to Human Health and Safety or Causing Contamination of the Ground Water Resource

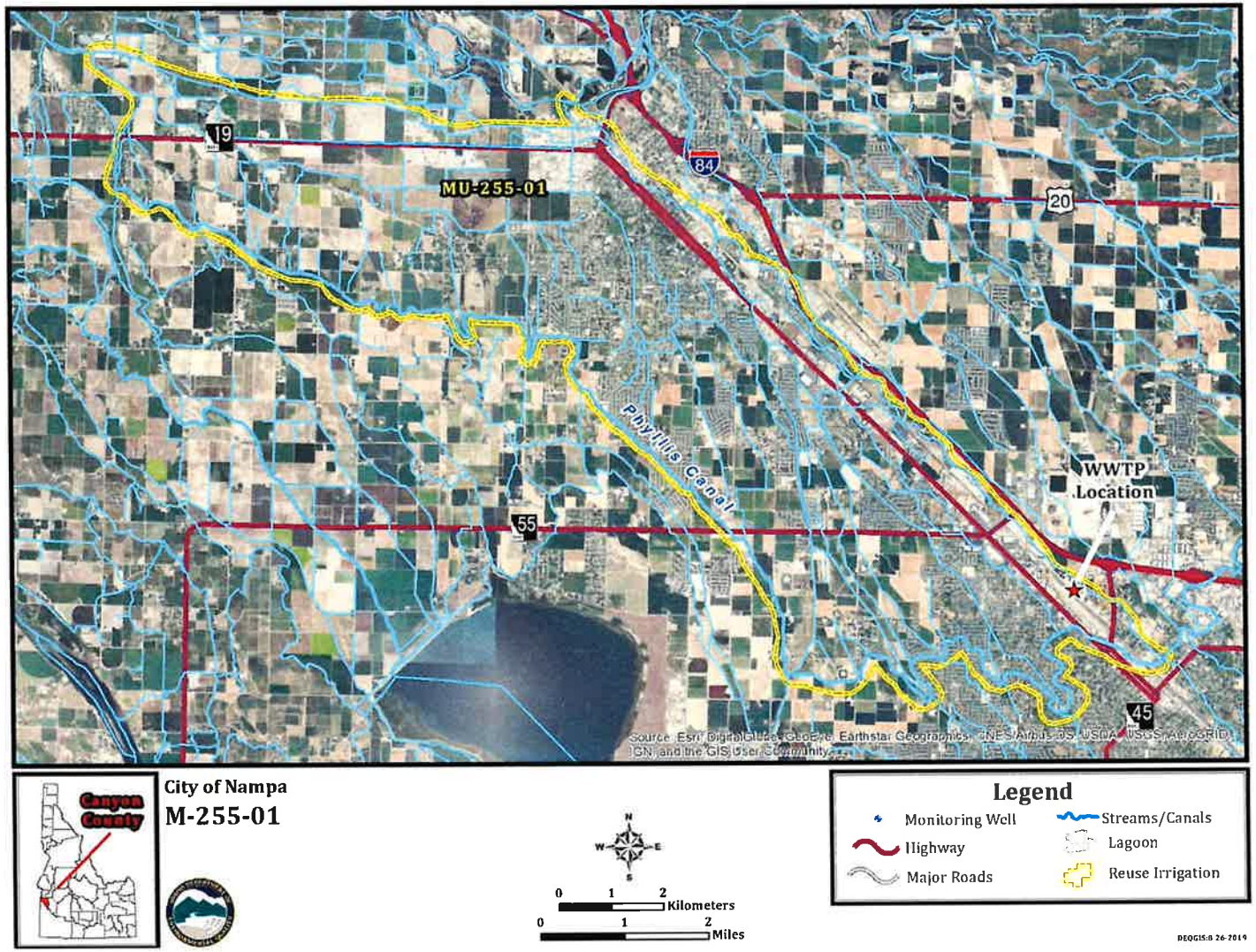
The well owner must have any well shown to pose a threat to human health and safety or cause contamination of the ground water resource immediately repaired or decommissioned (abandoned) by a licensed well driller under a permit issued by the IDWR director according to the applicable rules. See IDAPA 37.03.09.036.06 and consult IDWR for more information.

11. Site Maps

11.1 Regional Map



11.2 Facility Map(s)



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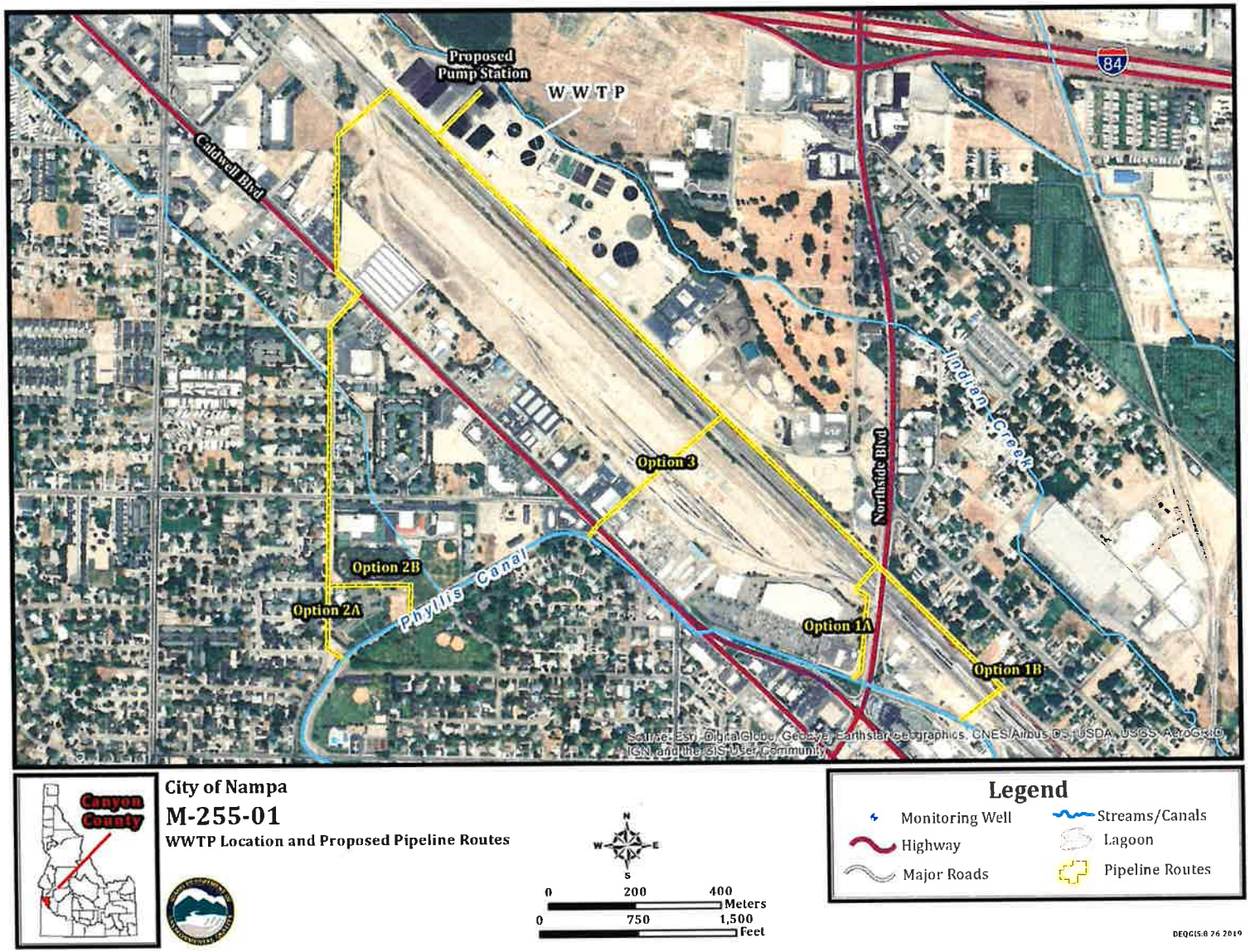
Proposed Pump Station
W W T P
Caldwell Blvd
84
Indian Creek
Northside Blvd
Option 3
Option 2B
Option 2A
Phyllis Canal
Option 1A
Option 1B
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community
Canyon County
City of Nampa
M-255-01
WWTP Location and Proposed Pipeline Routes
N
W
E
S
0 200 400 Meters
0 750 1,500 Feet
Legend
Monitoring Well
Highway
Major Roads
Streams/Canals
Lagoon
Pipeline Routes
DEQGIS:8 26 2019

00250

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RECEIVED
JUN 30 2020
DEPARTMENT OF
WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01

Docket No. P-DR-2020-01

REUSE PROPONENTS' SUBMISSION OF EXHIBIT H

Pursuant to *Reuse Proponents' Stipulation of Facts*, the Association of Idaho Cities ("AIC"), the Cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Nampa, Pocatello, Post Falls, and Rupert, and the Hayden Area Regional Sewer Board ("HARSB") (collectively, "Municipal Intervenors") and Pioneer Irrigation District ("Pioneer") hereby submit true and correct copy of the documents identified below. Municipal Intervenors and Pioneer are referred to collectively as "Reuse Proponents."

Respectfully submitted this 30th day of June, 2020.

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Christopher H. Meyer

MEMORANDUM

TO: Larry Waters, P.E., Bureau Chief, Wastewater Program
Aaron Scheff, Administrator, Boise Region
Mary Anne Nelson, Administrator, Water Quality Division
Adam Bussan, P.E., Senior Water Quality Engineer, Wastewater Program

FROM: Valerie A. Greear, P.E., Senior Water Quality Engineer, Boise Region

DATE: October 10, 2019

SUBJECT: **M-255-01 City of Nampa, Staff Analysis supporting reuse permit issuance.**

Executive Summary

The City of Nampa (City) owns and operates a municipal wastewater treatment facility that treats and discharges water to Indian Creek under a National Pollutant Discharge Elimination System (NPDES) permit (ID0022063). The City currently treats 11.6 million gallons per day (mgd) of water, and has a design flow for the year 2040 of an annual average of 18.6 mgd. The City is facing interim and final limits for total phosphorus, ammonia, and temperature in its current and upcoming NPDES permits, so the City is upgrading the treatment facility to meet these upcoming treatment requirements.

Throughout the planning, design, and construction processes for upgrading the treatment facilities, the City engaged the Nampa community through public outreach and stakeholders meetings, including meetings with the City Council and the formation of a Nampa Wastewater Advisory Group (NWAG), made up of the citizens of Nampa, and an Industrial Working Group, consisting of Nampa's industrial wastewater customers. All stakeholders had substantial input into the planning and decision making process for the upgrades to the wastewater treatment facilities, and these groups supported pursuing a recycled water program. The City passed a sewer bond in May of 2018, and the focal point of the bond stressed pursuing opportunities for industrial and irrigation reuse to make the most of the City's available water resources. The City's application for this reuse permit to use recycled water for irrigation and industrial use is the first step in implementing this water reuse concept.

The City proposes to treat water to Class A recycled water standards during the growing season, from May through September, and, via the Phyllis Canal, use that water for irrigation by the users of that canal network. The City proposes to begin this use in or around 2026 when the final total phosphorus limit becomes effective. Receipt of this permit is needed for planning purposes as the City designs and builds upgrades to their treatment facilities. With the capacity to treat water to Class A standards, the City also requested allowance to serve industrial users.

The draft permit includes requirements for Class A level filtration and UV disinfection, and requires the water to meet Class A disinfection requirements for turbidity and total coliform. The draft permit includes nutrient limits for 5-day biochemical oxygen demand (BOD_5) and total nitrogen of 10 mg/L and 30 mg/L respectively, reflecting the Class A requirements for irrigation

with recycled water. The draft permit also includes a total phosphorus limit of 0.35 mg/L, which reflects the City's winter (October through April) allocation in the Lower Boise River TMDL: 2015 Total Phosphorus Addendum.

The draft permit includes compliance activities to submit the necessary planning documents to implement this program when the City has finalized plans, and to show how the City will meet all of the Class A requirements in the "Recycled Water Rules" (IDAPA 58.01.17) prior to use of recycled water to augment Phyllis Canal irrigation water. The City will also be required to implement a Public Education Program to insure that the users of the water are aware of the origin of the water, and concept of agronomic rate for applying the Class A recycled water.

DEQ recommends issuance of a reuse permit for a 10-year permit term so that the permit will not expire before the estimated beginning of recycled water production in 2026. The draft permit will be available for a 30-day public review period prior to issuance.

1 Introduction

This memorandum satisfies the requirements of the "Recycled Water Rules" (IDAPA 58.01.17.400) for issuing reuse permits. The principal facts and significant questions considered in preparing the draft permit and a summary of the basis for the draft permit conditions are provided.

A brief summary of timelines follows:

- A pre-application conference was held on August 3, 2018.
- A draft permit application was received on November 5, 2018.
- A meeting between DEQ and the City was held on December 10, 2018 to go over DEQ's comments on the draft permit application. A follow-up meeting to review ground water was held on February 8, 2019.
- The permit application was received by DEQ on March 21, 2019.
- DEQ determined that the application was complete in a letter dated April 19, 2019, which is the effective date of the application.
- A revised Appendix E, Groundwater Quality Modelling, of the Reuse Permit Application, was received on April 26, 2019. This revision was expected, and the impending receipt was acknowledged in the April 19 completeness determination.
- A letter indicating DEQ's Preliminary Decision to issue a permit was issued on May 24, 2019.
- Drafts of the staff analysis and draft reuse permit were provided to the City on September 13, 2019. Comments were received on October 3, 2019. Minor clarifying changes were made to this document and the draft reuse permit as a result of these comments, but no changes were requested or made to the permit limits, conditions, or monitoring or reporting requirements.

Unless otherwise noted, the source of the information on the City of Nampa wastewater treatment plant (WWTP), Pioneer Irrigation District (PID) irrigation water distribution system, anticipated recycled water quality, and other information about the planned reuse come from the Recycled Water Reuse Permit Application Preliminary Technical Report (PTR) prepared for the

City of Nampa (B&C, 2019a). The other source of information is the City of Nampa Wastewater Treatment Plant Facility Plan (B&C, 2018a).

2 Site Location and Ownership

The City of Nampa's wastewater treatment facility is owned and operated by the City and is located on the north side of Nampa, next to Indian Creek (Figure 1). The facility has an EPA NPDES permit (ID0022063) which allows discharge of treated water to Indian Creek.

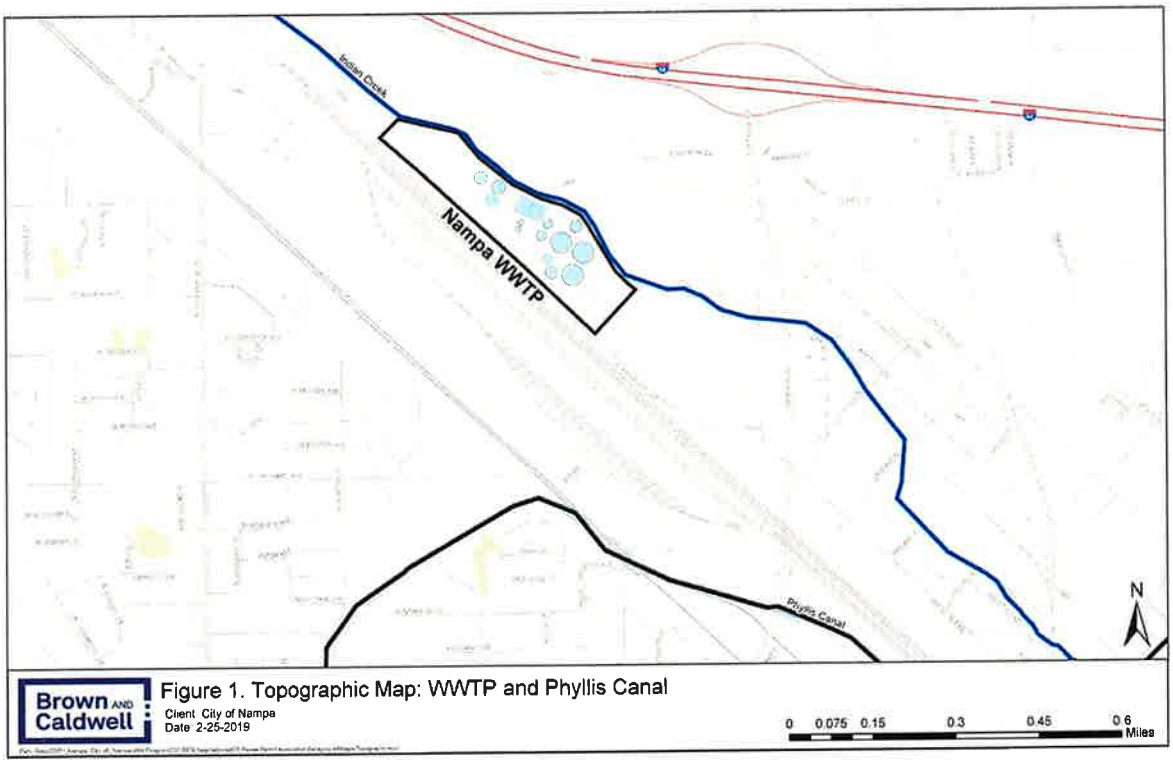

Figure 1 Site map (B&C, 2019a).

3 Process Description

The proposed recycled water reuse will be to add Class A quality water to the Phyllis Canal to augment the water supply PID distributes to water users, including City municipal irrigation utility customers. The City also anticipates providing approximately 1-2 mgd of Class A water year-round for use by industrial users.

Class A water is defined in the Recycled Water Rules, IDAPA 58.01.17.601.01, by the quality to which it is treated. Class A water is the highest quality of treated water for use as recycled water. To summarize, Class A water is municipal wastewater that has been oxidized, coagulated, clarified and filtered, and disinfected by either chlorine or ultra-violet (UV) light. The filtered water must meet turbidity standards prior to chlorination or UV disinfection in order to ensure that water can be sufficiently disinfected. Disinfection of water is shown by process parameters

such as UV transmittance or chlorine contact time, depending on the method of disinfection. Class A water is required to be tested for total coliform daily, and have results of less than 2.2 total coliform organisms per 100 milliliters (mL) as a median of the previous 7 days, with no sample exceeding 23 organisms per 100 mL.

Further treatment limits defined in the rules include limits on nitrogen, 5-day biochemical oxygen demand (BOD_5), and pH. These parameters are discussed in further detail in the following sections.

The City currently discharges treated water to Indian Creek under the City's NPDES permit, ID0022063. The current NPDES permit was issued September 20, 2016, effective November 1, 2016 to October 31, 2021, and includes discharge limits by season. The NPDES permit has interim limits that the City must meet for total phosphorus, temperature, mercury and copper. The final limits, also presented in the NPDES permit, include temperature limits and phosphorus limits that are effective during the growing season (EPA, 2016). Because of this, and for the benefit of PID and City irrigation utility customers, the City is planning to upgrade and increase the water treatment level so that it can be reused during the growing season of May through September, and not discharged to Indian Creek during that time.

3.1 Current and Future Wastewater Flow and Load Characteristics

Water treated at the City's WWTP comes from domestic dischargers, industrial dischargers, infiltration and inflow (I/I) from seasonal irrigation sources, and I/I from sources other than irrigation uses. Industrial dischargers include food processing plants, sanitation, and technology industries. These dischargers tend to be higher strength in terms of biochemical oxygen demand (BOD), total suspended solids (TSS), total Kjeldahl nitrogen (TKN) (organic nitrogen plus ammonia-nitrogen), and total phosphorus. Non-seasonal I/I is driven by precipitation and ground water variations independent of irrigation influences. Flow is highest from June to January because of irrigation and industrial food processors' peak discharge during the late fall and winter. The current flow is 11.6 mgd on an annual average, with a peak day flow of 16.6 mgd. The characteristics of the current influent flows and loads are shown in Table 1.

Table 1. Nampa WWTP Current Influent Flows and Annual Average Loads (B&C, 2019a)

	Annual Average mgd	Maximum Month mgd	Peak Day mgd	BOD lbs/day	TSS lbs/day	TKN lbs/day	TP lbs/day
Domestic	7.67	7.67	7.67	16,132	17,807	2,524	373
Industrial	2.82	2.82	4.23	20,389	10,632	1,988	345
Irrigation related I/I	0.95	2.28	2.38				
Non-Irrigation I/I	0.14	0.34	2.30				
Total Influent	11.6	13.1	16.6	36,521	28,439	4,512	718

BOD: Biochemical Oxygen Demand; TSS: Total Suspended Solids; TKN: Total Kjeldahl Nitrogen; TP: Total Phosphorus, I/I: Sewer Infiltration and Infiltration; mgd: million gallons per day

The City began planning upgrades to the WWTP in 2010 and completed a wastewater treatment facility plan in 2012. The improvements recommended in the 2012 facility plan were implemented in the design and construction of the Phase I upgrades of the WWTP.

The City completed a new wastewater treatment facility plan in 2017, which provides a plan for the upgrades to the WWTP to serve the City through 2040. The characteristics of the 2040 (design year) influent flows and loads are shown in Table 2.

Table 2. Nampa WWTP 2040 Influent Flow and Annual Average Loading Projections (B&C, 2019a)

	Annual Average mgd	Maximum Month mgd	Peak Day mgd	BOD lbs/day	TSS lbs/day	TKN lbs/day	TP lbs/day
Domestic	13.69	13.69	13.69	38,652	35,330	4,693	708
Industrial	3.8	3.8	5.7	32,907	23,150	2,906	762
Irrigation related I/I	0.95	2.28	2.38				
Non-Irrigation I/I	0.14	0.34	2.30				
Total Influent	18.6	20.1	24.1	63,560	65,040	7,600	1,470

BOD: Biochemical Oxygen Demand; TSS: Total Suspended Solids; TKN: Total Kjeldahl Nitrogen; TP: Total Phosphorus, I/I: Sewer Infiltration and Infiltration; mgd: million gallons per day

Throughout all the planning, design, and construction processes, the City engaged the Nampa community through public outreach and stakeholders meetings, including meetings with the City Council, and the formation of a Nampa Wastewater Advisory Group (NWAG), made up of the citizens of Nampa, and an Industrial Working Group, consisting of Nampa's industrial wastewater customers. All these stakeholders had substantial input into the planning and decision making process for the upgrades to the wastewater treatment facilities and the reuse facilities.

3.2 Wastewater Treatment Process Description

3.2.1 WWTP Phase I Upgrades

The WWTP is a secondary treatment facility. Construction of Phase I of the WWTP upgrades began in 2015 and is nearing completion. Upon completion of the Phase I WWTP upgrades, the wastewater treatment processes include influent screening and grit removal, followed by primary clarification. Primary treatment is followed by secondary treatment utilizing an enhanced activated sludge process for the biological oxidation of organics and the biological removal of nitrogen and phosphorus, and secondary clarification. Secondary effluent is disinfected by chlorine and then dechlorinated and aerated prior to the discharge of the final treated effluent into Indian Creek.

The processes for handling the solids generated by the wastewater treatment processes will consist of thickening of waste activated sludge by rotary drum thickeners, and the anaerobic digestion of primary sludge and the thickened waste activated sludge. The digested sludge (Class B biosolids) is then dewatered in centrifuges, and disposed of off-site. Solids handling is discussed further in Section 5.3.

3.2.2 WWTP Phase II Upgrades

The WWTP upgrades to produce Class A recycled water will include the addition of tertiary filtration after secondary treatment and additional disinfection to achieve the required 5-log inactivation of virus. Phase II of the WWTP upgrades will include these processes and other upgrades to meet the NPDES permit limits, provide capacity for future increases of the flows and

loads due to growth, and provide for the replacement of aging equipment, as addressed in the Facility Plan (B&C, 2018a).

The WWTP Phase II upgrades will include:

- Upgrades to the headworks and primary clarifies
- Additional secondary treatment capacity (additional aeration basin, additional secondary clarifier, and additional appurtenant equipment [pumps, blowers, etc.])
- New tertiary filtration
- New UV light disinfection
- A new irrigation reuse pump station and force main
- A new industrial reuse pump station and force main
- Additional anaerobic digestion capacity and digested sludge storage capacity
- Expansion of the solids handling facilities (additional rotary drum thickeners and centrifuges).

The treated water design criteria for the WWTP Phase II upgrades to produce Class A recycled water in the summer and for NPDES discharge to Indian Creek in the winter are presented in Table 3.

Table 3. Nampa Treated Water Design Conditions (B&C, 2019a)

Parameter	Summer Design Condition – Recycled Water Reuse	Winter Design Condition – NPDES Discharge
Maximum Monthly Flow	20.1 mgd	20.1 mgd
Effluent TSS	Monthly average: 30 mg/L Weekly average: 45 mg/L 4-month average: 17.5 mg/L	Monthly average: 30 mg/L Weekly average: 45 mg/L 4-month average: 17.5 mg/L
Effluent BOD_5	Monthly average: 10 mg/L	Monthly average: 30 mg/L Weekly average: 45 mg/L
Effluent Total Phosphorus	0.35 mg/L	Monthly average: 52.4 lbs/day (0.35 mg/L)[a]
Effluent Total Nitrogen	30 mg/L	30 mg/L
Effluent Ammonia	Monthly average: 1.31 mg/L (March–November) Daily maximum: 4.92 mg/L (March–November)	Monthly average: 1.41 mg/L (December–February) Monthly average: 1.31 mg/L (March–November) Daily maximum: 5.31 mg/L (December–February) Daily maximum: 4.92 mg/L (March–November)
Other	Class A Recycled Water requirements[b]	Class A recycled water reuse for industrial reuse (1-2 mgd)[b]

a. The City's NPDES permit contains an interim Total Phosphorus limit of 0.5 mg/L monthly average May-September and 1.5 mg/L monthly average October-April. Additionally the final effluent limit is only in lb/day; the concentration is provided for reference only.
b. The Class A recycled water requirements are defined in the Recycled Water Rules, IDAPA 58.01.17.601.01. Also see Table 5.

Figure 2 presents a liquid stream process flow diagram for the WWTP after completion of the Phase II upgrades.

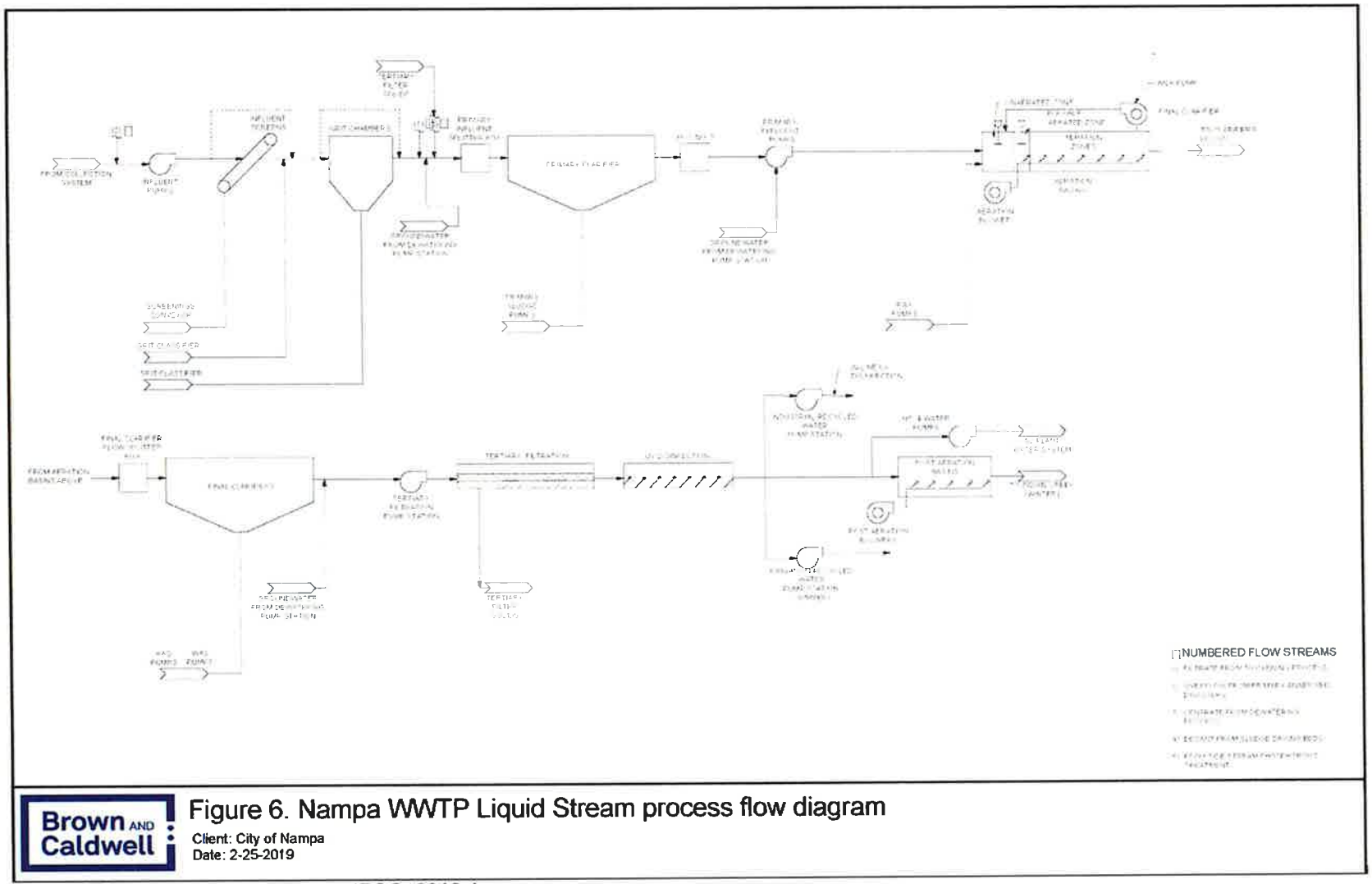

Figure 2. Process water treatment (B&C, 2019a).

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3.3 Reuse Process Description

Through an extensive public engagement process (see Section 3.1), city officials and citizens decided to utilize their treated recycled water for augmentation of irrigation water during the growing season, and pursue opportunities for industrial reuse year-round. In a letter from the City: "The NWAG and IWG worked to identify priorities for the City's water re-sources and capital investment in the next generation of wastewater treatment for Nampa. These groups overwhelmingly supported pursuing a recycled water program due to the positive community outcomes and environmental benefits." (Points, 2019) The City also states that they have committed financially to the next phase of WWTP improvements through a bond election that passed with an 87% yes vote, and the "focal point of the sewer bond funding stressed pursuing opportunities for industrial and irrigation reuse to make the most of the City's available water resources." (Points, 2019)

The City has applied for a reuse permit to add Class A water to the Phyllis Canal from May 1 to September 30. The maximum design flow is 31 cubic feet per second (cfs). The area served below the discharge point is approximately 17,000 acres of municipal and agricultural irrigation uses, including Nampa's pressurized irrigation system.

The area within the red polygon in Figure 3, referred to as the Area of Analysis, shows the PID service area downstream from the proposed recycled water discharge point with an approximately ¼-mile buffer of the area. Customers served by PID include the cities of Nampa and Caldwell; both cities have several pump stations and diversions along the Phyllis Canal and associated drains and laterals supply irrigation water to each irrigation utility customer. Other major customers include unincorporated subdivisions, private residences and farms. Downstream irrigation districts include Riverside Irrigation District and the Black Canyon Irrigation District. These districts rely heavily on irrigation water and return flows (both surface water and shallow ground water) managed by PID. The uses of this water are further discussed in Section 4.5.1 and Appendix B.

The City and the PID, the owner and operator of Phyllis Canal, have entered into an agreement signed March 8, 2018 for receipt and use of Class A recycled water from the City to the Phyllis Canal at flows up to 41 cfs on an annual average between May 1 and October 1. The agreement was included in the PTR. The agreement is ongoing unless either party terminates per specific terms within the agreement.

A map developed by the Idaho Department of Water Resources that identifies the jurisdictions of all irrigation companies and cooperatives operating in Canyon County is included in Appendix A. Figure 12 shows crop coverage and land use within the Area of Analysis; this is discussed further in Section 4.6.

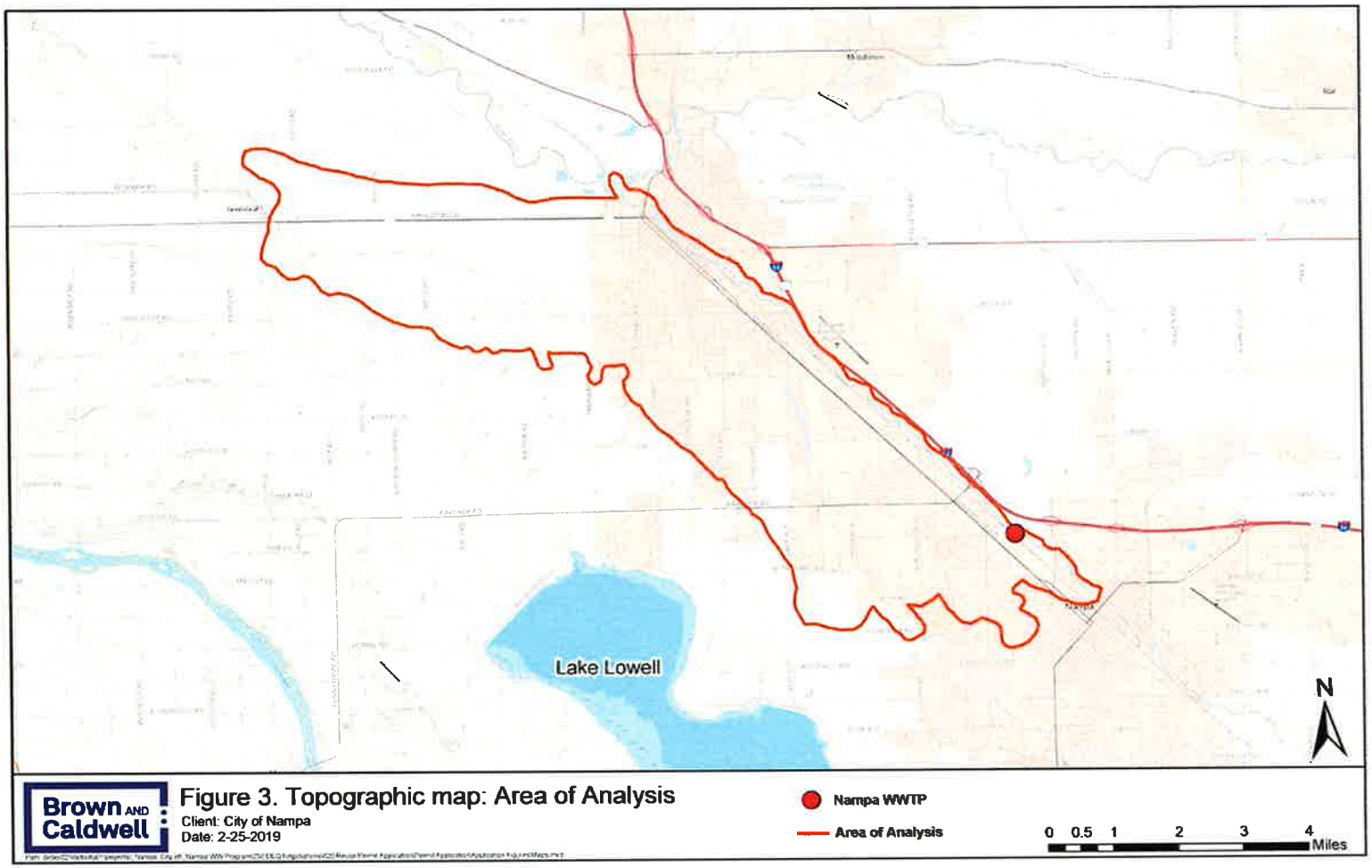

Figure 3. Recycled water application Area of Analysis (B&C, 2019a)

00268

4 Site Characteristics

4.1 Site History

A discussion of the recent history of the City's WWTP is in Section 3. The PID was established in 1901 and serves approximately 34,000 acres in western Ada County and Canyon County, including the City's pressurized irrigation system.

4.2 Climatic Characteristics

The climatic characteristics are described in detail in section 7.2 of the PTR. The data is taken from the weather station located in Nampa, ID.

The average annual precipitation is 11.2 inches per year, of which 8.13 inches occur during the non-growing season (October 1 through April 30). The annual average maximum temperature is 64.6 °F and annual average minimum temperature is 37.5 °F. Additional meteorological data can be found at: *http://www.wrcc.dri.edu/summary/climsmid.html.*

4.3 Soils

Soil types present are described in section 7.3 of the permit application. The area for reuse is large, and therefore the soils vary, but the land where the recycled water will be applied is mostly farmland. The PTR summarized the soil using the Geologic Map of the Boise Valley and Adjoining Area, Western Snake River Plan, Idaho, which can be seen at *https://www.idahogeology.org/product/gm-18* (Othberg, 1992).

The soils consist primarily of silt loams including Power, Greenleaf-Owyhee, Purdam, Bram series, and Baldock loam. The soils are well drained except where depth to ground water is shallow and soils are saturated. Soil depths range from 60-65 inches. Infiltration rates are moderately high except for Purdam which commonly has a cement layer at 20-40 inches below ground surface (bgs) that limits infiltration rates to very low to moderately low. Soils range from non-saline to very saline.

Figure 4 shows the area covered by the Area of Analysis shown in Figure 3 from Nampa in the lower right to Wilder in the upper left. The solid line indicates the approximate upper limit of the Bonneville Flood slack water. The following geologic units comprise the Area of Analysis, as labeled in Figure 4.

- Qwgs, Qwig: Sandy Silt of Bonneville Flood Slack Water
- Qa: Alluvium of Boise and Snake River
- Qbgc: Clay of Bonneville Slack Water
- Qas: Sandy Alluvium of Side-Stream Valleys and Gulches
- Qibs: Basalt Flows of Indian Creek buried by Loess and Stream Sediments

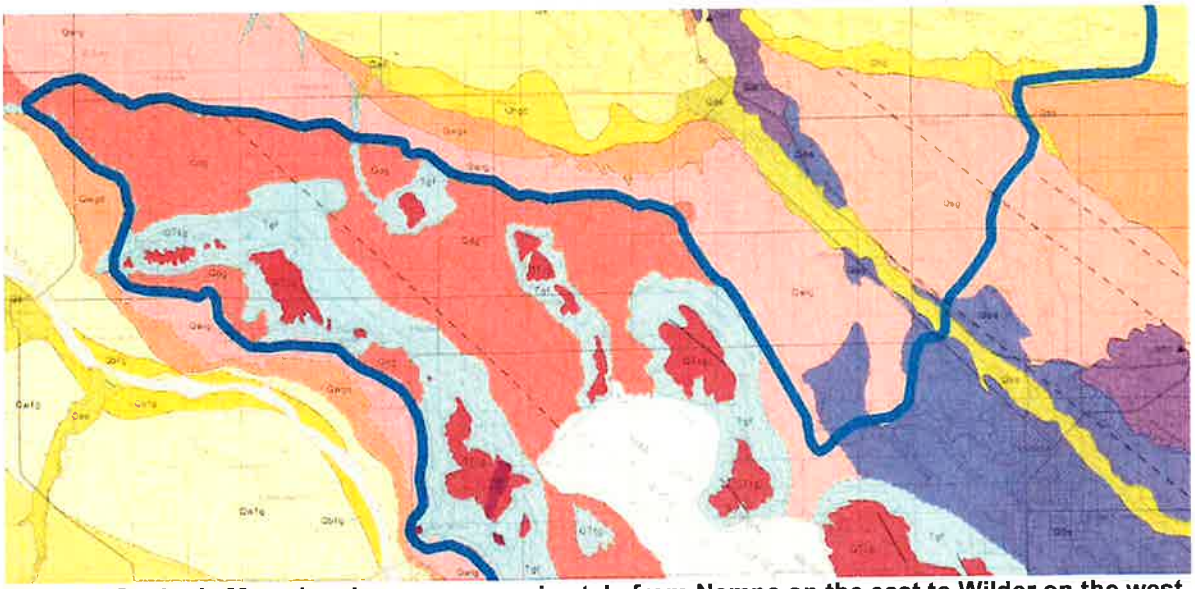

Figure 4 Geologic Map showing area approximately from Nampa on the east to Wilder on the west (Othberg, 1992)

The soils in the Area of Analysis are suitable for irrigation, as evidenced by successfully irrigated agriculture operations within the area.

4.4 Ground Water and Hydrogeology

There are several layers of aquifers within the Phyllis Canal area of analysis (Figure 3). The shallow layer is generally comprised of sand and gravel. A deeper layer, often separated from the shallow aquifer by layers of clay, is where private domestic wells are often drilled. Below 250 feet is considered the regional aquifer, which is confined or semi-confined and productive. Recharge to the deeper aquifers occurs in the eastern part of the Treasure Valley, with some recharge as underflow from the Boise Foothills to the north. Discharge from the regional system is primarily to the Boise or Snake Rivers to the west.

The area of analysis is located within the Ada Canyon Nitrate Priority Area. That area is designated as such based on nitrate levels in local wells of varying depths, with approximately half of the wells with recorded depths being less than 100 feet bgs, and 10% less than 50 ft bgs. Some drinking water supply wells are shown in Figure 8 and discussed in Section 4.4.2.

The shallow aquifer is recharged primarily from seepage from the canal system and infiltration associated with irrigated agriculture (Petrich & Urban, 2004). The PTR indicates that depth to first water ranges from 5 to 35 feet bgs, and this ground water flows generally to the west or northwest. Discharge from the shallow aquifer occurs at drains and streams in the area.

The primary path for constituents of concern to enter the ground water is through the bottom of the canal. This was modeled; the results and analysis are provided in the PTR and discussed in Section 4.4.1. Nutrient loading from irrigation with recycled water is discussed in Section 4.6.3 and shows that nutrient loading will be low and crop uptake of those nutrients will exceed application, so ground water impacts are not expected.

4.4.1 Ground Water Contaminant Transport Modeling

Contaminant transport modeling was conducted to assess the impact to ground water from canal seepage for nitrogen and total dissolved solids (TDS). Nitrate and TDS have ground water quality standards of 10 mg/L and 500 mg/L respectively in the "Ground Water Quality Rule" (IDAPA 58.01.11). The impact from total nitrogen was modeled at the proposed permit limit of 30 mg/L, and TDS was modeled at the anticipated discharge level of 700 mg/L. Background ground water quality was derived from data in the State of Idaho's Environmental Data Management System for wells within the vicinity of where Class A water will be added to the Phyllis Canal, and filtered to include only wells in the shallow aquifer that were sampled within the past 10 years. Water quality and flow conditions in the Phyllis Canal change quickly with distance (see Section 4.4.1), so the model focused on the area just downstream of where recycled water will be added to the Phyllis Canal. Nearby wells, local geology, ground water flow contours and model domain are shown in Figure 8 and Figure 9.

Understanding how ground water moves under a land treatment site and transports constituents is important when conducting predictive modeling. It was determined in a February 8, 2019 meeting with DEQ and Brown and Caldwell staff that contaminant transport modeling would be appropriate to make preliminary assessments of the feasibility of the proposed activity in its hydrogeologic setting. Appendix E: Groundwater Modeling, of the Recycled Water Reuse Permit Application, dated April 24, 2019 (B&C, 2019a), was submitted for review by DEQ.

The Reuse System Modeling Tool was used to make estimates of the degree of ground water impacts that may result from the operation of this proposed recycled water reuse facility. There are two modules of this tool, the Nutrient/Hydraulic Balance module and the Contaminant Transport module. The tool consists of two spreadsheet workbooks and documentation. Detailed instructions for use, general description of model functions, and description/definitions of input parameters are found in *Wastewater Land Treatment System Modeling* (DEQ, 2018). Understanding of the documentation and working knowledge of the model are necessary to evaluate permit-related submittals utilizing the model.

The Nutrient/Hydraulic Balance module uses meteorological, site, and crop inputs to calculate both hydraulic balances and nutrient balances on an annualized basis. Generally, longer-term average meteorological data are used in the model. This is because it is thought that over the longer-term use of a reuse site, varying conditions and resulting environmental impacts will tend to be buffered. Meteorological data include precipitation (PPT), evapotranspiration (actual) (ET_{act}), and net irrigation requirement (P_{def}). The hydraulic and nutrient balance yields a percolate flow and concentration of a constituent of concern. The percolate concentration and flow are primary inputs into the contaminant transport module.

The Contaminant Transport module uses aquifer parameters, ground water quality information, site geometry, and percolate concentration and volume to calculate both an initial source concentration at the down gradient boundary of the field being modeled, as well as concentrations in ground water down gradient of the source. A vertical planar source representing a cross-sectional discharge area oriented perpendicular to ground water flow and vertically at the source boundary is defined through modeling inputs. The mixed percolate and ground water discharges through this planar source into down gradient ground water, as shown

in Figure 5. Domenico equations are utilized to determine concentrations of down gradient ground water mixing with this source through advection and dispersion.

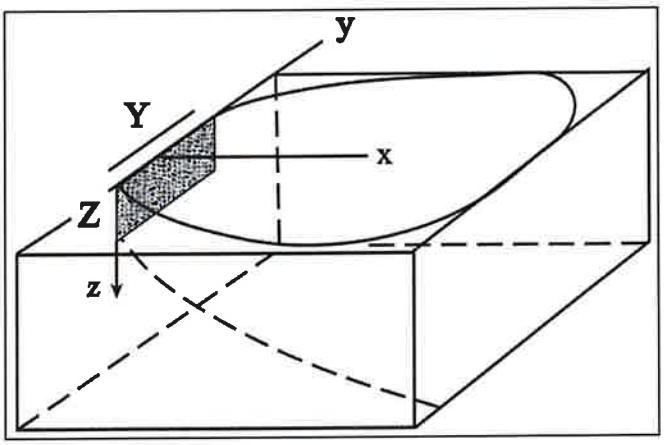

Figure 5. Planar Source and Coordinate System for a Contaminant Plume.

Model assumptions and input parameters are discussed in detail in the PTR. Both nitrogen and TDS were modeled at the levels that are proposed for discharge. Two scenarios for each were modeled: one where the canal runs parallel to ground water flow, and a second where the canal runs perpendicular to ground water flow. For both nitrogen and TDS, the more conservative scenario (i.e., the scenario yielding the highest final mixed concentration of ground water and percolate) was that for the canal running perpendicular to ground water flow. In both nitrogen and TDS scenarios, the concentration of percolate was predicted to be less than that of the ambient ground water concentrations. This resulted in model output showing slight decreases in constituent ground water concentrations, for both constituents modeled – that is, a minor improvement in ground water quality with respect to nitrate-N and TDS, associated with percolate mixing.

The output of the Reuse System Model is shown in Figure 6 and Figure 7. Figure 6 shows nitrate-N concentration at the top of the aquifer along the plume centerline in ground water increasing, asymptotically approaching ambient ground water quality, as the distance from the reuse site downgradient boundary increases. This is due to dispersion and advection processes. The horizontal blue dashed line represents the upgradient nitrate concentration. The vertical red dashed line represents the location of a receptor (such as a domestic well). The five curves represent a sensitivity analysis for different values of aquifer hydraulic conductivity.

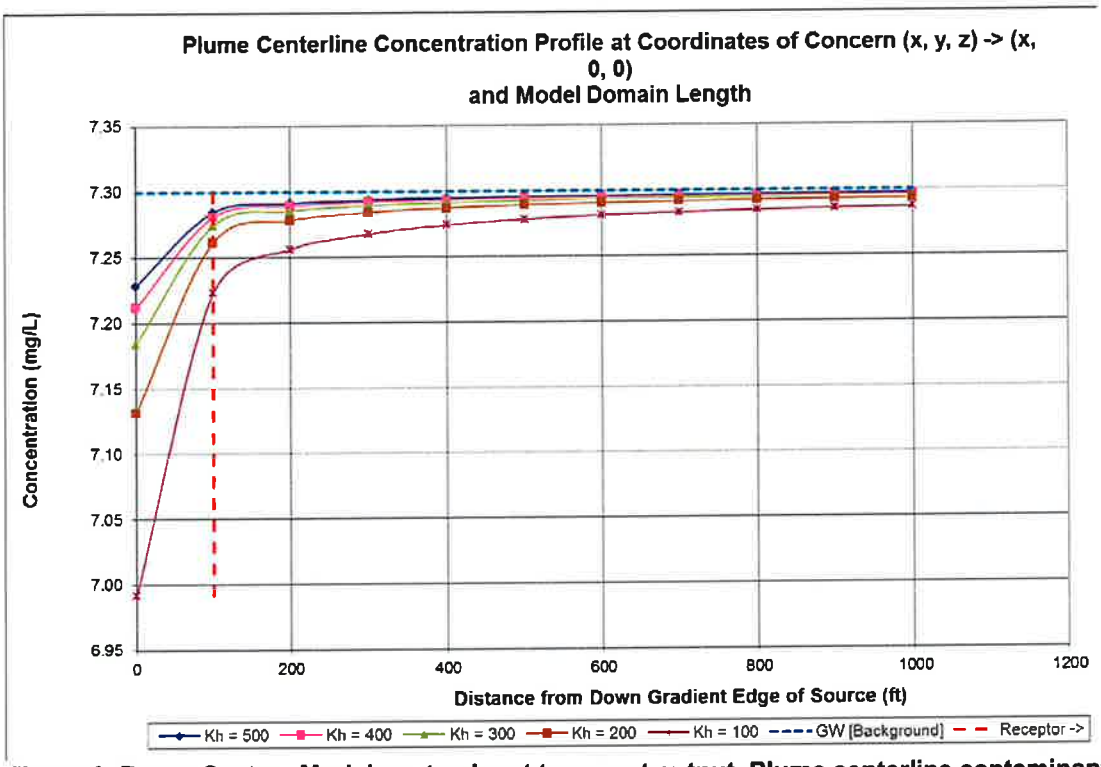

Figure 6. Reuse System Model contaminant transport output. Plume centerline contaminant concentrations for five different aquifer hydraulic conductivity values.

Figure 7 shows vertical contaminant gradient concentrations at a select point (e.g., at a receptor such as a domestic well) along the plume centerline for five different aquifer hydraulic conductivity values. Nitrate-N concentration in ground water increases with depth of the aquifer, asymptotically approaching ambient ground water quality levels. This is due to dispersion and advection processes. The vertical blue dashed line represents upgradient nitrate concentration. The horizontal brown dashed line represents the bottom of the aquifer. The five curves represent a sensitivity analysis for different values of aquifer hydraulic conductivity.

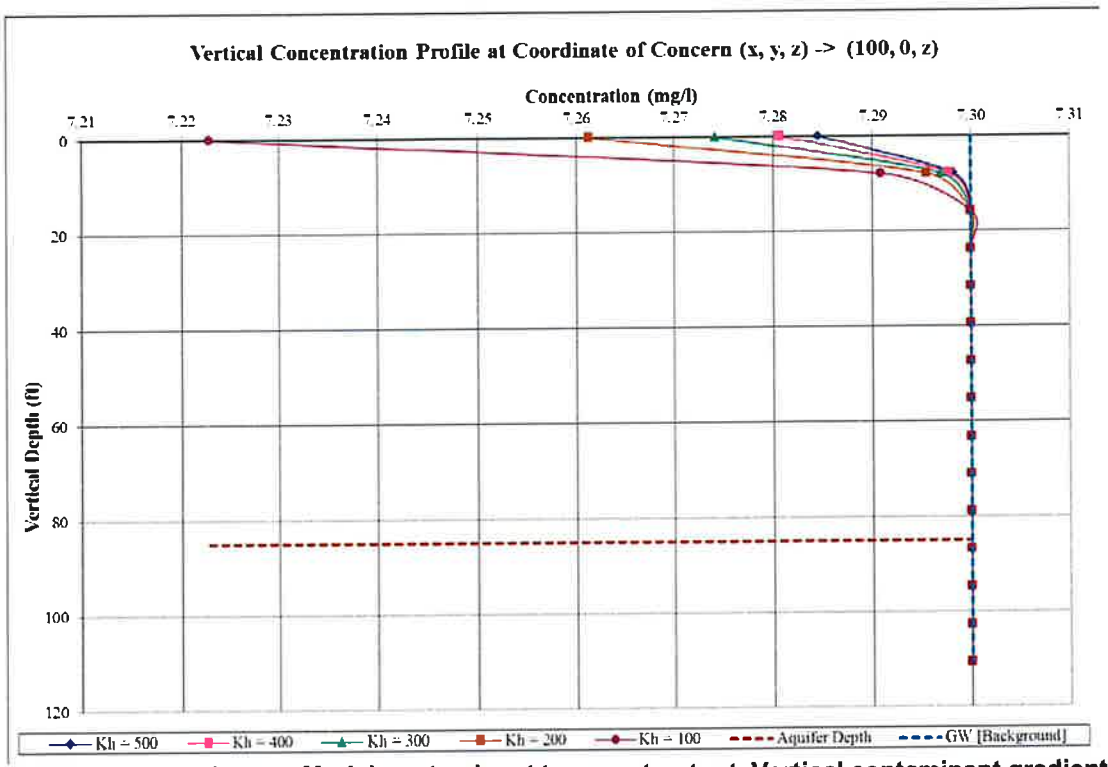

Figure 7. Reuse System Model contaminant transport output. Vertical contaminant gradient concentrations at a select point along the plume centerline for five different aquifer hydraulic conductivity values

Therefore, as shown, ground water is not expected to be negatively impacted by the proposed recycled water reuse.

4.4.2 Drinking Water Wells

There are many public and private wells within the Area of Analysis as shown on Figure 8 and Figure 9. The PTR includes a discussion of the City's public water supply (PWS) wells, and states that the 15.0 Lateral is the closest lateral to two of these wells, at distances of 500 feet and 2,500 feet. PWS wells are well protected from surface contamination around the wellhead due to construction and well siting requirements in the Idaho Rules for Public Drinking Water Systems, IDAPA 58.01.02, such as that requiring the wells be sealed to 58 feet below ground surface.

As discussed above, the aquifer where private domestic wells are often drilled is separated from the shallow aquifer by layers of clay, which protect that water source from contaminants that may infiltrate into the shallow aquifer. Private domestic wells may be vulnerable to contamination due to varying conditions of the well casing, or quality of the seal however.

As discussed in Section 4.4.1, the proposed recycled water reuse is protective of ground water. However, for the overall benefit to the public, staff recommends that the City include information on wellhead protection as part of its Public Education Program (section 5.7).

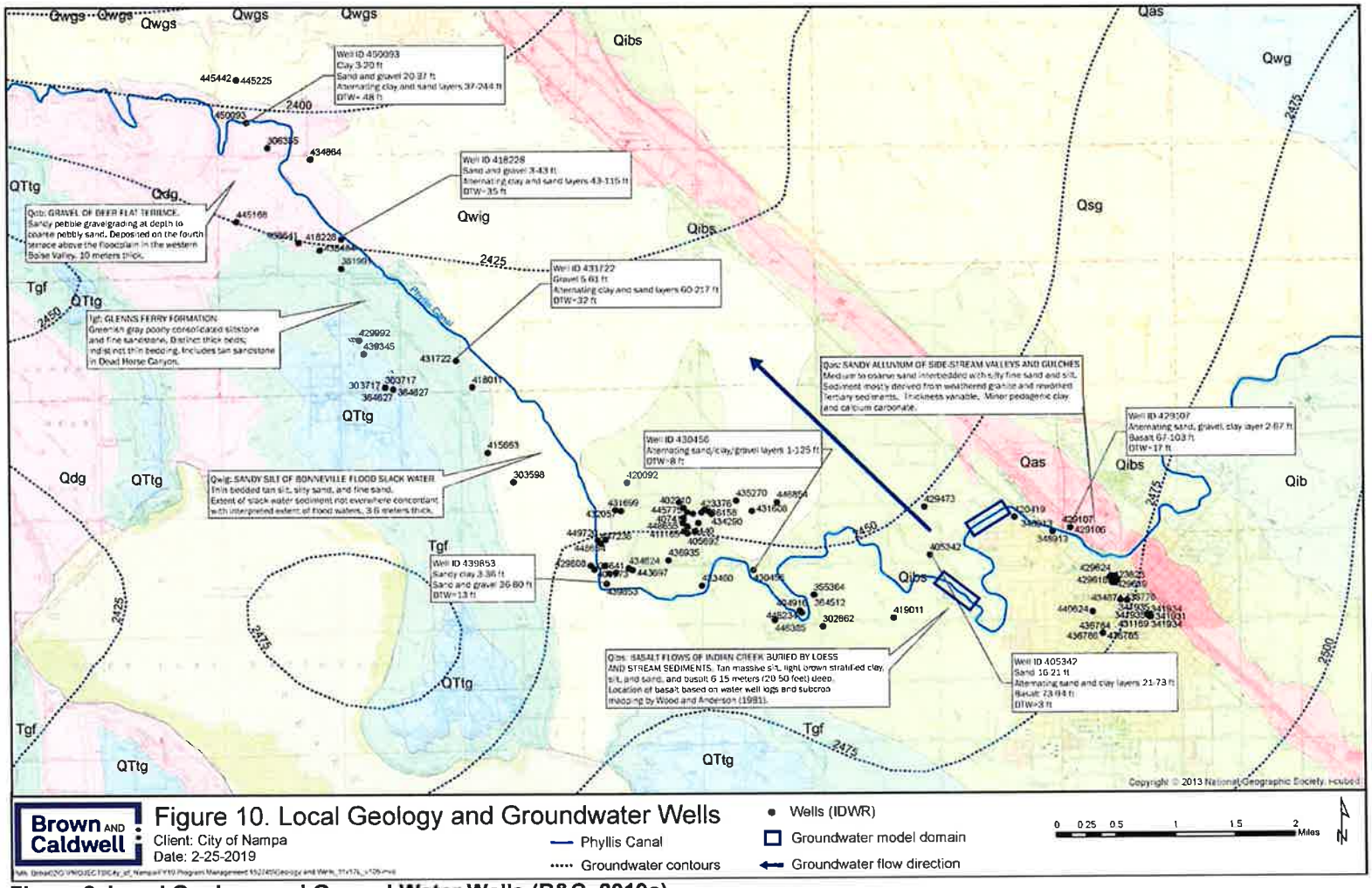

Figure 8. Local Geology and Ground Water Wells (B&C, 2019a)

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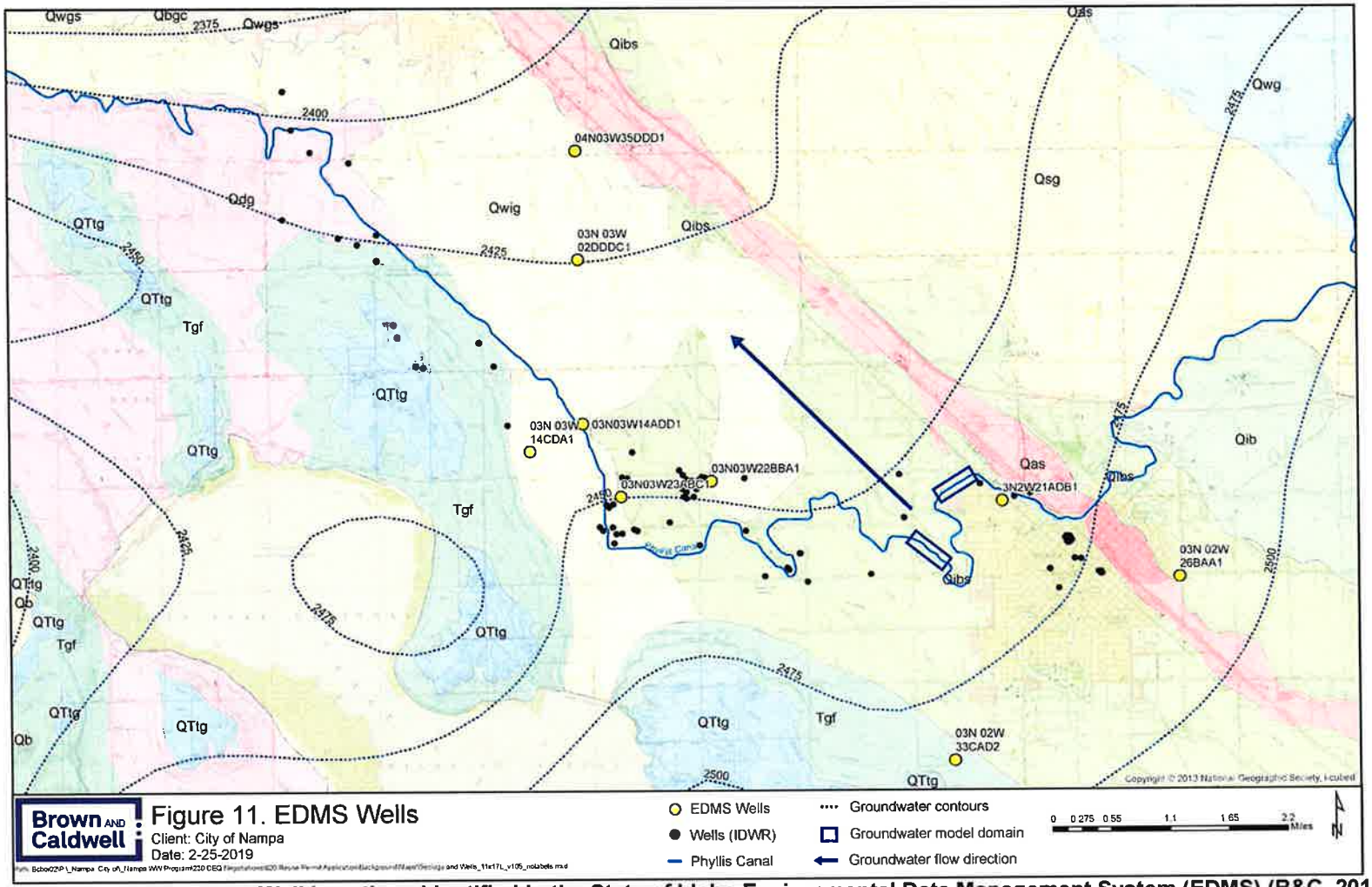

Figure 9. Ground Water Well Locations identified in the State of Idaho Environmental Data Management System (EDMS) (B&C, 2019a)

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4.5 Surface Water

Surface water is discussed in Section 7.5 of the PTR. The area of analysis (Figure 3) is located on the western Snake River Plain geographical feature as northwest-trending basin bounded by normal faults. The Lower Snake River Valley slopes downward from southeast to northwest. The irrigation conveyances within the area of analysis distribute and drain water almost exclusively to the north and west through a network of canals, laterals, and drains (B&C, 2019a).

The Nampa WWTP discharges to Indian Creek currently, and will continue to do so during the defined non-growing season of October 1 to April 30.

The Pioneer Irrigation District (PID) provides irrigation service to approximately 34,000 acres in western Ada County and Canyon County; 22,000 acres of this is downstream of the City's proposed discharge point to Phyllis Canal. The Phyllis Canal distributes irrigation water to approximately 17,000 acres north and west within the PID, ultimately discharging to tributaries of the Riverside Canal in Caldwell and other irrigation facilities west to Greenleaf.

The Phyllis Canal is a man-made canal diverting water from the Boise River near Eagle Island and extending west through Canyon County to Greenleaf where it discharges into the West End Drain via Pipe Gulch Drain. The West End Drain ultimately discharges into the Riverside Canal. At the proposed point of discharge of recycled water to Phyllis Canal, the flow is maintained at around 200 cfs throughout the irrigation season and distributed through the PID service area via a system of laterals, ditches, drains and pumps to agricultural and residential customers. At the terminus of the Phyllis Canal near Greenleaf, the remaining flow is drained into Pipe Gulch Drain at around 2-4 cfs.

Figure 10 shows a conceptual diagram of surface waters and irrigation conveyances, and Table 4 shows the flows at each diversion of the canal. In addition, two maps of the Phyllis Canal and the associated laterals and diversions are included in Appendix B. Section 4.5.1 goes into further detail about Phyllis Canal.

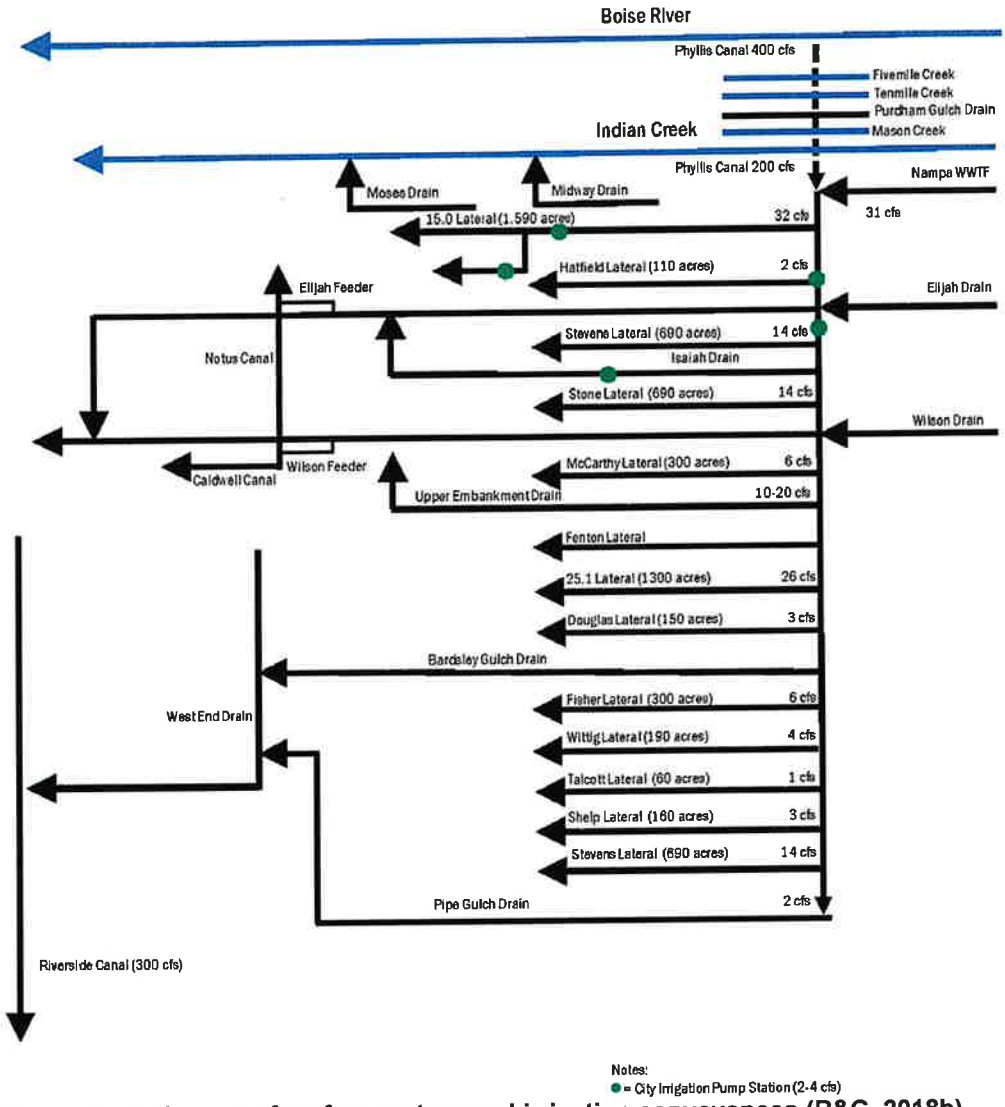

Figure 10 Conceptual diagram of surface waters and irrigation conveyances (B&C, 2018b)

Table 4 Phyllis Canal Diversions and Inputs (B&C, 2019a, pp. 7-8)

Diversion	Diversions (cfs)	Inputs (cfs)
Main Phyllis Canal Deliveries (Indian to Smith)	6	
15.0 Lateral	31.76	
Hatfield Lateral	2.25	
Pumping from Elijah Drain		10
Wilde Lateral	1.32	
Stevens Lateral	13.85	
Stone Lateral	13.8	
Pumping from Wilson Drain		15
Individual headgate deliveries (Smith Road to tail)	63.4	
McCarthy Lateral	5.94	
25.1 Lateral	26	
Small returns from irrigated land on south side of Phyllis Canal		30-40
Lonkey Lateral	1.83	
Mesler Lateral	7.17	
Douglas Lateral	3.03	
Cowling Lateral	0.81	
Torbett Lateral	3.21	
Hitchcock Lateral	1.74	
Smiley Lateral	1.76	
Return flow from Deer Flat Canal		10-20
Fisher Lateral	5.96	
Whittig Lateral	3.72	
Talcott Lateral	1.21	
Shelp Lateral	3.23	
Pipe Gulch Lateral	4.26	
Total	-206.25	+65-75

Several other major canals within the Area of Analysis, shown on Figure 10, are discussed in the PTR. Notus Canal, owned and operated by Black Canyon Irrigation District, serves 184 acres of land on the north side of Caldwell, and north and east of Notus. The Caldwell Highline Canal is owned and operated by PID and provides irrigation water north and east of Caldwell and north of Nampa. Riverside Canal, owned and operated by the Riverside Irrigation District, winds through Caldwell through western Canyon County to the Snake River.

Other nearby surface water includes the Lower Boise River and Indian Creek. The Lower Boise River drains 1,290 square miles of rangeland, agricultural fields, forests, and urban areas, and provides fresh water for recreation, municipal supply, environmental flows, hydropower, and agricultural irrigation. The agricultural irrigation conveyance system is a network of canals and laterals; organizations responsible for water allocation and distribution include irrigation districts, canal companies, ditch companies, and individual irrigators.

According to Idaho's Water Quality Standards, the designated uses for the Lower Boise River from Indian Creek's confluence to the river's mouth (SW-1) include cold water aquatic life and primary contact recreation. Cold water aquatic life is defined by water quality appropriate for the protection and maintenance of a viable aquatic life community for cold water species. Primary contact recreation refers to 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 (IDAPA 58.01.02 Section 100).

Indian Creek from Sugar Avenue to its confluence with the Boise River (SW-2) is designated for cold water aquatic life and secondary contact recreation. Secondary contact recreation refers to water quality appropriate for recreational uses on or about the water that are not included in the primary contact category (IDAPA 58.01.02 Section 100).

Certain stretches of the Lower Boise River do not fully support their designated beneficial uses. The IDEQ's 2016 Integrated Report reports several causes of impairment to the lower Boise River from Indian Creek to the river's mouth (ID17050114SW001_06). Total Maximum Daily Loads (TMDLs) have been developed for some of these impairments, including sedimentation/siltation, fecal coliform, and total phosphorus (Category 4a of the Integrated Report). This reach is on the §303(d) list (Category 5) for temperature impairment, indicating that this reach does not have an approved temperature TMDL. This section of the Boise River is also listed in Category 4c for physical substrate habitat alterations and low flow alterations.

The IDEQ's 2016 Integrated Report also reports several causes of impairment to Indian Creek from Sugar Avenue to the Boise River (ID17050114SW002_04). TMDLs have been developed for sedimentation/siltation and Escherichia coli impairments. This reach is currently on the §303(d) list for temperature and cause unknown (nutrients suspected). Although a nutrient TMDL has not been developed for Indian Creek, the tributary received a load allocation in the Lower Boise River TMDL: 2015 Total Phosphorus Addendum.

The City discharges water under their NPDES permit to Indian Creek, which is a tributary of the Boise River during the non-irrigation season of approximately November to March, but Indian Creek mostly discharges to the Riverside Canal at the western limits of Caldwell during irrigation season. Riverside Canal is a diversion of the Boise River that conveys water to irrigated lands west and north of Caldwell. Irrigation canals are not considered waters of the state, so the planned discharge to Phyllis Canal is not subject to Idaho's Water Quality Standards. This will allow the City to address its total phosphorus discharge limit to Indian Creek from May through September by treating it to standards that are acceptable for irrigation use, but not as stringent as water quality standards applicable to Indian Creek.

The PTR states that this project is expected to improve water quality in Indian Creek by removing the discharge from an impaired reach of the creek from May through September.

The City's discharge to Indian Creek received a wasteload allocation at a TP concentration of 0.1 mg/L expressed as an average monthly limit of 15 lb/day TP for May – September. The average monthly limit for October – April is 52.6 lb/day at a concentration of 0.35 mg/L. These wasteload allocations are estimates that achieve the $\leq$ 0.07 mg/L TP target in the Lower Boise River for the 90th percentile low flow conditions for May 1 – September 30 near Parma and a mean monthly benthic (periphyton) chlorophyll a target of $\leq$ 150 mg/m^2 (Lower Boise River

TMDL: 2015 Total Phosphorus Addendum). The average monthly limits were applied as final TP effluent limits in the City's NPDES permit. The City is currently meeting interim limits based on the permit's Schedule of Compliance.

4.5.1 Phyllis Canal

Phyllis Canal is a manmade canal diverting from the Boise River near Eagle Island, and extending west through Canyon County to near Greenleaf. Flow in the Phyllis Canal near the proposed point of discharge from the City is maintained at around 200 cfs during the irrigation season. At the design flow of 31 cfs (20 mgd), the City's water will make up around 13% of the total flow at the point of discharge. This water is distributed throughout the Area of Analysis via a system of laterals, ditches, drains, and pumps to agricultural and residential land, and to customers of the Nampa and Caldwell irrigation utilities.

The PTR contains a narrative of the Phyllis Canal as it flows from the point of discharge from the Nampa WWTP to the canal, through to where it ultimately discharges to the West End Drain. This narrative discusses each of the numeric callouts on Figure 14 and Figure 15, included in Appendix B. The information presented in the PTR is important to understand what happens to the water as it flows within the PID to the customers, so it has been included in full in Appendix B. The PTR states that this information was the result of PID and City staff interviews, discussions, and site visits conducted to document actual conditions at critical locations within the PID service area. The site visits and interviews took place between May 2018 and February 2019. A small amount of the presented information is discussed here.

All laterals from the Phyllis Canal in the Area of Analysis are to the north of the canal, and the flow direction in the majority of the laterals and drains is to the north and west. A limited number of deliveries are to individual customers to the south of the canal.

Under typical operation the demand for water is higher than the water volume available for deliver by the Phyllis Canal, and the deficiency is typically made up from ground water pumping and irrigation rotation. PID does have the ability to spill water to drains for flood control during significant storm events, discussed below, but routine operations do not spill water from the canal. The diversion gates, pumps, and interactions are shown in Figure 14 and Figure 15. All additions of water to Phyllis Canal are completed by pipes above the canal, so the canal cannot backflow to the source of the water.

There are several points where water from Phyllis Canal could spill back to a jurisdictional water. The first is a small operational spill to Moses Drain at the end of either the north or south branch of the 15.0 Lateral. The spill is a result of PID maintaining hydraulic head to serve the customers along the laterals. Moses Drain conveys water back to Indian Creek. The PTR proposes to eliminate this spill by installing an automated flow control system on both branches that is regulated by the pump stations (boxes [6], [7], and [8]). The pump stations will turn on or off based on the flow control, and the level can be maintained without use of the spill. A compliance activity has been included in the draft permit to discuss this system in the Plan of Operation.

The Phyllis Canal has plumbing connections to Elijah Drain [13], Wilson Drain [20], and where the canal crosses over the Upper Embankment Drain [24]. Each of these would be used for flood

control to regulate canal levels from runoff from an exceptionally large storm. The flow from the first three drains is diverted into the Wilson (Caldwell Canal) Feeder [25], which diverts nearly all Wilson Drain flows to the Caldwell Lowline Canal and Notus Canal. Below this point, Wilson drain picks up flows from shallow ground water and runoff from fields before flowing into Indian Creek in Caldwell [27].

Below the Wilson Drain crossing, the Phyllis Canal continues for 12 miles to a concrete chute [28] where between 1 and 4 cfs runs down into Pipe Gulch Drain. This drain, and all drains in the lower reach of Phyllis Canal (the area west of Wilson Drain, south of the Riverside Canal, and north of the Phyllis Canal) flow into the Riverside Canal. Pipe Gulch Drain gets there by way of the West End Drain. This includes Bardsley Gulch Drain [30], for which there is a plumbed connection to Phyllis Canal that could be used during a flood event as described above. From the confluence with the West End Drain, the Riverside Canal flows 22 miles to the Snake River, delivering water via laterals and diversions and receiving water from drains and return flows from fields.

Phyllis Canal receives inputs from drains and tailwaters of conveyances operated by the Nampa Meridian Irrigation District and the Wilder Irrigation District totaling between 65 and 75 cfs. As stated in the PTR, "receiving tailwater flow results in a substitution of water flowing through Phyllis Canal such that the volume of water present at the proposed recycled water discharge points is replaced by the time the Phyllis Canal reaches [its terminus] at Pipe Gulch Drain." The City and PID have sufficiently demonstrated in the PTR that the recycled water discharged to the Phyllis Canal will not return to jurisdictional waters of the state.

4.6 Wastewater/Recycled Water Characterization and Loading Rates

4.6.1 Wastewater and Recycled Water Characterization

As discussed in Section 3, the City will be upgrading their secondary treatment conventional activated sludge facility to a tertiary treatment facility. The facility will still be based on conventional activated sludge treatment for biological nutrient removal, with the addition of tertiary filtration and Class A level UV disinfection.

The design conditions shown in Table 5 are based on anticipated 2040 flows. The design includes requirements for Class A water as outlined in IDAPA 58.01.17.601, and total phosphorus based on the City's wintertime load allocation. All constituents are discussed further below the table.

Table 5. Nampa Class A Recycled Water Design Conditions (B&C, 2019a)

Parameter	Summer Design Condition – Recycled Water Reuse
Maximum Monthly Flow	20.1 mgd
Effluent BOD_5	Monthly average: 10 mg/L
Effluent Total Phosphorus	Seasonal average: 0.35 mg/L
Effluent Total Nitrogen	Monthly average: 30 mg/L
pH	6-9
Turbidity	Class A Requirement[a]
Total Coliform	Class A Requirement[b]
Disinfection	UV[c]

a. Turbidity requirements for Class A are in IDAPA 58.01.601.01.b. A membrane filtration system must produce water with a turbidity of less than 0.2 NTU as a daily arithmetic mean, and must not exceed 0.5 NTU at any time. A media filtration system must produce water with a turbidity of less than 2 NTU as a daily arithmetic mean, and must not exceed 5 NTU at any time.
b. Total coliform requirements for Class A are in IDAPA 58.01.601.01.a.ii. The median number of total coliform organisms cannot exceed 2.2 / 100 mL, based on the median of the last seven daily samples, and no sample can exceed 23 /100 mL.
c. Disinfection requirements for Class A are in IDAPA 58.01.601.01.a.i. A UV disinfection system, in combination with the filtration, must be demonstrated to achieve 5-log inactivation of virus.

Data for the existing effluent derived from a wastewater characterization study performed during December, 2016, is presented in Table 6. Wastewater influent characteristics are shown in Table 1.

Table 6. Existing treated effluent water quality, mg/L (B&C, 2018a)

	BOD_5	COD	Ammonia-N	Nitrate-N	TKN	Total P	pH
2016	4.7	32	0.10	13.9	2.0	0.44	7.6

The City is still investigating discharge points to Phyllis Canal, but all begin following the outfall to Indian Creek and discharge at points along a 1-mile section of the Phyllis Canal as shown in Figure 11. The routes will be evaluated in the design phase of the WWTP upgrades. The pipeline will be buried and will discharge on PID property, but the pipeline and associated infrastructure will be owned by the City. The pipeline and associated infrastructure will be authorized under a license agreement between the City and PID once the final location and design are selected and completed (B&C, 2019a). This construction will be subject to the plans and specifications review and approval requirements of the Wastewater Rules, IDAPA 58.01.16, and the Class A distribution system requirements in IDAPA 58.01.17.607; see Section 5.10.

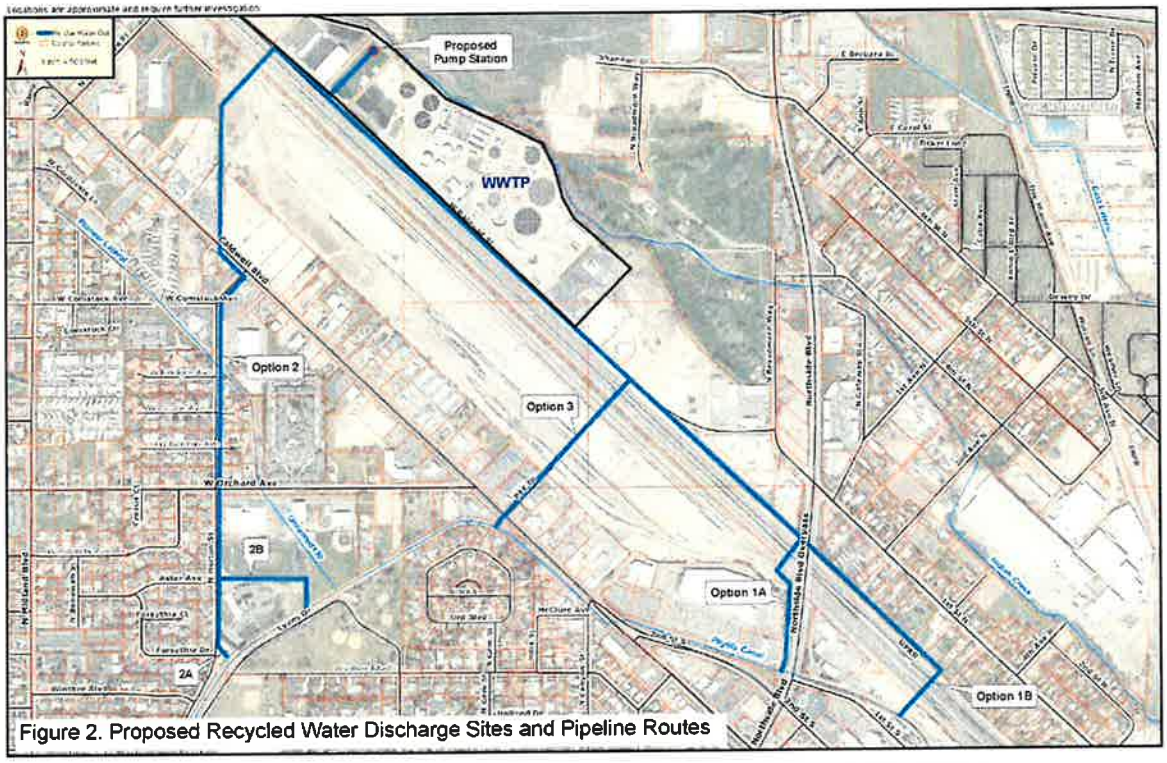

Figure 11. Possible Recycled Water Discharge Points to Phyllis Canal (B&C, 2019a)

4.6.2 Hydraulic Loading Rates

The Area of Analysis is large and therefore mixed in its uses, as shown in Figure 12. The PTR includes land uses that were drawn from GIS data in the United States Department of Agriculture (USDA) National Agricultural Statistics Service Cropland Data Layer from 2017. Table 7 shows a breakdown in acreage of the area of analysis. As shown, the slight majority of the land served by the Phyllis Canal is agricultural in nature, but approximately half is developed. The analysis estimated a percentage of area for irrigation of the developed spaces, shown on Table 7, of what was assumed to be turf grass.

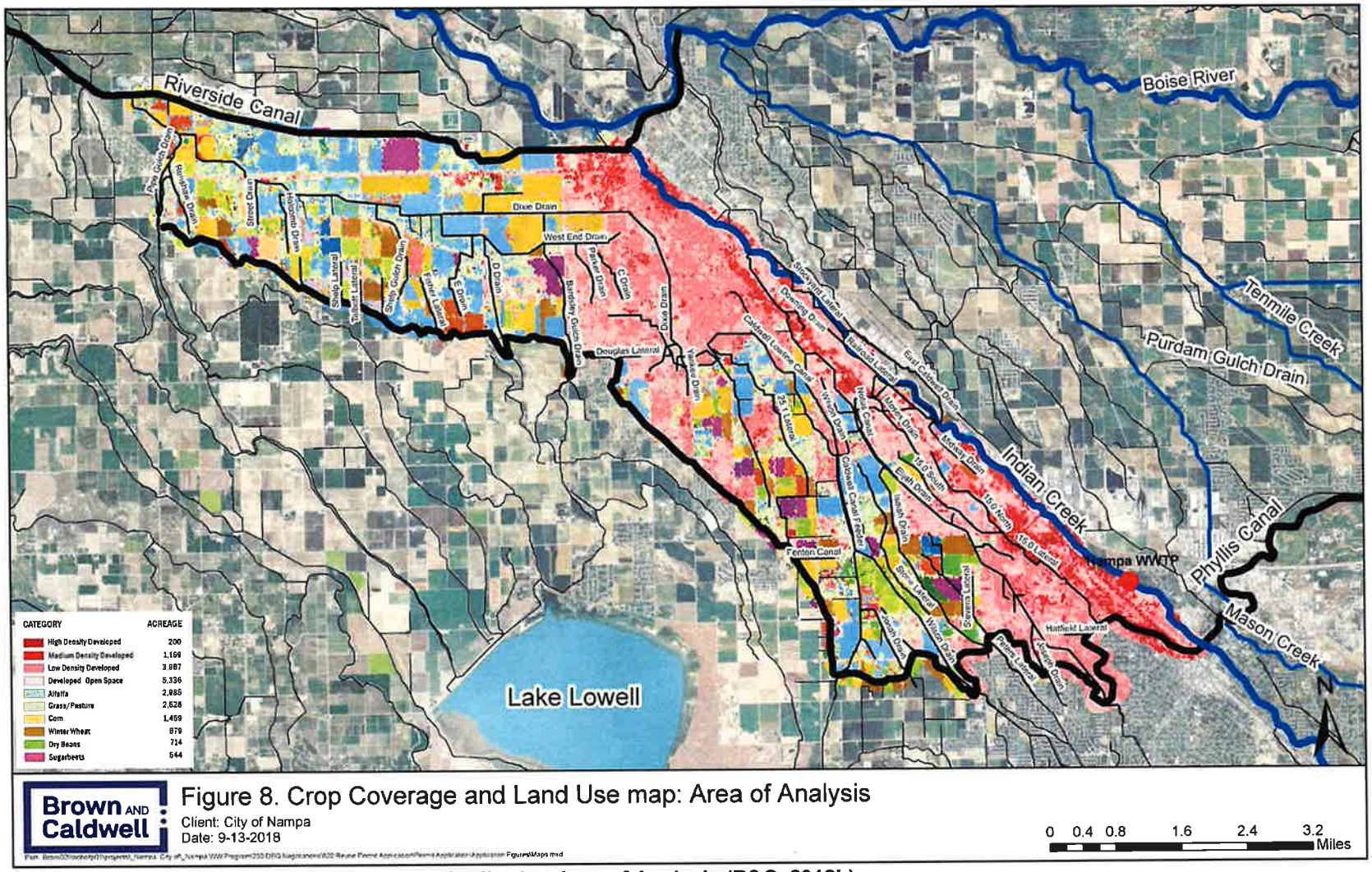

Figure 12 Land Use in the Recycled Water Distribution Area of Analysis (B&C, 2018b)

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Table 7. Land Use / Crop Type Acreage (B&C, 2019a)

Land Use / Crop Type	Acreage
Developed/high intensity (20% irrigable)[a]	200
Developed/medium intensity (30% irrigable)[a]	1,168
Developed/low intensity (40% irrigable)[a]	3,986
Developed/open space (80% irrigable)[a]	5,336
Agriculture[b]	9,546
Fallow/idle cropland[c]	294
Sum of land uses under 40 acres[d]	1,642
Total acreage:	22,172

a. The acreage available for irrigation was estimated by the permittee for each of these subcategories, and assumed to be turf grass for the purpose of the hydraulic and constituent loading evaluation.
b. Sum of acreages for alfalfa, grass pasture, winter wheat, dry beans, peas, corn, sugar beets, and hay.
c. Area not included in irrigation acreage for loading analysis.
d. Assumed to be mixed vegetables.

A Crop Nutrient and Water Uptake discussion was included in Appendix F of the PTR. The IWR for the crops and land uses shown in Table 7 was calculated using precipitation deficit values from the Kimberly Research and Extension Center for the Nampa Station and a growing season of May 1 to September 30; this is shown in Table 8.

Table 8. Irrigation Water Requirement for the Land Uses within the Phyllis Canal Area of Analysis (B&C, 2019a)

Land Use / Crop Type	Acres	IWR[a,b] inches	IWR[a,b] Million Gallons / year
Developed / Turf Grass	6,252	53.30	9,046
Alfalfa	2,985	43.76	3,547
Grass Pasture	2,528	41.81	2,870
Winter Wheat	878	20.48	488
Dry Beans	714	22.65	441
Peas (seed)	248	16.34	111
Corn (field, moderate season length)	1,458	36.66	1,451
Sugar beets	543	47.46	700
Grass Hay	192	53.16	277
Mixed Vegetables	1,642	43.65	1,943
Total Volume			20,874

a. IWR: Irrigation Water Requirement, calculated for each crop using data for the Nampa Station (PN-AM–NMPI) by the University of Idaho Kimberly Research Extension Center.
b. An irrigation efficiency of 60% was applied to turf grass, grass pasture, and grass hay, and an irrigation efficiency of 70% was applied to the remaining crops, i.e. each calculated monthly precipitation deficit value was divided by 0.60 or 0.70 to arrive at the IWR values presented (B&C, 2019a).

The calculated IWR versus the estimated available water is shown in Table 9.

Table 9. Estimated Total Water Available[a] vs. Irrigation Water Requirement[b] (IWR) (B&C, 2019a)

Month	Total Water Available MG/month	Total Water Required MG/month
May	4,824	3,382
June	4,667	4,515
July	4,822	5,589
August	4,863	4,614
September	4,631	2,774
Total	23,806	20,874

a. Calculated in Appendix F of the PTR, accounting for typical volume in Phyllis Canal, Recycled Water, inputs from drains, losses to ground water, and losses to atmosphere (B&C, 2019a).
b. Calculated in Appendix F of the PTR by adding the IWR values for each crop in Table 8.

Of the total available water in Table 9, recycled water will add 600 MG per month, therefore comprising approximately 13% of the available water, and between 11% and 22% of the total water required. This means both that the recycled water is a valuable season-long asset to the community, and that the water is very diluted by the existing irrigation water.

4.6.3 Constituent Loading

The constituent loading was estimated in the PTR using IWR values presented in section 4.6.2, the addition of water at design nutrient criteria in Table 5, and existing nutrient and flow data in Phyllis Canal, shown in Table 10.

Table 10 Background Phyllis Canal Data Summary

	TN[1] Concentration (mg/L)	TP[a] Concentration (mg/L)	TDS[b] Concentration (mg/L)	Temperature[a] (°C)
May	1.43	0.31	138	11.3
June	1.46	0.25	138	13.7
July	1.51	0.30	138	17.1
August	1.99	0.32	138	17.3
September	1.59	0.32	138	16.0

a. TN and TP concentrations and temperature are averages of monthly data from 2007-2009
b. TDS concentration is the average of samples taken in September and October 2018

The proposed recycled water reuse will add total nitrogen at a maximum of 30 mg/L, total phosphorus at a maximum of 0.35 mg/L, and TDS at an estimated 700 mg/L. At these concentrations, and a design flow of 31 cfs recycled water mixing with a flow of 200 cfs in the Phyllis Canal and the concentrations shown in Table 11, the expected concentration of water in Phyllis Canal following addition of the recycled water is shown in Table 11.

Table 11. Phyllis Canal Estimated Water Quality Following Addition of Recycled Water

	TN (mg/L)	TP (mg/L)	TDS (mg/L)	Temperature[b] (°C)
Recycled Water Concentration[a]	30	0.35	700	
May	5.26	0.32	213	12.20
June	5.29	0.27	213	14.57
July	5.33	0.31	213	17.78
August	5.75	0.32	213	18.01
September	5.40	0.32	213	16.73

a. The values of TN and TP reflect the proposed limits included in the draft permit.
b. Temperature of the recycled water used to calculate these values is 18.3°C, 20.2°C, 22.5°C, 22.9°C, and 21.4°C for May through September.

The calculated monthly loading rate for nitrogen, phosphorus and TDS are shown in Table 12 for the design water quality data (Table 11), and the current water quality data in Phyllis Canal (Table 10).

Table 12. Estimated Nutrient Loading Rates in lb/acre/month shown for Phyllis Canal water quality before and after recycled water is added (B&C, 2019a)[a]

	TN (lb/acre/mo)		TP (lb/acre/mo)		TDS (lb/acre/mo)	
	Current	With Recycled Water	Current	With Recycled Water	Current	With Recycled Water
May	3.1	8.5	0.5	0.5	217	344
June	3.2	11.4	0.5	0.6	290	460
July	4.0	14.2	0.8	0.8	358	569
August	4.5	12.7	0.7	0.7	296	470
September	2.1	7.2	0.4	0.4	178	283
Total (lb/acre)	16.8	54.0	3.0	3.1	1338	2126

a. These values vary slightly from those presented in the PTR, presumably due to rounding differences in the dataset available.

The nutrient loading rates in Table 12 are estimated for a total IWR and the total acreage. In reality, the concentration in the water available for users of the water will change quickly and in the far reaches of the Phyllis Canal will be very different than the values presented here.

The potential loading rates shown in Table 12 can be compared to typical crop uptakes, included in the PTR and presented in Table 13. The nutrient needs of the crops are greater than that provided by the additional nutrient supplied by the recycled water.

Table 13. Typical Crop Uptake Rates in lb/acre/growing season (B&C, 2019a)[a, b]

Crop Type	Nitrogen	Phosphorus
Turf Grass	196	27
Alfalfa	482	45
Grass Pasture	95	12
Winter Wheat	84	16
Beans	331	42
Peas	81	10
Corn	116	22
Sugar beets	137	25
Grass Hay	94	13

a. Nutrient uptake rates from USDA-NRCS 2019 (B&C, 2019a)
b. Uptake rates are typically provided as a traditional growing season total. Nutrient uptake rates were discounted by 13% to align with the May-September growing season in this proposal.

For Class A water uses, which include end of pipe concentration limits rather than the typical reuse approach of loading limits (i.e. pounds per acre or acre-inches per acre), the Recycled Water Rules, IDAPA 58.01.601.01.c, allow for total nitrogen at the point of compliance not to exceed 30 mg/L for "residential irrigation and other non-[ground water] recharge uses." This analysis, along with the modeling conducted and discussed in Section 4.4.1, demonstrate that a recycled water total nitrogen concentration of 30 mg/L, added to the Phyllis Canal, will not exceed the crop needs or cause an increase in ground water nitrate concentration when added directly to the canal. Therefore 30 mg/L is the recommended total nitrogen (TN) limit, and this limit has been included in section 4.2 of the draft permit. Since IDAPA 58.01.601.01.c does not differentiate between irrigation and non-irrigation uses, as quoted above, this limit applies whenever recycled water is produced.

Growers of crops and turf grass will be used to providing nutrient needs via fertilizer, so the City and PID will need to educate the public of the benefit of this additional nutrient being provided in the water so that the growers can account for this prior to adding fertilizer. As stated in the PTR, "because nitrogen fertilizer application is a common practice in this area, the city and PID will cooperate to educate customers in the service area about the increasing TN levels to avoid over application of TN that may exceed agronomic uptake rates of crops and landscaped areas in the portion of the PID service area downstream of the recycled water discharge location." Public education is discussed further in Section 5.7.

The draft reuse permit includes a Total Phosphorus (TP) concentration limit of 0.35 mg/L. This is based on the wintertime concentration target in the TMDL (see Section 4.5), which is the basis for the final limit in the City's NPDES permit ID0022063, to be met in 2026. The draft permit includes the TP limit calculated as a seasonal average of all measurements; this compliance method matches the interim wintertime limit calculation method in the NPDES permit.

The addition of phosphorus to Phyllis Canal at a concentration of 0.35 mg/L will not exceed the nutrient uptake of crops grown, as demonstrated in Table 12 and Table 13. This limit is not based on modeling or any further demonstration of environmental protection beyond the TMDL, so it is possible that a less stringent limit may be protective. However, because this is the basis for the final TP limit in the City's NPDES permit, so it is known that the City will be able to treat water

to meet this low level of total phosphorus, and because it is known that this level will be protective, it is recommended that this limit be included in the draft permit. The City would need to demonstrate that a less restrictive level is appropriate and protective before a different limit could be considered for inclusion. Such a change would be subject to permit modification and the opportunity for public input.

4.6.4 Turbidity and Disinfection

The proposed recycled water reuse requires treatment to Class A disinfection standards. This class of water requires that the recycled water meet turbidity, disinfection and total coliform limits as defined in IDAPA 58.01.17.601.a. The aspects of disinfecting to Class A level include filtration technology and disinfection technology, and these are verified by monitoring.

Following treatment, effluent must be filtered and then disinfected. The Recycled Water Rules, IDAPA 58.01.17.610, state that Class A filtration technology shall be approved by DEQ if they are listed in, or approved in accordance with, the State of California Treatment Technology Report for Recycled Water. The filtration system for the City has not yet been determined, so this cannot be discussed in detail here. A compliance activity has been included in the draft permit to require that the City show that the filtration technology meets the requirements of the Rules prior to production of Class A water. In practice, the City should submit this to DEQ much earlier during design and prior to construction.

Following filtration, it must be shown that particles have been sufficiently removed from the water so that it can be thoroughly disinfected. This is accomplished by continuously monitoring the turbidity. IDAPA 58.01.17.601 specifies turbidity limits as follows:

- For filtration systems utilizing sand or other granular media or cloth media, the daily arithmetic mean of all measurements of turbidity shall not exceed two (2) NTU, and turbidity shall not exceed five (5) NTU at any time.
- For filtration systems utilizing membrane filtration, the daily arithmetic mean of all measurements of turbidity shall not exceed zero point two (0.2) NTU, and turbidity shall not exceed zero point five (0.5) NTU at any time.

The City may use either media filtration (such as sand or other filter media) or membrane filtration, and both turbidity requirements were included in Section 4.5 of the draft permit. Additionally, IDAPA 58.01.17.611 requires that an alternative back-up system must be activated if turbidity exceeds the instantaneous required value for more than five (5) minutes (see Section 5.8).

IDAPA 58.01.17.601 requires disinfection that provides a chlorine concentration/contact time of 450 mg-min/L, or a disinfection process that, when combined with filtration, has been demonstrated to achieve 5-log inactivation of virus. The City intends to use UV disinfection, so this is the technology discussed herein, with the associated recommended UV system monitoring included in the draft permit.

Demonstration of 5-log inactivation of virus is done for each manufacturer, system, and water source. Since the facility has not yet designed the disinfection system, it is unknown what exact method will be used. The *Ultraviolet Disinfection Guidelines for Drinking Water and Water Reuse*, published by the National Water Research Institute (NWRI), is a guide from industry experts for review and approval of UV disinfection systems. The guide discusses the minimum

performance expected of a UV disinfection system, and performance testing required to show that the system will meet the intended use. The guide states the following (NWRI, 2012):

> *After disinfection, the filtered wastewater is defined herein as "disinfected filtered reclaimed water" and is essentially pathogen free (i.e., 5-log10 poliovirus inactivation and a 7-day median total coliform of 2.2 most probable number [MPN]/100 milliliters [mL]). Disinfected filtered reclaimed water in California is suitable for the irrigation of food crops (including all edible root crops), parks, playgrounds, school yards, residential landscaping, unrestricted access golf courses, non-restricted recreational impoundments, cooling towers, flushing toilets and urinals, industrial process water, structural firefighting, decorative fountains, commercial laundries, and commercial car washes as well as for the production of artificial snow, priming of drain traps, and consolidation of backfill around potable (drinkable) water pipelines.*

While Idaho's rules do not exactly match the California rules discussed in the above quote, it is included to demonstrate that, after disinfection meeting the performance requirements in the guidelines, the water is suitable for many public uses.

As stated, the UV system will have to be chosen to meet disinfection standards when paired with the filtration system. Table 14 shows design requirements from the guide.

Table 14 UV System Disinfection Design Requirements (NWRI, 2012)

		Media Filtration	Membrane Filtration
UV Dose		100 mJ/cm^2	80 mJ/cm^2
UV transmittance		55% or greater at 254nm	65% or greater at 254 nm
Effluent turbidity	24 hr average	<2 NTU	<0.2 NTU
	5% of the time	<5 NTU	<0.5 NTU
	Never exceeds	10 NTU	NA

mJ: milliJoule; NTU: Nephelometric turbidity units; cm^2: square centimeters; nm: nanometers

In order to ensure that the UV disinfection system is operating as intended, the draft permit requires continuous monitoring of UV intensity and transmittance. The UV dose and transmittance values in Table 14 are included as permit conditions in section 4.5 in the draft permit. The City has been collecting UV transmittance (UVT) data since 2014 however, so it is expected that this information will be used to calculate the appropriate UV dose to meet the disinfection requirements; therefore section 4.5 of the permit includes allowance for a UVT that varies from the values in Table 14. This value will need to be approved by DEQ. A compliance activity has been included in the draft permit to require that the permittee show that the UV disinfection system meets the Class A disinfection requirements in IDAPA 58.01.17.601. The permittee should include the UV dose calculation (see Section 6.5) in this documentation.

The final indication that disinfection has been achieved is daily sampling for total coliform. Coliforms are a group of bacteria that, in Idaho, are used as the indicator organism to show that pathogens have been killed. In order to be a Class A system, the water must show total coliform organisms of less than 2.2 / 100 mL, calculated as the median of the most recent 7 days for which samples were collected. Additionally, the water should never have a total coliform result of greater than 23 / 100 mL. These limits are included in section 4.5 of the draft permit, with monitoring requirements included in section 5.1.1 of the draft permit.

5 Site Management

The City will be the sole owner and operator of the recycled water treatment, conveyance, and discharge equipment and operations. The City has an agreement with PID, dated March 8, 2018, authorizing the City to discharge up to 41 cfs (annual average) of recycled water to the Phyllis Canal every year between May 1 and October 1. Other than construction permits associated with construction of the reuse pipeline and discharge structure, no other permits are required.

The recycled water pipeline will be buried from the Nampa WWTP to the discharge point. Discharge to Phyllis Canal will be on PID property, but the pipeline and associated infrastructure will belong to the City and will be authorized under a separate license agreement than the one currently in place.

The following sections discuss site management requirements for typical recycled water reuse scenarios and their applicability to the proposed recycled water reuse, and then finish with discussions of management requirements specific to Class A recycled water.

5.1 Buffer Zones

Buffer distances are not required for Class A, as addressed in the Recycled Water Rules, IDAPA 58.01.17.602, and the definition of buffer distances in 58.01.17.200.06, and no buffer zones have been included in the draft permit.

The discharge pipe from the WWTP to Phyllis Canal will be located on PID property which prohibits access to canal roads by unauthorized personnel. Access to the discharge point will be secured for access via security fencing or other measures. Signage with a message indicating that the discharge is recycled water will be posted at the discharge pipe, as required by IDAPA 58.01.17.603.

5.2 Runoff

Nampa and Caldwell have irrigation utilities that provide water for irrigation to their utility customers. According to the section 10.2.6 of the PTR, both utilities regularly provide information regarding water conservation and efficient water use practices to avoid overwatering that may result in runoff from the urban area. Excess irrigation water that does flow off properties may likely enter the cities' Municipal separate Storm Sewer Systems (MS4s) which convey stormwater through a system of drain pipes to natural waterways such as Indian Creek and Mason Creek as well as irrigation conveyances, the majority of which are owned by PID. Irrigation runoff is considered an allowable non-stormwater discharge in both cities' MS4 permits.

Public education and outreach programs are required by the MS4 permits and include information about avoiding overwatering and overspray as well as proper application and storage of chemicals. As a provider of Class A water to the public, the City must also undertake a Public Education Program, discussed further in Section 5.7.

Outside of the MS4 areas, PID actively manages water deliveries to run the irrigation system efficiently. This practice mitigates excess spills and tailwater runoff from fields. Tailwater runoff is collected in drains or ditches for further use in deliveries downstream.

5.3 Waste Solids, Biosolids, Sludge, and Solid Waste

Generation of waste solids is primarily from the processing of waste activated sludge (WAS) and primary solids, as shown in Figure 13. Following completion of the construction of the Phase II Upgrades, WAS and primary sludge will be pumped through thickening feed pumps to rotary drum thickeners after addition of polymer for more efficient thickening. The thickened WAS and primary sludge will be pumped to five primary anaerobic digesters. The digested sludge is then stored in a digested sludge storage tank. Polymer is added to the sludge prior to dewatering using centrifuges. Dewatered, Class B biosolids will be disposed of at the Simco Road Landfill. The City is in planning stages to begin land applying Class B biosolids on land near Simco Road. This practice will follow the Environmental Protection Agency requirements, 40 CFR 503, and is overseen by DEQ through approval of a Biosolids Management Plan following the Wastewater Rules, IDAPA 58.01.16.650. Screenings and grit are also sent to a landfill.

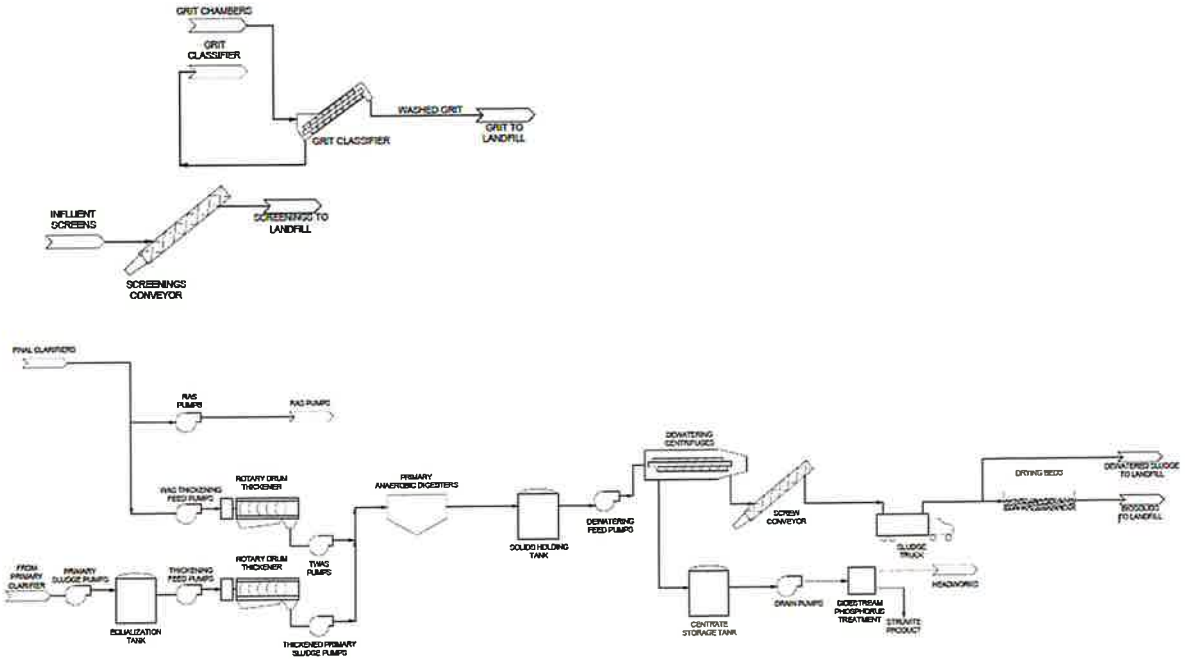

Figure 13. Solids Process Flow Schematics (B&C, 2019a)

5.4 Nuisance Odors

Class A water is not expected to cause any nuisance odors or other nuisance conditions. The WWTP does cause some nuisance odors due to influent flows and large open tanks, but planned upgrades will result in lower odor problems, as discussed in Section 10 of the PTR. Section 9.1 of the reuse permit includes provisions against health hazards, nuisances, and odors. The City should maintain a log of odor complaints and mitigate them to the extent possible.

5.5 Grazing

There are approximately 2,500 acres of grass and pasture within the area of analysis (B&C, 2019a). The proposed activities are not anticipated to have any impact on grazing, or vice versa.

5.6 Salts

The TDS concentration in the recycled water is expected to be around 700 mg/L, as was found in the wastewater characterization study performed during December, 2016 (B&C, 2019a). However, when mixed with water in the canal, which is approximately 135 mg/L on average, the concentration is expected to be 213 mg/L. Section 10.2.5 of the PTR cites several studies that show that water with TDS of between 450 mg/L and 750 mg/L may have an impact on crops, so the mixed concentration is not expected to have an impact on crops.

The organic and inorganic fractions of the measured TDS concentration in the treated water is not well understood yet, however, so the draft permit includes a requirement to monitor non-volatile dissolved solids (NVDS) (TDS minus volatile dissolved solids) weekly during the first growing season that water is discharged to the Phyllis Canal, and monthly during the first full year of reuse (i.e. after industrial users are connected).

5.7 Public Education

Providers of Class A water are required by the Recycled Water Rules, IDAPA 58.01.17.607.02.e, to undertake a public education program to teach potential customers of the benefits and responsibilities of using Class A recycled water. The City has already begun public education of wastewater treatment and the benefits of reuse. The City has met with water user groups, environmental advocacy groups, and others to facilitate a dialogue concerning the City's proposed use of recycled water and address concerns as they are brought to the City. The result of some of this dialogue is this reuse project (see section 3).

A compliance activity is included in the draft permit for the City to continue additional public education to inform the users of the Class A recycled water of the origin of the water, the concept of agronomic rate, and other elements of the program that the public expresses interest in or the City wishes to discuss. DEQ recommends that public education include public involvement workshops, a web page to manage and disseminate information, and placing notices in monthly bills and in the media.

The City's proposed recycled water reuse is augmentation of the irrigation water source, and the irrigation water is not viewed as recycled water. As such, the requirement to complete a user agreement does not apply to the use of irrigation water from Phyllis Canal.

The compliance activity would require that the City define a Public Education Plan, describe the aspects of the plan and how it is implemented, and include education on the origin of the effluent and concept of agronomic rate for applying the Class A recycled water. This plan will be required to be submitted within one year of permit issuance and will require DEQ review and approval.

5.8 Reliability and Redundancy

The Recycled Water Rules, IDAPA 58.01.17.611, require that Class A recycled water producers are able to treat peak day flow for the season for which Class A is produced, and that the treatment system provide for one other alternative back-up system. This back-up can be another permitted disposal option, or diversion to a lined storage facility. The PTR states that the City will maintain its Indian Creek discharge permit and can use this as an alternative backup system during the irrigation season to meet the reliability and redundancy requirement. The alternative back-up system must be automatically activated if turbidity exceeds the instantaneous value for more than five minutes, or if the filtration/disinfection system is not achieving 5-log removal/inactivation of virus for more than five minutes. Class A redundant monitoring, automatic by-pass equipment, and stand-by power is also required.

The draft permit contains a compliance activity, CA-225-01, that would require the facility to show how these requirements are going to be met prior to commencement of the production of Class A water. To meet the requirement of the compliance activity, the City should discuss the alternative discharge and any limitations on this use, the ability and capacity to return and re-treat water that does not meet the Class A requirements, specify how the back-up system is automatically activated, and provide any other relevant information on how this requirement is to be met.

5.9 Industrial Reuse

The City has requested to have the ability to provide Class A recycled to industrial users. This is as-yet undefined, and the PTR does not include any details about the potential future industrial reuse.

In addition to the ability to produce Class A water, a pump station and pipeline will also need to be installed prior to the City having the capability to provide water to a new user. The PTR includes unit process assumptions that include two submersible pumps and 10,000 linear feet of force main. Disinfection via UV will be provided as will be required by the reuse permit, but the City should also consider maintaining a chlorine residual in the water provided to industrial users for the added assurance of maintaining water quality in the delivery system.

A compliance activity is included in the draft permit requiring that the City submit to DEQ a general plan for the connection of users of industrial water prior to implementation of the program. The intent of the compliance activity is for the City to provide DEQ with sufficient details of the intended industrial uses, how the connections will occur and how the users of the industrial water will be made aware of the origin of the water, so that DEQ can insure that the connection and use will be done in accordance with the Recycled Water Rules and the reuse permit.

The Recycled Water Rules, IDAPA 58.01.17.607.02.e, require that users of Class A recycled water be required to sign a user utility agreement that states that the user understands the origin of the effluent. The compliance activity requires that the user agreement is included in the submitted plan.

The compliance activity also specifies that DEQ will require a Preliminary Engineering Report and plans and specifications, per the requirements of the Wastewater Rules, for the engineering aspects of the upgrade.

5.10 Other Class A Requirements

The remaining sections of the Recycled Water Rules pertaining to Class A recycled water are requirements regarding construction of various aspects of the distribution system. IDAPA 58.01.17.603.01 requires that all buried pipe in the distribution system be purple and labeled to identify it as recycled water pipe. This will apply likely to the pipe conveying water from the WWTP to the Phyllis Canal, as well as the pipelines for distribution of industrial water. This section also requires that all exposed pipes be colored purple and labeled, which will apply the infrastructure immediately preceding the point at which recycled water is added to the Phyllis Canal, located within the PID property. As stated in section 7.1 of the PTR, all piping, valves and other appurtenances from the Nampa WWTP to the Phyllis Canal, both buried and exposed, will be purple.

Section 607 and 608 of the Recycled Water Rules contain additional specific requirements for distribution pipelines. All piping and pumping must receive DEQ approval under the Wastewater Rules, IDAPA 58.01.16, prior to construction, so the City will show DEQ that the requirements are met. Review and approval of recycled water pipelines must be submitted to DEQ for review and approval, and cannot be done by a Qualified Licensed Professional Engineer under the Wastewater Rules, IDAPA 58.01.16.400.03.b.

The applicable requirements are included in Section 4.5 of the draft permit.

6 Monitoring

The proposed monitoring requirements for the draft permit are described in detail in the following subsections. All monitoring will be conducted in accordance with the facility's Quality Assurance Project Plan (QAPP). See Section 7 for requirements regarding the QAPP.

6.1 Recycled Water Monitoring

Required monitoring of Class A water is specified in IDAPA 58.01.17.601.01 a, shown in Table 15 and included in Section 5 of the draft permit.

Table 15. Class A Required Monitoring[a]

Parameter:	Required Monitoring Frequency	Point of Compliance
Turbidity	Continuous Monitoring	After filtration, prior to disinfection
Total Coliform	Daily Grab Sample	Following disinfection
Total Nitrogen	Weekly Composite	Following disinfection
pH	Daily Grab or Continuous Sampling	Following disinfection
BOD_5	Weekly Composite	Following disinfection

a. Class A monitoring requirements defined in the Recycled Water Rules, IDAPA 58.01.17.601.01.

Additional monitoring proposed for inclusion in the draft permit is shown in Table 16. Total phosphorus is included to show that the use is meeting the discharge limit discussed in Section 0. Staff also recommends including one growing season and one year of monitoring for non-volatile dissolved solids (NVDS), which is an estimate of the amount of salt in the water (see Section 5.6). This information is recommended to ensure that assumptions made during the permitting process about the impact of salts are valid, and can be used during the following permitting cycles.

Table 16. Additional Constituent Monitoring included in the Draft Permit

Parameter:	Required Monitoring	Point of Compliance
Total Phosphorus	Weekly Composite	Following disinfection
Non-volatile Dissolved Solids	Weekly composite for first year of irrigation augmentation, and Monthly Composite for the first year of Class A reuse	Not applicable

Although not required for compliance with permit limits, staff recommends requiring the permittee to monitor the quantity of recycled water generated and used for the defined purposes, as well as the flow of water in Phyllis Canal upstream of the recycled water discharge point, as shown in Table 17. The quantity of recycled water used by industrial users should be monitored separately from that discharged to Phyllis Canal. The PTR indicates that flow in the Phyllis Canal near the point of discharge is maintained at or around 200 cfs during the growing season. Monitoring and reporting of Phyllis Canal flow is recommended to show that assumptions made during the permitting process are valid.

Table 17. Flow Monitoring included in the Draft Permit

Parameter:	Required Monitoring
Flow of Recycled Water to Phyllis Canal	Flow, daily reading, monthly compilation
Flow of Recycled Water for Industrial Reuse	Flow, daily reading, monthly compilation
Flow of water in Phyllis Canal	Flow, monthly reporting

Section 8.1 of the PTR states that discharge to the Phyllis Canal will be monitored by in-pipe flow monitoring equipment. Monitoring of the flow of water in Phyllis Canal is not discussed in the PTR.

6.2 Soil Monitoring

Soil monitoring requirements are not recommended for this widespread Class A recycled water use.

6.3 Ground Water Monitoring

Ground water monitoring is not recommended for this Class A recycled water use. The impact of the additional nutrient in the recycled water on ground water quality was modeled and considered as part of the nutrient concentration limits in the draft permit as discussed in Section 4.4.1 and Section4.6.3.

6.4 Crop Yield and Tissue Monitoring

As a Class A permit with constituent concentration limits, rather than constituent loading limits, monitoring of crops and nutrient uptake is not proposed to be included in the draft permit. A discussion of hydraulic and nutrient load and uptake are included in Section 4.6.

6.5 Calculation Methodologies

Several calculations are required to show compliance with the terms and conditions of Section 4 of the permit. These calculations are shown in the table included in Section 6.1 of the draft permit.

The median number of total coliform organisms limit is based on the last 7 days for which samples were collected. So of the most recent 7 sample results (listed in order from smallest to largest), the median is the sample in the middle.

A daily arithmetic mean of turbidity measurements is required to be calculated. This should be calculated as one number per day, and may be calculated based on either the 15-minute recorded numbers required by Section 5.1.1 of the draft permit, or all measurements collected during the day. The method of calculation should be included in the PO.

UV disinfection dose is to be calculated and reported. UV dose is calculated using an equation that will be received from the manufacturer following design and validation. The equation uses flow rate, UV transmittance, UV intensity and lamp status. This equation should be included in the paperwork submitted to DEQ under CA-255-01 and included in the PO.

BOD_5 and TN are limited on a monthly basis in mg/L as an average of weekly samples. These calculations should be made using all measurements taken within the calendar month.

TP is limited on a seasonal basis in mg/L as an average of weekly samples. The calculation should be made as the average of all measurements of TP taken of recycled water discharged to Phyllis Canal.

7 Quality Assurance Project Plan

The QAPP outlines the procedures used by the permittee to ensure the data collected and analyzed meets the requirements of the permit.

To support its mission, DEQ is dedicated to using and providing objective, correct, reliable, and understandable information. Decisions made by DEQ are subject to public review and may at times be subject to rigorous scrutiny. Therefore, DEQ's goal is to ensure that all decisions are based on data of known and acceptable quality.

The QAPP is a permit requirement and must be submitted to DEQ as a stand-alone document for review and acceptance. The QAPP is used to assist the permittee in planning for the collection, analysis, and reporting of all monitoring data in support of the reuse permit and explaining data anomalies when they occur.

DEQ does not approve QAPPs, but reviews them to determine if the minimum EPA guideline requirements are met and that the reuse permit requirements are satisfied. DEQ does not approve QAPPs because the responsibility for validating of the facility's sampling data lies with the permittee's quality assurance officer and not with DEQ.

The format of the QAPP should adhere to the recommendations and references in the Assurance and Data Processing sections of the guidance manual (DEQ 2007) and EPA QAPP guidance documents *https://www.epa.gov/sites/production/files/2015-06/documents/g5-final.pdf*.

8 Site Operation and Maintenance

A draft Plan of Operations (PO) was included in the permit application package (B&C, 2019b). The document was submitted as an outline for the PO that the City will develop to maintain the recycled water discharge requirements and other requirements of the reuse permit. The reuse permit includes a compliance activity to submit for review and approval an updated PO before Class A water production commences. Facilities are required to maintain a PO by the Recycled Water Rules, IDAPA 58.01.17.300.05, and DEQ provides a checklist for the facility's use containing items that are required by rules or suggested by guidance. The compliance activity would require the City to address the applicable items in this checklist.

Plans that are required to be submitted as part of the PO include an emergency operating plan, procedures to eliminate the Moses Drain operational spill discussed in Section 4.5.1, and recording and reporting of uses of the emergency spillways discussed in Section 4.5.1 and Appendix B. The PO should also specify how to calculate the values in Section 6 of the draft permit, as discussed in Section 6.5. It is also recommended that the items discussed in the other compliance activities (see Section 9) be thoroughly addressed in the PO for ease of operator use.

The City requires Class IV wastewater treatment plant operators. The WWTP Superintendent and WWTP Assistant Superintendent are both certified Class IV operators. The City also requires Class IV level collections operators. The land application license is not a requirement for facilities that utilize only Class A recycled water. Public education of the users of Class A water is included in Section 5.7.

9 Compliance Activities

Compliance Activities are specified when information required for compliance with a rule is not available prior to issuance of the draft permit. The following Compliance Activities are included in Section 3 of the draft permit:

1. Specifically address how the City will meet the requirements in the Recycled Water Rules for filtration technology, UV disinfection technology, and the reliability and redundancy requirement. See Sections 4.6.4 and 5.8.
2. Submit a Plan of Operation that addresses how the City will meet the Class A requirements in the permit, includes the following management plans: emergency operating plan, procedures to eliminate spills to Moses Drain, and recording and reporting procedures for emergency use of spillways. Approval of the Plan of Operation will be required prior to the start of reuse, so the plan should be submitted to DEQ at least 6 months prior to the anticipated start date. See Section 8.
3. Submit a Quality Assurance Project Plan, including verification that the plan has been implemented by the facility, at least 6 months prior to the anticipated start date. See Section 7.
4. Submit a Public Education Plan within one year of permit issuance. See Section 5.7.
5. Submit an Industrial Reuse Program plan prior to connection of the first industrial user. Engineering approvals will also be required prior to construction. See Section 5.9.
6. Contact DEQ for a pre-application conference at least 18 months prior to permit expiration.
7. Submit an application for permit renewal at least 12 months prior to permit expiration.

10 Recommendations

Staff recommends the draft reuse permit be issued. The City demonstrated that the recycled water reuse will not discharge to the Lower Boise River or waters of the state. The draft reuse permit specifies Class A disinfection requirements, constituent concentration limits and establishes monitoring and reporting requirements to evaluate system performance, environmental impacts, and permit compliance.

11 References

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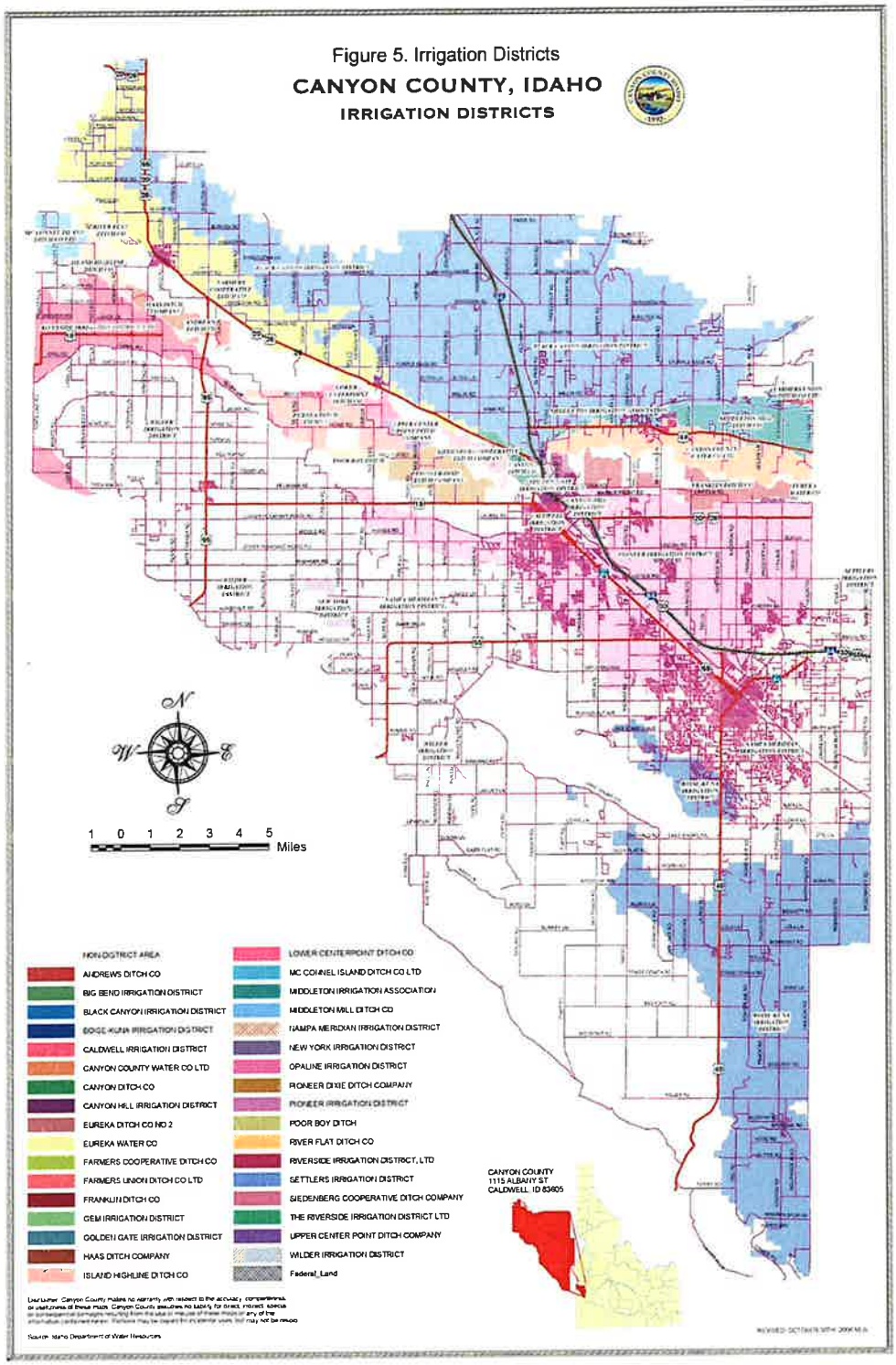
Appendix A. Irrigation Districts Map



Appendix B. Phyllis Canal Flow and Operations

The following description of Phyllis Canal flows and operations is Section 7.5.1.4 of the Recycled Water Reuse Permit Application Preliminary Technical Report (B&C, 2019a).

Information about the Phyllis Canal, laterals, drains, and other conveyances inside the area of analysis is the result of PID and City staff interviews, discussions, and site visits conducted to document actual conditions at critical locations within the PID service area. Site visits were conducted during the 2018 irrigation season. Multiple interviews and discussions with PID and City staff took place between May 2018 and February 2019 (PID, 2019). The Phyllis Canal is a manmade canal diverting from the Boise River near Eagle Island and extending west through Canyon County to near Greenleaf, Idaho. In the area of the proposed recycled water discharge points (shown on Figure 1 [Figure 1), flow is maintained at around 200 cfs throughout the irrigation season (typically mid-April through mid-October). This flow is distributed through the PID service area via a system of laterals, ditches, drains, and pumps to provide water to agricultural and residential land and customers served by the Nampa and Caldwell irrigation utilities. The Phyllis Canal marks the southern and western borders of the PID service area. All the laterals in this area are on the north side of the Canal, and flow direction in the majority of laterals and drains is to the north and the west. A limited number of deliveries to individual customers are made off the south side of the canal.

Downstream of where the Phyllis Canal crosses over Indian Creek, the Canal receives inputs from drains and tailwaters of conveyances operated by the Nampa Meridian Irrigation District and the Wilder Irrigation District. These inputs typically total between 65 and 75 cfs and are discussed in more detail in the text below. Receiving tailwater flow results in a substitution of water flowing through the Phyllis Canal such that the volume of water present at proposed recycled water discharge points is replaced by the time the Phyllis Canal reaches Pipe Gulch Drain. At its terminus, between 2 and 4 cfs flow down a chute into Pipe Gulch Drain which flows (mostly) north into the West End Drain. The West End Drain ultimately discharges into the Riverside Canal.

The irrigation conveyances within PID's jurisdiction are designed to distribute irrigation water to customers efficiently and reliably. Under typical operations, the demand for water is higher than the water volume available for delivery by the Phyllis Canal. The deficiency is typically made up from groundwater pumping and irrigation rotation. PID does have the ability to spill water to drains from the Phyllis Canal for flood control purposes during significant storm events, but routine canal operations do not spill water from the Canal. These diversion gates and interactions are shown in Figures 9 and 10 [Figure 14 and Figure 15] and Table 7-2 [Table 4]. Figure 9 [Figure 14] is a map of the PID service area focusing on the area of analysis. Figure 10 [Figure 15] focuses on the upper half of the area of analysis to provide greater detail of irrigation conveyances and the proposed recycled water discharge locations.

The text below provides a detailed accounting for water delivery points and irrigation conveyances from the point at which Phyllis Canal crosses Indian Creek to where the Pipe Gulch (receiving water at the terminus of the Phyllis Canal) enters the Riverside Canal. Notes in the text correspond to locations on Figures 9 and 10 [Figure 14 and Figure 15] for ease of reference.

The Phyllis Canal crosses over Indian Creek [1] via a short aqueduct at a point approximately 400 feet due east from the intersection of 7th Avenue North and 2nd Street North in Nampa. PID has the ability at this intersection to spill water from Phyllis Canal to Indian Creek during storm events, or PID can pump water from Indian Creek (pumping capacity up to 20 cfs) into the Phyllis Canal to supplement irrigation supply at this point in the canal. The latter use is the routine operation.

The area of proposed recycled water discharge locations [2] is less than 1 mile downstream from the Indian Creek crossing, between a point just upstream of the intersection of Northside Blvd and 2nd Street South to just south of the intersection of Caldwell Boulevard and West Orchard Ave. The first water delivery below the discharge is a small pump station [3] operated by PID (1 cfs) that provides water to about 50 acres on the southwest side of Caldwell Boulevard. The first major delivery is to the 15.0 Lateral [4] at approximately 32 cfs (slightly more than the maximum recycled water design flow) to serve 1,600 acres of developed and agricultural land within the City. This area includes more irrigable land than the PID irrigation system can deliver. The shortfall is made up by pumping from wells (two owned and operated by PID and other private wells operated by property owners as needed) and irrigation rotation.

The City has one pressurized irrigation (PI) pump station [5: Eaglecrest pump] located on the main branch of the 15.0 Lateral and another on the South Branch farther downstream [6: Moss Point pump]. A third Nampa PI pump station is situated along the Elijah Drain in close proximity to the South Branch pump station [7: Crestwood pump]. Another City PI pump station is situated just south of the intersection of West Moss Lane and Midway Road [8: Asbury Park pump]. The four Nampa owned PI pump stations supply irrigation water for lawn watering in the surrounding subdivisions. The City of Caldwell also maintains a PI pump station at the end of the North Branch of the 15.0 Lateral [9], used to supply irrigation water for the same purposes. Each City-owned PI pump station in the PID service area is capable of pumping 2 to 4 cfs. Consistently meeting water demand from the Nampa PI pump stations in this area is a perpetual challenge for the City's irrigation utility. Customers reliant on water delivered from these four pump stations often experience low water pressures during peak hours.

Under current operations, a small operational spill occurs somewhat regularly to the Moses Drain at the end of both the North [10] and South Branches [11] of 15.0 Lateral. The Moses Drain then conveys return flows to Indian Creek. The spill is a result of maintaining hydraulic head throughout the lateral to adequately fill water orders for customers near the end of the delivery laterals. To eliminate this spill, the City and PID plan to install an automated flow control system on both branches of 15.0 Lateral that is regulated by the City's PI pump stations at locations 6, 7, and 8. Level sensors at the end of each branch will trigger the PI pump stations to turn on (or adjust pumping rates if already operating) to increase withdrawals from the lateral in the amounts necessary to maintain a no-spill (zero discharge) condition at the end of each branch of the 15.0 Lateral. Additional controls may be placed at the headgate to 15.0 lateral to provide further regulation of flows, which will prevent water from spilling into Moses Drain and subsequently, Indian Creek.

Approximately 1,000 feet downstream from the 15.0 Lateral are the Hatfield Lateral and the Horton Pump Station [12]. These typically both divert between 2 and 3 cfs to serve neighborhoods in the immediate vicinity. In the next 2 miles the Phyllis Canal crosses over the Elijah Drain [13] and the Joseph Drain [14] (which joins the Elijah approximately ½ mile downstream of this crossing). Both drains are piped under the Phyllis Canal. At the Elijah Drain crossing, PID has the ability to pump water from the Elijah Drain to the Phyllis Canal, as needed to supplement irrigation supply, at a rate up to 10 cfs. PID also operates a flood control gate at the Elijah Drain crossing that is used to regulate canal levels when runoff from exceptionally large storm events is collected upstream in the Phyllis Canal.

Just over 1 mile downstream from the Joseph Drain is the Isaiah Drain [15]. The Phyllis Canal has no plumbing connection to either drain. Between the two drains PID delivers water to another City PI pump station [16: Orchard Heights pump] and Stevens Lateral [17] (about 14 cfs). The Isaiah Drain joins the Elijah Drain about 3 miles north of the Phyllis Canal.

The Elijah feeder is situated along the Elijah Drain, with its gate [18] located approximately 750 ft north of the intersection of Midway Road and Moss Lane. The feeder diverts nearly all Elijah Drain flows (leaving only about 1 cfs in the drain) and delivers the water to Unit 1 of the Notus Canal [19] (described above). Below the feeder, Elijah Drain picks up flows from shallow groundwater and runoff from fields and joins the Wilson Drain about 1.25 miles downstream.

Approximately 1 mile downstream from the Elijah Drain crossing, the Phyllis Canal crosses over the Wilson Drain [20]. This crossing is also used as a flood control point to regulate flows in response to storm events that result in large volumes of stormwater runoff entering the canal. At the Wilson Drain crossing, PID has the ability to pump water from the Wilson Drain to the Phyllis Canal at a rate up to 15 cfs, as needed to supplement irrigation supply. About 14 cfs is diverted into Stone Lateral [21] from the Phyllis Canal between the Elijah Drain and the Wilson Drain.

Over the next 2 miles the Phyllis Canal delivers about 6 cfs to the McCarthy Lateral [22], then crosses over the Jonah Drain [23] and the Upper Embankment Drain [24]. There is no plumbing connection between the Phyllis Canal and the Jonah Drain. The farthest downstream Nampa PI pump station (Midway Park pump station) is installed just downstream of the Jonah Drain. The Upper Embankment Drain is used to regulate canal levels when runoff from exceptionally large storm events is collected upstream in the Phyllis Canal.

Just over 1.5 miles due north of where the Phyllis Canal crosses over the Upper Embankment Drain, flows from the Wilson Drain, Jonah Drain, and Upper Embankment Drain are diverted into the Wilson (Caldwell Canal) Feeder [25]. The feeder diverts nearly all Wilson Drain flows (leaving only about 1 cfs of flow in the drain) and delivers the water to a diversion [26] which sends a portion of the flow to the east, forming the Notus Canal, and the rest of the flow to the west to make the Caldwell Lowline Canal. Both Canals are described above. Below this point, the Wilson drain picks up flows from shallow groundwater and runoff from fields before finally flowing into Indian Creek approximately 0.25 mile southeast of the intersection of South 21st Street and South Georgia Avenue in Caldwell, Idaho [27].

Below the Wilson Drain crossing, the Phyllis Canal continues on for another 12 miles to a concrete chute [28] located southwest of the intersection of Top Road and Lower Pleasant Ridge Road where between 1 and 4 cfs runs down into Pipe Gulch Drain. Over these 12 miles, the Phyllis Canal delivers water to 12 laterals. The largest diversion on this stretch is to 25.1 Lateral [29] at 26 cfs. The 11 smaller lateral diversions range from 0.8 to 7.2 cfs. A gate above the Bardsley Gulch Drain [30] creates a flood control point that can be used to regulate flows in response to storm events. In this final stretch, the Phyllis Canal also picks up about 50 cfs of water from drains and tailwaters of conveyances operated by the Nampa Meridian Irrigation District and the Wilder Irrigation District on the south side of the Phyllis Canal. The largest input is from the Deer Flat Canal [31], which consistently adds between 10 and 20 cfs.

All the drains situated in the lower reach of the Phyllis Canal (the area west of Wilson Drain, south of the Riverside Canal, and north of the Phyllis Canal) flow into the Riverside Canal. The majority of the drain flows, including Pipe Gulch Drain, get there by way of the West End Drain, which joins the Riverside Canal a mile north of Greenleaf [32].

Figures 9 and 10 [Figure 14 and Figure 15] provide overview maps of the PID service area focusing on the area of analysis. The maps' numbered sites correspond with attributes discussed above, and a quick reference table is included on each figure. Table 7-2 lists the diversion flows and inputs along the Phyllis Canal downstream from the proposed recycled water discharge location.

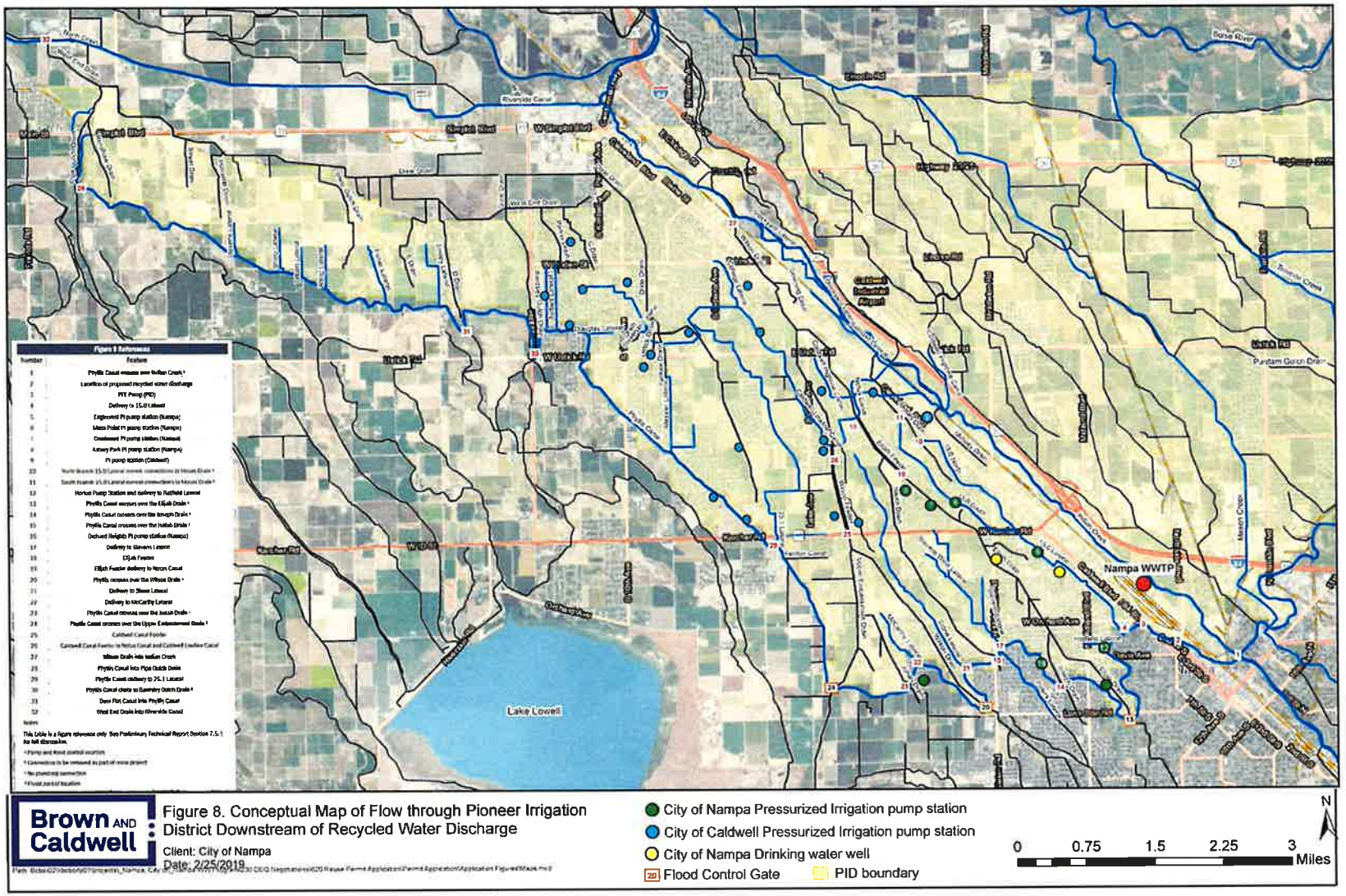


Figure 14. Conceptual Map of Flow through Pioneer Irrigation District Downstream of Recycled Water Flow Discharge (B&C, 2019a)

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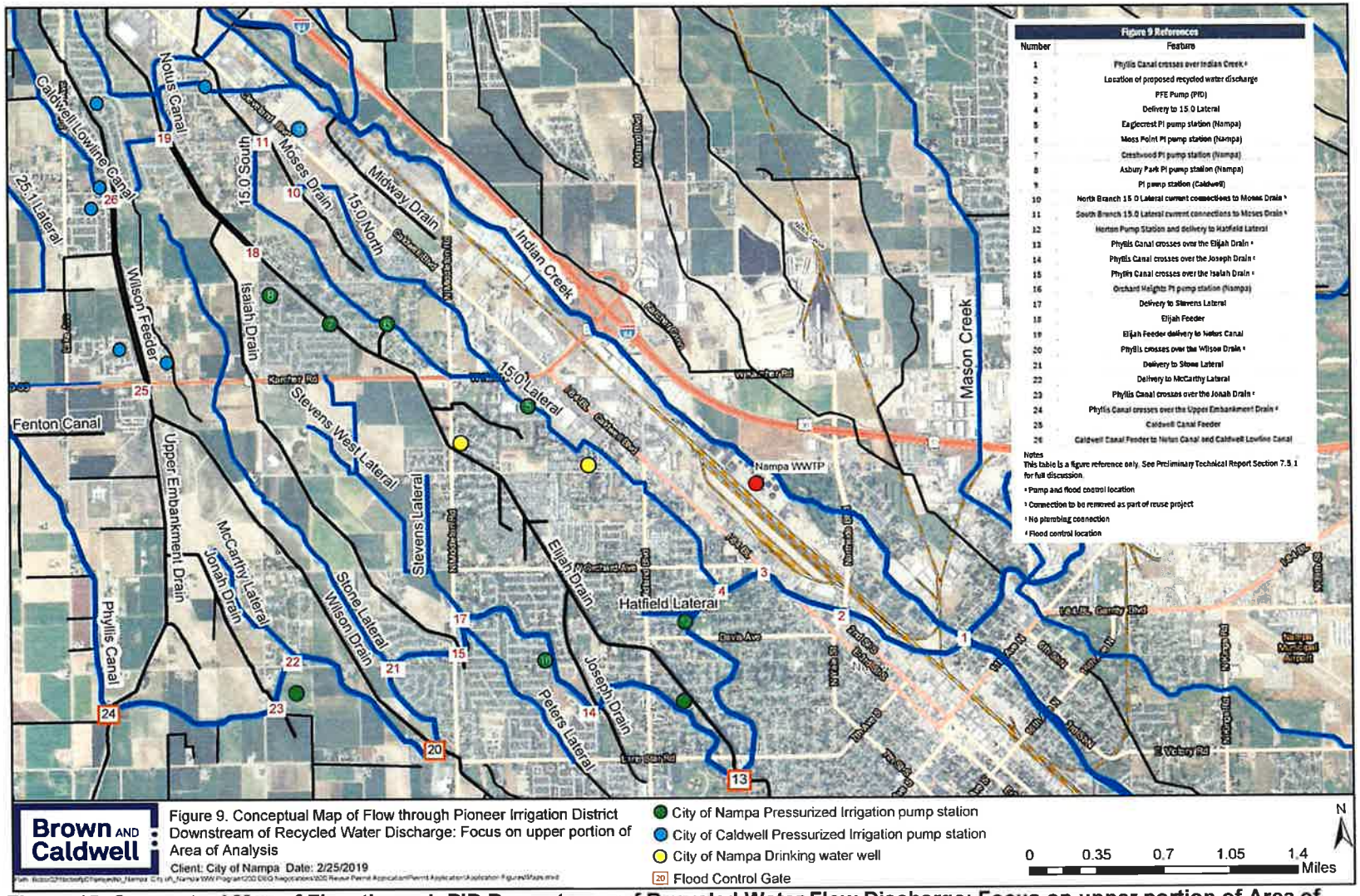

Figure 15. Conceptual Map of Flow through PID Downstream of Recycled Water Flow Discharge: Focus on upper portion of Area of Analysis

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01

Docket No. P-DR-2020-01

REUSE PROPONENTS' SUBMISSION OF SUBMISSION OF EXHIBIT I

Pursuant to *Reuse Proponents' Stipulation of Facts*, the Association of Idaho Cities ("AIC"), the Cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Nampa, Pocatello, Post Falls, and Rupert, and the Hayden Area Regional Sewer Board ("HARSB") (collectively, "Municipal Intervenors") and Pioneer Irrigation District ("Pioneer") hereby submit true and correct copy of the documents identified below. Municipal Intervenors and Pioneer are referred to collectively as "Reuse Proponents."

Respectfully submitted this 30th day of June, 2020.

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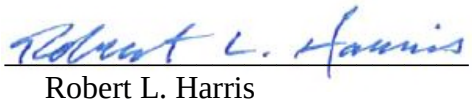

Robert L. Harris

Attorneys for City of Idaho Falls

I HEREBY CERTIFY that on this 30th day of June, 2020, the foregoing was filed, served, and copied as shown below.

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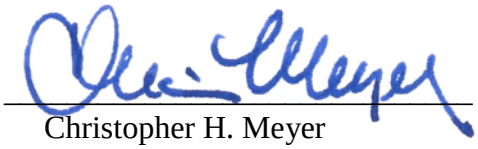

Christopher H. Meyer

Fact Sheet

**The U.S. Environmental Protection Agency (EPA)
Proposes to Reissue a National Pollutant Discharge Elimination System (NPDES) Permit to Discharge Pollutants Pursuant to the Provisions of the Clean Water Act (CWA) to:**

Nampa Wastewater Treatment Facility
340 West Railroad Street
Nampa, ID 83687

Public Comment Start Date: July 23, 2015
Public Comment Expiration Date: September 21, 2015

Technical Contact: Brian Nickel
206-553-6251
800-424-4372, ext. 6251 (within Alaska, Idaho, Oregon and Washington)
Nickel.Brian@epa.gov

The EPA Proposes to Reissue an NPDES Permit
The EPA proposes to reissue the NPDES permit for the facility referenced above. The draft permit places conditions on the discharge of pollutants from the wastewater treatment plant to waters of the United States. In order to ensure protection of water quality and human health, the permit places limits on the types and amounts of pollutants that can be discharged from the facility.

This Fact Sheet includes:
- information on public comment, public hearing, and appeal procedures
- a listing of proposed effluent limitations and other conditions for the facility
- a map and description of the discharge location
- technical material supporting the conditions in the permit

State Certification
The EPA is requesting that the Idaho Department of Environmental Quality (IDEQ) certify the NPDES permit for this facility, under Section 401 of the Clean Water Act. Comments regarding the certification should be directed to:

Regional Administrator
Idaho Department of Environmental Quality
1445 North Orchard
Boise, Idaho 83706

(208) 373-0550

Public Comment

Persons wishing to comment on, or request a Public Hearing for the draft permit for this facility may do so in writing by the expiration date of the Public Comment period. A request for a Public Hearing must state the nature of the issues to be raised as well as the requester's name, address and telephone number. All comments and requests for Public Hearings must be in writing and should be submitted to the EPA as described in the Public Comments Section of the attached Public Notice.

After the Public Notice expires, and all comments have been considered, the EPA's regional Director for the Office of Water and Watersheds will make a final decision regarding permit issuance. If no substantive comments are received, the tentative conditions in the draft permit will become final, and the permit will become effective upon issuance. If substantive comments are received, the EPA will address the comments and issue the permit. The permit will become effective no less than 30 days after the issuance date, unless an appeal is submitted to the Environmental Appeals Board within 30 days pursuant to 40 CFR 124.19.

Documents are Available for Review

The draft NPDES permit and related documents can be reviewed or obtained by visiting or contacting the EPA's Regional Office in Seattle between 8:30 a.m. and 4:00 p.m., Monday through Friday at the address below. The draft permits, fact sheet, and other information can also be found by visiting the Region 10 NPDES website at "http://EPA.gov/r10earth/waterpermits.htm."

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue, OWW-191
Seattle, Washington 98101
(206) 553-0523 or
Toll Free 1-800-424-4372 (within Alaska, Idaho, Oregon and Washington)

The fact sheet and draft permits are also available at:

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
(206) 553-0523 or
1-800-424-4372 (within Alaska, Idaho, Oregon and Washington)

The fact sheet and draft permit are also available at:

EPA Idaho Operations Office
950 W Bannock
Suite 900
Boise, ID 83702

Phone: 208-378-5746

Idaho DEQ Boise Regional Office
1445 N. Orchard St.
Boise, ID 83706
(208) 373-0550

Caldwell Public Library
1010 Dearborn St.
Caldwell, ID 83605
(208) 459-3242

Nampa Public Library
101 11th Ave. S.
Nampa, ID 83651
(208) 468-5800

Cherry Lane Library
1326 W. Cherry Ln.
Meridian, ID 83642
(208) 888-4451

Silverstone Branch Library
3531 E. Overland Rd.
Meridian, ID 83642
(208) 884-2616

Table of Contents

Acronyms

1Q10	1 day, 10 year low flow
7Q10	7 day, 10 year low flow
30B3	Biologically-based design flow intended to ensure an excursion frequency of less than once every three years, for a 30-day average flow.
30Q10	30 day, 10 year low flow
ACR	Acute-to-Chronic Ratio
AML	Average Monthly Limit
AWL	Average Weekly Limit
BOD_5	Biochemical oxygen demand, five-day
BMP	Best Management Practices
°C	Degrees Celsius
CFR	Code of Federal Regulations
CFS	Cubic Feet per Second
CV	Coefficient of Variation
CWA	Clean Water Act
DMR	Discharge Monitoring Report
DO	Dissolved oxygen
EFH	Essential Fish Habitat
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FR	Federal Register
HUC	Hydrologic Unit Code
IC	Inhibition Concentration
ICIS	Integrated Compliance Information System
IDEQ	Idaho Department of Environmental Quality
I/I	Infiltration and Inflow
LA	Load Allocation
lbs/day	Pounds per day
LTA	Long Term Average
mg/L	Milligrams per liter
ml	milliliters

µg/L	Micrograms per liter
mgd	Million gallons per day
MDL	Maximum Daily Limit or Method Detection Limit
MF	Membrane Filtration
MPN	Most Probable Number
N	Nitrogen
NOAA	National Oceanic and Atmospheric Administration
NOEC	No Observable Effect Concentration
NPDES	National Pollutant Discharge Elimination System
OWW	Office of Water and Watersheds
O&M	Operations and maintenance
POTW	Publicly owned treatment works
QAP	Quality assurance plan
RP	Reasonable Potential
RPM	Reasonable Potential Multiplier
RWC	Receiving Water Concentration
SS	Suspended Solids
SSO	Sanitary Sewer Overflow
s.u.	Standard Units
TKN	Total Kjeldahl Nitrogen
TMDL	Total Maximum Daily Load
TRC	Total Residual Chlorine
TRE	Toxicity Reduction Evaluation
TSD	Technical Support Document for Water Quality-based Toxics Control (EPA/505/2-90-001)
TSS	Total suspended solids
TU_a	Toxic Units, Acute
TU_c	Toxic Units, Chronic
USFWS	U.S. Fish and Wildlife Service
USGS	United States Geological Survey
UV	Ultraviolet
WET	Whole Effluent Toxicity

WLA	Wasteload allocation
WQBEL	Water quality-based effluent limit
WQS	Water Quality Standards
WWTF	Wastewater treatment facility
WWTP	Wastewater treatment plant

I. Applicant

A. General Information

This fact sheet provides information on the draft NPDES permit for the following entity:

Nampa Wastewater Treatment Facility (WWTF)
NPDES Permit # ID0022063

Physical Address:
340 West Railroad Street
Nampa, ID 83687-1741

Mailing Address:
411 3rd Street South
Nampa, ID 83651

Contact:
Michael Fuss, Public Works Director, City of Nampa

B. Permit History

The most recent NPDES permit for the Nampa WWTF was issued on December 29, 1998, became effective on February 1, 1999, and expired on February 2, 2004. An NPDES application for permit issuance was submitted by the permittee in July 2003. The EPA determined that the application was timely and complete. Therefore, pursuant to 40 CFR 122.6, the permit has been administratively extended and remains fully effective and enforceable. The City submitted updates to the NPDES permit application in 2005, 2008 and 2011. The first NPDES permit was issued to this facility in December 1974.

II. Facility Information

A. Treatment Plant Description

General

The City of Nampa (City) owns and operates the Nampa WWTF. The facility treats wastewater from both domestic and industrial sources. The collection system has no combined sewers. The facility serves a resident population of about 80,000. The design flow of the facility is 18.0 mgd as a maximum monthly average flow. The average actual effluent flow between 2008 and 2013 is 10.1 mgd, and the maximum monthly average effluent flow was 11.8 mgd.

Treatment Process

The Nampa facility consists of grit removal and screening, three primary clarifiers, three trickling filters, two secondary clarifiers, a nitrification activated sludge process, three final clarifiers, chlorination, dechlorination and post-aeration. Sludge (biosolids) from the wastewater treatment facility is anaerobically digested in a two-stage process. The facility

produces Class B biosolids which are usually applied to land in southeastern Canyon County. The outfall for this facility goes to Indian Creek, and it does not have a diffuser.

Details about the wastewater treatment process and a map showing the location of the treatment facility and discharge are included in Appendix A.

B. Compliance History

In the past five years, the permittee has generally been in compliance with the effluent limits in the 1999 permit with the following exceptions listed in Table 1 below.

Table 1: City of Nampa Effluent Limit Violations 2008 – 2013

Parameter	Statistic	Units	Number of Instances
Total Residual Chlorine	Maximum Daily	µg/L	3
Total Ammonia as N	Maximum Daily	mg/L	5
Total Ammonia as N	Maximum Daily	lb/day	5

III. Receiving Water

This facility discharges to Indian Creek in Nampa, Idaho. The outfall is located downstream (west) of Nampa Boulevard (State Highway 55). Indian Creek is a tributary to the Boise River, which, in turn, is a tributary to the Snake River, which is an interstate waterbody.

A. Low Flow Conditions

The low flow conditions of a water body are used to assess the need for and develop water quality based effluent limits (see Appendix C of this fact sheet for additional information on flows). The EPA used ambient flow data collected at USGS Station #13211309, Indian Creek above Waste Water Plant near Nampa, Idaho (1981 – 1996), and receiving water flow data measured by the permittee (2003 – 2011) to calculate the low flow conditions for Indian Creek upstream of the outfall.

Because there are significant seasonal variations in the flow rate of Indian Creek, the EPA has elected to calculate the critical low flows on a seasonal basis. Due to seasonal variations in hardness, the seasons used for analysis of metals with water quality criteria that are dependent upon hardness are different than those used for other parameters. Because there is relatively little dilution at all times, the seasonal changes in hardness have a greater influence upon effluent limits for metals with hardness-dependent criteria than the seasonal changes in flow.

Table 2: Seasonal Low Flows in Indian Creek Upstream of the Point of Discharge

Season	1Q10 (CFS)	7Q10 (CFS)	30Q10 (CFS)
March – November	7.88	12.9	17.0
December – February	18.0	18.5	19.5
April – October (hardness-dependent metals)	11.6	14.6	N/A
November – March (hardness-dependent metals)	15.2	17.2	N/A

B. Water Quality Standards

Overview

Section 301(b)(1)(C) of the Clean Water Act (CWA) requires the development of limitations in permits necessary to meet water quality standards. Federal regulations at 40 CFR 122.4(d) require that the conditions in NPDES permits ensure compliance with the water quality standards of all affected States. A State's water quality standards are composed of use classifications, numeric and/or narrative water quality criteria, and an anti-degradation policy.

The use classification system designates the beneficial uses that each water body is expected to achieve, such as water supply, contact recreation, and aquatic life. The numeric and narrative water quality criteria are the criteria deemed necessary by the State to support the beneficial use classification of each water body. The anti-degradation policy represents a three-tiered approach to maintain and protect various levels of water quality and uses.

Designated Beneficial Uses

This facility discharges to Indian Creek in the Lower Boise watershed (HUC 17050114), Water Body Unit SW-2. At the point of discharge, Indian Creek is protected for the following designated uses (IDAPA 58.01.02.140.12):

- cold water aquatic life
- secondary contact recreation

In addition, Water Quality Standards state that all waters of the State of Idaho are protected for industrial and agricultural water supply, wildlife habitats and aesthetics (IDAPA 58.01.02.100.03.b and c, 100.04 and 100.05).

Surface Water Quality Criteria

The criteria are found in the following sections of the Idaho Water Quality Standards:

- The narrative criteria applicable to all surface waters of the State are found at IDAPA 58.01.02.200 (General Surface Water Quality Criteria).
- The numeric criteria for toxic substances for the protection of aquatic life and secondary contact recreation are found at IDAPA 58.01.02.210 (Numeric Criteria for Toxic Substances for Waters Designated for Aquatic Life, Recreation, or Domestic Water Supply Use).
- Additional numeric criteria necessary for the protection of aquatic life can be found at IDAPA 58.01.02.250 (Surface Water Quality Criteria for Aquatic Life Use Designations).
- Numeric criteria necessary for the protection of recreation uses can be found at IDAPA 58.01.02.251 (Surface Water Quality Criteria for Recreation Use Designations).
- Water quality criteria for agricultural water supply can be found in the EPA's Water Quality Criteria 1972, also referred to as the "Blue Book" (EPA R3-73-033) (See IDAPA 58.01.02.252.02).

The numeric and narrative water quality criteria applicable to Indian Creek at the point of discharge are provided in Appendix B of this fact sheet.

Antidegradation

The IDEQ has completed an antidegradation review which is included in the draft 401 certification for this permit. See Appendix H for the State's draft 401 water quality certification. The EPA has reviewed this antidegradation review and finds that it is consistent with the State's 401 certification requirements and the State's antidegradation implementation procedures. Comments on the 401 certification including the antidegradation review can be submitted to the IDEQ as set forth above (see State Certification).

C. Water Quality Limited Waters

Any waterbody for which the water quality does not, and/or is not expected to meet, applicable water quality standards is defined as a "water quality limited segment."

Section 303(d) of the Clean Water Act (CWA) requires states to develop a Total Maximum Daily Load (TMDL) management plan for water bodies determined to be water quality limited segments. A TMDL is a detailed analysis of the water body to determine its assimilative capacity. The assimilative capacity is the loading of a pollutant that a water body can assimilate while maintaining compliance with water quality standards. Once the assimilative capacity of the water body has been determined, the TMDL will allocate that capacity among point and non-point pollutant sources, taking into account natural background levels and a margin of safety. Allocations for non-point sources are known as "load allocations" (LAs). The allocations for point sources, known as "waste load allocations" (WLAs), are implemented through effluent limitations in NPDES permits. Effluent limitations for point sources must be consistent with applicable TMDL allocations.

In January 2000, the EPA approved the *Lower Boise River TMDL: Subbasin Assessment, Total Maximum Daily Loads* ("Lower Boise River TMDL"). The Lower Boise River TMDL included wasteload allocations for TSS and bacteria for City of Nampa facility (IDEQ 1999).

On April 15, 2014, IDEQ granted a portion of the Lower Boise River TMDL's reserve for growth allocation to the City of Nampa. IDEQ revised Table 15 of the *Sediment and Bacteria Allocation Addendum to the Lower Boise River TMDL* (IDEQ 2008) to allow Meridian an average monthly allocation of 4,503 lb/day and an average weekly allocation of 6,755 lb/day.

The permit includes water quality-based effluent limits for TSS and bacteria that are consistent with the wasteload allocations in the TMDL.

The State of Idaho's 2012 Integrated Report Section 5 (the "303(d) list") lists the segment of Indian Creek to which the City of Nampa discharges (assessment unit ID17050114SW002_04) as impaired due to temperature, E. coli, sedimentation and siltation, and an unknown cause (with nutrients suspected).

Although the *Lower Boise River TMDL* established load and wasteload allocations for sediment and bacteria for the City of Nampa, these allocations were developed to protect water quality in the Boise River as opposed to Indian Creek.

In April 2015, IDEQ issued the draft *Lower Boise River TMDL: 2015 Addendum*, addressing sediment and bacteria in tributaries to the Boise River, including Indian Creek. This draft TMDL proposed wasteload allocations for sediment and bacteria for the City of Nampa's

discharge to Indian Creek. The proposed WLAs for the City of Nampa are in Table 26, on Page 47 of the draft *Lower Boise River TMDL: 2015 Addendum.* In addition, the State of Idaho's draft CWA §401 certification, states that IDEQ expects that the WLAs will be incorporated into the draft NPDES permit. The draft permit proposes effluent limits for TSS and E. coli that are consistent with the assumptions and requirements of the WLAs in the draft *Lower Boise River TMDL: 2015 Addendum*.

The State of Idaho's 2012 Integrated Report Section 5 (the 303(d) list) lists the segments of the Boise River from Middleton to Indian Creek and from Indian Creek to the mouth as impaired for temperature and total phosphorus (TP). IDEQ has completed a draft TMDL for TP, and the draft permit proposes effluent limits consistent with the assumptions and requirements of the WLAs in the draft TP TMDL. The EPA believes these effluent limits will also protect water quality in Indian Creek. See Appendix F for more details about the proposed TP limits.

Regarding the impairment with an unknown cause, with nutrients suspected, the EPA believes the proposed TP effluent limits, which are consistent with the assumptions and requirements of the WLAs in the draft TP TMDL, will protect water quality in Fivemile Creek as well as the Boise River. See Appendix F for more details about the proposed TP limits.

The EPA has determined that the City of Nampa's discharge has the reasonable potential to cause or contribute to excursions above water quality standards for temperature from July – September, therefore, the permit proposes water quality-based effluent limits for temperature during this season.

IV. Effluent Limitations

A. Basis for Effluent Limitations

In general, the CWA requires that the effluent limits for a particular pollutant be the more stringent of either technology-based limits or water quality-based limits. Technology-based limits are set according to the level of treatment that is achievable using available technology. A water quality-based effluent limit is designed to ensure that the water quality standards applicable to a waterbody are being met and may be more stringent than technology-based effluent limits. The basis for the effluent limits proposed in the draft permit is provided in Appendices D, E, F, and G.

B. Proposed Effluent Limitations

The following summarizes the proposed effluent limits that are in the draft permit.

1. The permittee must not discharge floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or that may impair designated beneficial uses.
2. Removal Requirements for BOD_5 and TSS: The monthly average effluent concentration must not exceed 15 percent of the monthly average influent concentration. Percent removal of BOD_5 and TSS must be reported on the Discharge Monitoring Reports (DMRs). For each parameter, the monthly average percent removal must be calculated from the arithmetic mean of the influent values and the

arithmetic mean of the effluent values for that month. Influent and effluent samples must be taken over approximately the same time period.

3. pH must be within the range of 6.5 – 9.0 standard units.

Table 3, below, presents the proposed effluent limits.

Table 3: Proposed Effluent Limits

Parameter	Units	Average Monthly Limit	Average Weekly Limit	Maximum Daily Limit
BOD_5	mg/L	30	45	—
	lb/day	4504	6755	—
TSS	mg/L	30	45	—
	mg/L	4-month rolling average: 17.5		
	lb/day	4503	6755	—
	lb/day	4-month rolling average: 2,629		
Removal Rates for BOD_5 and TSS	%	85% minimum	—	—
E. coli Bacteria	#/100 ml	126 (geometric mean)	—	576 (instantaneous maximum)
Ammonia March – November	mg/L	1.31	—	4.92
	lb/day	197	—	739
Ammonia December – February	mg/L	1.41	—	5.31
	lb/day	212	—	797
Chlorine March – November	µg/L	9.2	—	18
	lb/day	1.4	—	2.7
Chlorine December – February	µg/L	9.6	—	19
	lb/day	1.4	—	2.9
Total Phosphorus May – September	lb/day	15	26	—
Total Phosphorus October – April	lb/day	52.6	90.5	—
Copper, Total Recoverable April – October	µg/L	10.7	—	23.1
	lb/day	1.61	—	3.47
Copper, Total Recoverable November – March	µg/L	17.8	—	38.5
	lb/day	2.67	—	5.78
Cyanide, Weak Acid Dissociable March – November	µg/L	4.75	—	9.53
	lb/day	0.713	—	1.43
Cyanide, Weak Acid Dissociable December – February	µg/L	4.96	—	9.96
	lb/day	0.745	—	1.50
Dissolved Oxygen	mg/L	6.0 minimum		
	% saturation	90% minimum	80% minimum	—
Mercury, Total March – November	µg/L	0.011	—	0.022
	lb/day	0.0017	—	0.0033
Mercury, Total December – February	µg/L	0.011	—	0.023
	lb/day	0.0017	—	0.0035

Table 3: Proposed Effluent Limits for Temperature			
Season	**Units**	**Maximum Daily Limit**	**Instantaneous Maximum Limit**
July	°C	19.0	—
August	°C	19.0	22.8
September	°C	19.7	—

Effluent Limits Less than Analytical Quantification Limits

The effluent limits for total residual chlorine and weak acid dissociable cyanide are less than the concentrations that can be reliably quantified using EPA-approved analytical methods. Consistent with EPA Region 10's "Guidance on Water Quality Based Effluent Limits Set Below Analytical Detection/Quantification Limits," (EPA 2005) the EPA will use the lowest minimum levels (MLs) that are achievable with EPA-approved analytical methods as the compliance evaluation levels for chlorine and cyanide. The permittee will be compliant with the total residual chlorine and cyanide limitations if the average monthly and maximum daily concentrations are less than the MLs. The ML for chlorine is 50 µg/L, and the ML for cyanide is 10 µg/L.

C. Schedules of Compliance

Schedules of compliance are authorized by federal NPDES regulations at 40 CFR 122.47 and by Section 400.03 of the Idaho Water Quality Standards. The Idaho water quality standards allow for compliance schedules "when new limitations are in the permit for the first time." The federal regulation allows schedules of compliance "when appropriate," and requires that such schedules require compliance as soon as possible. When the compliance schedule is longer than 1 year, federal regulations require that the schedule shall set forth interim requirements and the dates for their achievement. The time between the interim dates shall generally not exceed 1 year, and when the time necessary to complete any interim requirement is more than one year, the schedule shall require reports on progress toward completion of these interim requirements. Federal regulations also generally require that interim effluent limits are at least as stringent as the final limits in the previous permit (40 CFR 122.44(l)(1)).

EPA policy states that, in order to grant a compliance schedule, a permitting authority must make a reasonable finding that the permittee cannot comply with the effluent limit immediately upon the effective date of the final permit (see the *US EPA NPDES Permit Writers' Manual* at Section 9.1.3). Some of the proposed effluent limits for copper, cyanide, dissolved oxygen, mercury, phosphorus, and temperature are new limits that are in the permit for the first time. The EPA has evaluated the City of Nampa's effluent data to determine whether the City could consistently comply with the new water quality-based effluent limits in the draft permit. Table 4, below, summarizes this evaluation.

Table 4: Immediate Achievability of New Water Quality-based Effluent Limits		
Parameter	**Season**	**Achievable Immediately?**
Copper	April – October	No
	November – March	No
Cyanide	March – November	Yes[1]
	December – February	Yes[1]
Dissolved Oxygen (mg/L)	Year-round	Yes
Mercury	March – November	No
	December – February	No
Phosphorus	May – September	No
Phosphorus	October – April	No
Temperature	July	No
	August	No
	September	No

Notes:
1. When determining if the City could comply immediately with the proposed water quality-based effluent limits for weak acid dissociable cyanide, the EPA compared the existing effluent concentrations against the compliance evaluation level of 10 µg/L (see discussion above, under "Effluent Limits Less than Analytical Quantification Limits").

In its draft Clean Water Act Section 401 certification, the State of Idaho proposed to authorize compliance schedules for all of the effluent limits listed in Table 4, above, that the City could not comply with immediately. Consistent with federal regulations (40 CFR 122.47(a)(3)), the schedules of compliance include interim milestones and reports of progress. The State of Idaho also specified interim limits for phosphorus and mercury, which apply during the terms of the compliance schedules.

D. Basis for Less-Stringent BOD_5, Ammonia and Chlorine Limits

Statutory Prohibitions on Backsliding

Section 402(o) of the Clean Water Act (CWA) and 40 CFR 122.44(l) generally prohibit the establishment of effluent limits in a reissued NPDES permit that are less stringent than the corresponding limits in the previous permit (i.e. "backsliding") but provides limited exceptions. Section 402(o)(1) of the CWA states that a permit may not be reissued with less-stringent limits established based on Sections 301(b)(1)(C), 303(d) or 303(e) (i.e. water quality-based limits or limits established in accordance with State treatment standards) except in compliance with Section 303(d)(4). Section 402(o)(1) also prohibits backsliding on technology-based effluent limits established using best professional judgment (i.e. based on Section 402(a)(1)(B)). The anti-backsliding regulations in 40 CFR 122.44(l) address backsliding for other permit conditions.

Section 303(d)(4) of the CWA states that, for water bodies where the water quality meets or exceeds the level necessary to support the water body's designated uses, WQBELs may be revised as long as the revision is consistent with the State's antidegradation policy.

Additionally, Section 402(o)(2) contains exceptions to the general prohibition on backsliding in 402(o)(1). According to the *U.S. EPA NPDES Permit Writers' Manual* (2010) the 402(o)(2) exceptions are applicable to WQBELs (except for 402(o)(2)(B)(ii) and 402(o)(2)(D)) and are independent of the requirements of 303(d)(4). Therefore, WQBELs may be relaxed as long as either the 402(o)(2) exceptions or the requirements of 303(d)(4) are satisfied.

Even if the requirements of Sections 303(d)(4) or 402(o)(2) are satisfied, Section 402(o)(3) prohibits backsliding which would result in violations of WQS or effluent limit guidelines.

BOD_5

The BOD_5 effluent limits in the 1999 permit were the technology-based effluent limits in 40 CFR 133.102. Because these effluent limits were not based on state standards, the applicable anti-backsliding provisions are those in 40 CFR 122.44(l) (see the US EPA Permit Writers' Manual at Section 7.2.2). This regulation states that effluent limitations, standards or conditions in reissued permits must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit, unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under 40 CFR 122.62.

At the time the 1999 permit was issued, the design flow of the Nampa WWTF was 11.76 mgd. The design flow of the WWTP has since been increased to 18 mgd. The increased design flow is a material and substantial alteration, and would therefore constitute cause for a permit modification under 40 CFR 122.62. The loading (i.e., lb/day) limits for BOD_5 have been re-calculated using the current design flow of the POTW, consistent with 40 CFR 122.45(b)(1) and (f).

The EPA has determined that the revised effluent limits for BOD_5, in combination with the effluent limits for dissolved oxygen, will ensure compliance with water quality criteria for DO in Indian Creek. The State of Idaho has determined that the revised effluent limits for BOD_5 are consistent with its antidegradation policy. Because the revised limits ensure compliance with water quality criteria and with the State's antidegradation policy, the revised limits ensure compliance with Idaho's water quality standards and therefore with Section 402(o)(3) of the CWA. The revised effluent limits for BOD_5 ensure compliance with all applicable water quality standards, including antidegradation requirements. Therefore, the loading effluent limits for BOD_5 may be revised.

Total Residual Chlorine

Under some conditions, the draft permit proposes less-stringent effluent limits for total residual chlorine relative to the prior permit. As shown in Table 1, above, the City has at times violated the chlorine effluent limits in the prior permit. When the EPA re-calculated effluent limits for chlorine based on current water quality criteria and recent effluent variability, the resulting limits were less stringent than those in the prior permit, if the flow in Indian Creek is less than 37 CFS.

One of the exceptions to the general prohibition on less-stringent effluent limits is that water quality-based effluent limits may be revised if the revised effluent limits are subject to and consistent with the State's antidegradation policy (CWA Section 303(d)(4)(B)). The State of

Idaho has determined that the revised effluent limits for chlorine are consistent with its antidegradation policy. Because the revised limits ensure compliance with water quality criteria and with the State's antidegradation policy, the revised limits ensure compliance with Idaho's water quality standards and therefore with Section 402(o)(3) of the CWA.

All of the effluent limits for chlorine in both the 1999 permit and the draft permit are less than the concentration that can be reliably quantified using EPA-approved analytical methods. Thus, as explained above, under "Effluent Limits Less than Analytical Quantification Limits," compliance evaluation levels were set for chlorine in both the 1999 permit and the draft permit. The draft permit specifies a lower compliance evaluation level (50 µg/L) than the 1999 permit (100 µg/L). Thus, as a practical matter, the City will need to achieve lower concentrations of chlorine in its effluent under the draft permit than it did under the 1999 permit.

Total Ammonia as N

The draft permit proposes less-stringent effluent limits for total ammonia as N relative to the prior permit. As shown in Table 1, above, the City has at times violated the ammonia effluent limits in the prior permit. When the EPA re-calculated effluent limits for ammonia based on current water quality criteria and recent effluent variability, the resulting limits were less stringent than those in the prior permit.

One of the exceptions to the general prohibition on less-stringent effluent limits is that water quality-based effluent limits may be revised if the revised effluent limits are subject to and consistent with the State's antidegradation policy (CWA Section 303(d)(4)(B)). The State of Idaho has determined that the revised effluent limits for ammonia are consistent with its antidegradation policy. Because the revised limits ensure compliance with water quality criteria and with the State's antidegradation policy, the revised limits ensure compliance with Idaho's water quality standards and therefore with Section 402(o)(3) of the CWA.

V. Monitoring Requirements

A. Basis for Effluent and Surface Water Monitoring

Section 308 of the CWA and federal regulation 40 CFR 122.44(i) require monitoring in permits to determine compliance with effluent limitations. Monitoring may also be required to gather effluent and surface water data to determine if additional effluent limitations are required and/or to monitor effluent impacts on receiving water quality.

The permit also requires the permittee to perform effluent monitoring required by parts B.6 and D of the NPDES Form 2A application, so that these data will be available when the permittee applies for a renewal of its NPDES permit.

The permittee is responsible for conducting the monitoring and for reporting results on DMRs or on the application for renewal, as appropriate, to the EPA.

B. Effluent Monitoring

Monitoring frequencies are based on the nature and effect of the pollutant, as well as a determination of the minimum sampling necessary to adequately monitor the facility's performance. Permittees have the option of taking more frequent samples than are required

under the permit. These samples can be used for averaging if they are conducted using EPA-approved test methods (40 CFR Part 136) and if the Method Detection Limits for the test methods are less than the effluent limits.

Monitoring Changes from the Previous Permit

The draft permit proposes more-frequent effluent monitoring for total phosphorus from May – October to determine compliance with the new water quality-based effluent limits in effect during that season. The draft permit also proposes more-frequent monitoring for copper, cyanide, mercury, and temperature in order to determine compliance with the new water quality-based effluent limits for those parameters. The draft permit proposes more-frequent monitoring for ammonia because the permittee has had difficulty complying with the effluent limits for ammonia in the prior permit. The draft permit proposes more-frequent monitoring for TSS because the loading (i.e., lb/day) effluent limits for TSS are now water quality-based (i.e., they are consistent with the City's WLA in the *Lower Boise River TMDL*) rather than technology-based. The draft permit requires monitoring for chromium VI in addition to total chromium in order to better characterize the City's discharge of chromium and evaluate it against water quality criteria for both chromium III and chromium VI. The permit requires more-frequent influent monitoring for mercury to determine if the City's mercury minimization plan is effective.

Table 5: Influent, Effluent and Sludge Monitoring Requirements

Parameter	Units	Sample Location	Sample Frequency	Sample Type
Flow	mgd	Effluent	Continuous	recording
Temperature	°C	Effluent	Continuous	recording
BOD_5	mg/L	Influent & Effluent	1/week	24-hour composite
	lb/day	Influent & Effluent		calculation[1]
	% Removal	% Removal	1/month	calculation[2]
TSS	mg/L	Influent & Effluent	2/week	24-hour composite
	lb/day	Influent & Effluent		calculation[1]
	% Removal	% Removal	1/month	calculation[2]
pH	standard units	Effluent	5/week	grab
E. Coli	#/100 ml	Effluent	10/month	grab
Total Residual Chlorine	µg/L	Effluent	5/week	grab
	lb/day	Effluent		calculation[1]
Total Phosphorus as P	µg/L	Effluent	2/week	24-hour composite
	lb/day	Effluent		calculation[1]
Total Phosphorus as P	mg/L	Influent	1/month	24-hour composite
Total Ammonia as N	mg/L	Effluent	2/week	24-hour composite
	lb/day	Effluent		calculation[1]
Copper, total recoverable	µg/L	Effluent	1/month	24-hour composite
	lb/day	Effluent		calculation[1]
	µg/L	Influent	2/year[3]	24-hour composite
	mg/kg	Sludge	2/year[4]	24-hour composite
Cyanide, weak acid dissociable	µg/L	Effluent	1/month	24-hour composite
	lb/day	Effluent		calculation[1]
	µg/L	Influent	2/year[3]	24-hour composite
	mg/kg	Sludge	2/year[4]	24-hour composite
Mercury, Total	µg/L	Influent & effluent	1/month	24-hour composite
	lb/day	Effluent		calculation[1]

Table 5: Influent, Effluent and Sludge Monitoring Requirements

Parameter	Units	Sample Location	Sample Frequency	Sample Type
	mg/kg	Sludge	2/year[4]	24-hour composite
Whole Effluent Toxicity	TU_c	Effluent	2/year[5]	24-hour composite
Nitrate + Nitrite	mg/L	Effluent	1/month	24-hour composite
Total Kjeldahl Nitrogen	mg/L	Effluent	1/month	24-hour composite
Soluble Reactive Phosphorus	mg/L	Effluent	1/month	24-hour composite
Arsenic, Total	µg/L	Influent & effluent	2/year[3]	24-hour composite
	mg/kg	Sludge	2/year[4]	
Cadmium, Total Recoverable	µg/L	Influent & effluent	2/year[3]	24-hour composite
	mg/kg	Sludge	2/year[4]	
Chromium, Total	µg/L	Influent & effluent	2/year[3]	24-hour composite
	mg/kg	Sludge	2/year[4]	
Chromium VI, Dissolved	µg/L	Influent & effluent	2/year[3]	24-hour composite
Conductivity	µmhos/ cm	Effluent	1/month	24-hour composite
Dissolved Organic Carbon (DOC)	mg/L	Effluent	1/month	24-hour composite
Hardness	mg/L as $CaCO_3$	Effluent	1/month	24-hour composite
Lead, Total Recoverable	µg/L	Influent & effluent	2/year[3]	24-hour composite
	mg/kg	Sludge	2/year[4]	
Molybdenum	µg/L	Influent & effluent	2/year[3]	24-hour composite
	mg/kg	Sludge	2/year[4]	
Nickel, Total Recoverable	µg/L	Influent & effluent	2/year[3]	24-hour composite
	mg/kg	Sludge	2/year[4]	
Selenium	µg/L	Influent & effluent	2/year[3]	24-hour composite
	mg/kg	Sludge	2/year[4]	
Silver, Total Recoverable	µg/L	Influent & effluent	2/year[3]	24-hour composite
	mg/kg	Sludge	2/year[4]	
Zinc, Total Recoverable	µg/L	Influent & effluent	2/year[3]	24-hour composite
	mg/kg	Sludge	2/year[4]	
NPDES Application Form 2A Expanded Effluent Testing	—	Effluent	3x/5 years	—

Notes:
1. Loading is calculated by multiplying the concentration in mg/L by the flow in mgd and a conversion factor of 8.34. If the concentration is measured in µg/L, the conversion factor is 0.00834.
2. Percent removal is calculated using the following equation:
   (average monthly influent – average monthly effluent) ÷ average monthly influent.
3. Each twice yearly sampling event for these parameters must consist of three 24-hour composite samples taken within a calendar week.
4. Sludge sampling must be conducted once during the same time period that influent and effluent samples are being taken.
5. Sampling must take place at least once during each of the following seasons: December – February and March – November.

The regulations at 40 CFR 122.62(a)(2) allow modification of permit conditions if new information was received that was not available at the time of permit issuance. The purpose of the monitoring requirements in the 1999 permit was to ensure appropriate data was available for the next permit reissuance. The EPA considers the monitoring data gathered during the term of the 1999 permit new information that was not available at the time of issuance of the 1999 permit, therefore, the monitoring requirements may be modified, if appropriate.

The EPA reviewed the monitoring results and has determined that orthophosphate and fecal coliform bacteria do not need to be monitored.

For arsenic, cadmium, chromium, lead, nickel, sliver, and zinc, the EPA has determined that, in general, the sampling that had been required as part of the pretreatment requirements in the 1999 permit (see the 1999 permit at Page 13) is adequate to characterize the discharge of these pollutants. Therefore, the pretreatment monitoring requirements for these pollutants have been included in Table 1 of the draft permit. Although more frequent effluent monitoring is required for copper, cyanide, and mercury in order to determine compliance with the new water quality-based effluent limits for those parameters, the influent and sludge monitoring requirements for those parameters are the same as those in the 1999 permit.

The prior permit had required monitoring of fecal coliform five times per week. The fecal coliform limits and monitoring requirements in the prior permit have been replaced with effluent limits and monitoring requirements for E. coli.

The Idaho WQS state that "waters designated for primary or secondary contact recreation are not to contain E. coli bacteria in concentrations exceeding a geometric mean of one hundred twenty-six (126) E. coli organisms per one hundred (100) ml based on a minimum of five (5) samples taken every three (3) to seven (7) days over a thirty (30) day period" (IDAPA 58.01.02.251.01.a). Sampling E. coli at a frequency of five times per week would require samples to be taken more frequently than once every three days. Therefore, the EPA has changed the E. coli sampling frequency to 10 times per month, which allows sampling at a frequency consistent with the WQS.

Monitoring for conductivity and dissolved organic carbon is required so that, if the State of Idaho were to adopt water quality criteria for copper based on the biotic ligand model consistent with EPA recommendations, water quality criteria for copper can be evaluated.

C. Surface Water Monitoring

The previous permit required receiving water monitoring for a variety of parameters. As stated previously, the purpose of the monitoring was to assure that appropriate data was available for the next permit cycle. As discussed above, the EPA's anti-backsliding regulations at 40 CFR 122.44(l)(1) generally prohibit the backsliding of any conditions (including monitoring requirements) unless there is cause for change consistent with the federal regulations at 40 CFR 122.62. The regulations at 40 CFR 122.62 allow modification of permit conditions if new information was received that was not available at the time of permit issuance. The purpose of the monitoring requirements in the 1999 permit was to ensure appropriate data was available for the next permit reissuance. The EPA considers the monitoring data gathered during the term of the 1999 permit new information that was not available at the time of issuance of the 1999 permit, therefore, the monitoring requirements may be modified. The EPA reviewed the monitoring results and has determined that some receiving water parameters are no longer necessary (e.g., ortho-phosphorus, oil and grease, fecal coliform bacteria). The table below presents the proposed receiving monitoring requirements for the facility.

Table 6: Surface Water Monitoring Requirements		
Parameter	**Upstream Sampling Frequency**	**Downstream Sampling Frequency**
Flow, CFS	1/week	—
BOD_5, mg/L	1/month	—
Dissolved Oxygen, mg/L	Continuous[1]	Continuous[1]
Dissolved Oxygen, % of saturation	Continuous[1]	Continuous[1]
Total Phosphorus, mg/L	1/month	1/month
Total Nitrogen, mg/L	1/month	1/month
Chlorophyll a	1/month	1/month
Temperature, °C	Continuous	Continuous
pH, standard units	Continuous[1]	Continuous[1]
Turbidity, NTU	1/week	1/week
Hardness as $CaCO_3$, mg/L	—	1/month
Arsenic, µg/L	1/quarter	—
Cadmium, dissolved µg/L	1/quarter	—
Chromium, total dissolved	1/quarter	—
Chromium VI, dissolved	1/quarter	—
Conductivity, µmhos/cm	—	1/quarter
Copper, dissolved µg/L	1/quarter	—
Dissolved organic carbon, mg/L	—	1/quarter
Lead, dissolved µg/L	1/quarter	—
Mercury, total µg/L	1/quarter	1/quarter
Nickel, dissolved µg/L	1/quarter	—
Silver, dissolved µg/L	1/quarter	—
Zinc, dissolved µg/L	1/quarter	—
Notes: 1. Continuous monitoring for dissolved oxygen and pH is required during the final 12 months of the permit term.		

The EPA proposes receiving water monitoring for total nitrogen, total phosphorus and chlorophyll a and continuous monitoring for dissolved oxygen and pH to determine if the proposed effluent limits for nutrients are adequate to protect water quality in Indian Creek. Continuous monitoring for temperature is required in order to better determine the discharge's effect on water the temperature of Indian Creek and to allow for the calculation of dissolved oxygen saturation.

Monitoring for conductivity and dissolved organic carbon is required so that, if the State of Idaho were to adopt water quality criteria for copper based on the biotic ligand model consistent with EPA recommendations, water quality criteria for copper can be evaluated.

VI. Sludge (Biosolids) Requirements

The EPA Region 10 separates wastewater and sludge permitting. The EPA has authority under the CWA to issue separate sludge-only permits for the purposes of regulating biosolids. The EPA may issue a sludge-only permit to each facility at a later date, as appropriate.

Until future issuance of a sludge-only permit, sludge management and disposal activities at each facility continue to be subject to the national sewage sludge standards at 40 CFR Part 503 and any requirements of the State's biosolids program. The Part 503 regulations are self-

implementing, which means that facilities must comply with them whether or not a permit has been issued.

VII. Other Permit Conditions

A. Mercury Minimization Plan

As explained in Appendix E, the City's discharge has the reasonable potential to cause or contribute to excursions above aquatic life water quality criteria for mercury in the water column. The proposed numeric water quality-based effluent limits for mercury in the draft permit are derived from and ensure compliance with the aquatic life criteria.

In addition to the numeric effluent limits for mercury based upon the aquatic life criteria for mercury in the water column, the draft permit proposes to require the City to develop and implement a mercury minimization plan (MMP). The objective of the plan is to identify potential sources of mercury loading to the POTW, and, in turn, the receiving water, in an effort to attain compliance with the State of Idaho's human health criterion for mercury in fish tissue (0.3 mg/kg).

On July 2, 2012, the Idaho Department of Health and Welfare issued a fish advisory for catfish caught from the lower Boise River, due to levels of mercury that could be dangerous to developing babies, children, and the general public, if eaten too often. In addition, the Snake River, in the Middle Snake-Payette watershed, downstream from the Boise River, is 303(d) listed in the State of Oregon's 2010 integrated report as being impaired for mercury due to high concentrations of mercury in fish tissue.

Quantifiable concentrations of mercury have been measured in the City's discharge. The EPA's *Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion* ("EPA Methylmercury Guidance") recommends that, when there is a quantifiable discharge of mercury from a point source, and the concentration of methylmercury in fish tissue from the receiving water exceeds or is close to the criterion, the permitting authority should find that the discharge has the reasonable potential to cause or contribute to excursions above the fish tissue criterion. If there is no TMDL for mercury for the receiving water and it is not feasible to translate the fish tissue criterion to a water column concentration, the EPA Methylmercury Guidance recommends a permit requirement to develop and implement an MMP, as well as effluent monitoring using a sufficiently sensitive analytical method to determine if the MMP is effective and a reopener clause to modify the permit conditions if the MMP is found to be ineffective or if a water column translation of the fish tissue criterion is developed.

The State of Idaho has also published guidance for the implementation of its methylmercury fish tissue criterion, the *Implementation Guidance for the Idaho Mercury Water Quality Criteria* ("Idaho Mercury Guidance"). According to the Idaho Mercury Guidance, a source that has the reasonable potential to cause or contribute to an excursion above the fish tissue criterion or that has been assigned a mercury WLA in a TMDL is a "significant source." As explained above, the City's discharge has the reasonable potential to cause or contribute to an excursion above the fish tissue criterion, according to the EPA Methylmercury Guidance. Furthermore, the Idaho Mercury Guidance states that, prior to the development of a TMDL for mercury, "permit conditions for major and minor NPDES dischargers can parallel 'significant' or 'de minimis' requirements, respectively" (see Table 6-1, Page 92). That is to

say, major NPDES discharges that discharge mercury are generally considered "significant" and have the reasonable potential to cause or contribute to excursions above WQS. The recommended permit conditions for significant municipal sources include mandatory best management practices (BMPs) and both effluent and fish tissue monitoring requirements.

The Idaho Mercury Guidance also recommends a no net increase requirement for mercury, for sources that have reasonable potential to cause or contribute to excursions above the fish tissue criterion (Section 6.3.1). However, in this case, the EPA believes that the numeric effluent limits for mercury, which are based on the aquatic life water quality criteria that are in effect for Clean Water Act purposes in Idaho, will ensure that there is no increase in mercury discharges from the facility. Therefore, the draft permit does not propose a no net increase provision.

The Idaho Mercury Guidance recommends an effluent monitoring frequency of quarterly until 12 samples are collected, and then semi-annually thereafter. However, in this case, numeric water quality-based effluent limits for mercury are necessary in order to ensure compliance with the aquatic life water quality criteria that are in effect for Clean Water Act purposes in Idaho, and more frequent (i.e., monthly) monitoring is necessary to determine compliance with these limits. Consistent with the recommendations in the EPA Methylmercury Guidance and the Idaho Mercury Guidance, the EPA has proposed to require that effluent monitoring for mercury use sufficiently sensitive analytical methods.

B. Quality Assurance Plan

The federal regulation at 40 CFR 122.41(e) requires the permittee to develop procedures to ensure that the monitoring data submitted is accurate and to explain data anomalies if they occur. The City of Nampa is required to update the Quality Assurance Plan for the wastewater treatment facility within 90 days of the effective date of the final permit. The Quality Assurance Plan must include standard operating procedures the permittee will follow for collecting, handling, storing and shipping samples, laboratory analysis, and data reporting. The plan must be retained on site and be made available to the EPA and the IDEQ upon request.

C. Operation and Maintenance Plan

The permit requires the City of Nampa to properly operate and maintain all facilities and systems of treatment and control. Proper operation and maintenance is essential to meeting discharge limits, monitoring requirements, and all other permit requirements at all times. The permittee is required to develop and implement an operation and maintenance plan for their facility within 90 days of the effective date of the final permit. The plan must be retained on site and made available to the EPA and the IDEQ upon request.

D. Sanitary Sewer Overflows and Proper Operation and Maintenance of the Collection System

Untreated or partially treated discharges from separate sanitary sewer systems are referred to as sanitary sewer overflows (SSOs). SSOs may present serious risks of human exposure when released to certain areas, such as streets, private property, basements, and receiving waters used for drinking water, fishing and shellfishing, or contact recreation. Untreated sewage contains pathogens and other pollutants, which are toxic. SSOs are not authorized

under this permit. Pursuant to the NPDES regulations, discharges from separate sanitary sewer systems authorized by NPDES permits must meet effluent limitations that are based upon secondary treatment. Further, discharges must meet any more stringent effluent limitations that are established to meet the EPA-approved state water quality standards.

The permit contains language to address SSO reporting and public notice and operation and maintenance of the collection system. The permit requires that the permittee identify SSO occurrences and their causes. In addition, the permit establishes reporting, record keeping and third party notification of SSOs. Finally, the permit requires proper operation and maintenance of the collection system. The following specific permit conditions apply:

Immediate Reporting – The permittee is required to notify the EPA of an SSO within 24 hours of the time the permittee becomes aware of the overflow. (See 40 CFR 122.41(l)(6))

Written Reports – The permittee is required to provide the EPA a written report within five days of the time it became aware of any overflow that is subject to the immediate reporting provision. (See 40 CFR 122.41(l)(6)(i)).

Third Party Notice – The permit requires that the permittee establish a process to notify specified third parties of SSOs that may endanger health due to a likelihood of human exposure; or unanticipated bypass and upset that exceeds any effluent limitation in the permit or that may endanger health due to a likelihood of human exposure. The permittee is required to develop, in consultation with appropriate authorities at the local, county, tribal and/or state level, a plan that describes how, under various overflow (and unanticipated bypass and upset) scenarios, the public, as well as other entities, would be notified of overflows that may endanger health. The plan should identify all overflows that would be reported and to whom, and the specific information that would be reported. The plan should include a description of lines of communication and the identities of responsible officials. (See 40 CFR 122.41(l)(6)).

Record Keeping – The permittee is required to keep records of SSOs. The permittee must retain the reports submitted to the EPA and other appropriate reports that could include work orders associated with investigation of system problems related to a SSO, that describes the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the SSO. (See 40 CFR 122.41(j)).

Proper Operation and Maintenance – The permit requires proper operation and maintenance of the collection system. (See 40 CFR 122.41(d) and (e)). SSOs may be indicative of improper operation and maintenance of the collection system. The permittee may consider the development and implementation of a capacity, management, operation and maintenance (CMOM) program.

The permittee may refer to the Guide for Evaluating Capacity, Management, Operation, and Maintenance (CMOM) Programs at Sanitary Sewer Collection Systems (EPA 305-B-05-002). This guide identifies some of the criteria used by the EPA inspectors to evaluate a collection system's management, operation and maintenance program activities. Owners/operators can review their own systems against the checklist (Chapter 3) to reduce the occurrence of sewer overflows and improve or maintain compliance.

E. Design Criteria

The 1999 NPDES permit for the facility contained flow, BOD_5 and TSS influent design loadings for the facility, and required the facility to develop a plan when the loading exceeded 85% of the design loads. The purpose of this requirement was to ensure that the permittee took the necessary steps to upgrade the facility to ensure that the facility was able to properly treat the flows into the facility and maintain compliance with the permit.

In general, federal regulations at 40 CFR 122.44(l) prohibit the renewal, reissuance or modification of an existing NPDES permit that contains effluent limits, permit conditions or standards that are less stringent than those established in the previous permit (i.e., anti-backsliding) unless the circumstances upon which the previous permit was based have materially and substantially changed since the last permit was issued and which would constitute a cause for permit modification pursuant to 40 CFR 122.62. In addition, 40 CFR 122.44(l)(1) and CWA Section 402(o) allows for the imposition of less stringent effluent limitations if one of the anti-backsliding exceptions set forth in 40 CFR 122.44(l)(2) is applicable.

The regulations at 40 CFR 122.62(a)(2) allow modification of permit conditions if new information was received that was not available at the time of permit issuance. In this case, the City of Nampa has been working over the last several years to identify options to upgrade its facility. The City has found four options that are viable. The four options are:

Option #1 and #2: Infiltration - Treated wastewater would be applied to an area of land rather than discharged into Indian Creek. Highly treated water from the City's wastewater treatment plant would be pumped offsite and released into a system of basins and/or ponds, then slowly infiltrated back into the aquifer south of Lake Lowell. Two methods of infiltration are being considered:

Infiltration Sub-Option #1: Direct infiltration would increase the level of treatment to a very high level at the plant. The treated water would pumped away from the plant and applied to constructed ponds where it would infiltrate back into the groundwater.

Infiltration Sub-Option #2: Rapid infiltration would increase the level of treatment to a high level at the plant. The treated water would be pumped away from the plant and applied to a series of basins. The basins would be designed to further cleanse the water by using the soil ecosystem to absorb pollutants and organic compounds. After being thoroughly cleansed through the soil, the treated water would infiltrate back into the groundwater.

Option #3: Treat and offset –Upgrades would be made at the plant to treat wastewater to certain levels and water would continue to be discharged into Indian Creek. To meet stricter regulations, Nampa would remove pollutants from Indian Creek at an alternate enhanced wetlands location.

Option #4: Upgrade the treatment plant –Substantial upgrades would be made at the plant and water would continue to be discharged into Indian Creek. To meet stricter regulations, upgrades to the plant would include adding chemical and biological processes to remove pollutants that are harmful to waterways.

The City has engaged in numerous public meetings to discuss the upgrade options and gather input from the public. The final option has not yet been chosen.

The EPA considers the extensive work that the City has engaged in regarding upgrading their treatment plant to be new information that was not available at the time of issuance of the 1999 permit, therefore, the EPA believes that the design criteria requirements may be removed from the permit.

F. Pretreatment Requirements

In February 1982, the City of Nampa submitted a formal pretreatment program application that met the requirements of 40 CFR §403. The program was approved by the EPA on July 1, 1982, and the city's NPDES permit was modified with pretreatment implementation conditions. The facility developed local limits as part of the pretreatment program in 1987.

According to the City's 2011 Pretreatment Annual Report the following are Significant Industrial Users to the wastewater treatment system:

- ABC Sanitation Company
- Boise Packaging and Newsprint, LLC
- Cintas Corporation
- Great American Appetizer Inc.
- Pepsi Bottling Venture
- Plexus Corporation
- Silicon Mountain
- Simplot Food Group
- The Amalgamated Sugar Company
- Transform Manufacturing, LLC

The following are Categorical Industrial Users to the wastewater treatment system:

- Advanced Electrochemical Technology
- BHS Marketing
- Micron Technology, Inc
- Microsil Silicon Services, LLC
- Selkirk, LLC
- Steelhead Metal Corporation

The total flow from the significant industrial users is approximately 3.2 mgd.

The proposed permit includes requirements to continue implementation of the approved pretreatment program. In particular, it continues the pretreatment sampling requirements from the previous permit and adds requirements to monitor for ammonia, molybdenum and selenium, as recommended in the EPA's *Local Limits Development Guidance* (EPA 833-R-04-002A, July 2004).

G. Standard Permit Provisions

Sections III, IV and V of the draft permit contain standard regulatory language that must be included in all NPDES permits. Because these requirements are based directly on NPDES regulations, they cannot be challenged in the context of an NPDES permit action. The standard regulatory language covers requirements such as monitoring, recording, and reporting requirements, compliance responsibilities, and other general requirements.

H. Environmental Justice

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, directs each federal agency to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities." EPA strives to enhance the ability of overburdened communities to participate fully and meaningfully in the permitting process for EPA-issued permits, including NPDES permits. "Overburdened" communities can include minority, low-income, tribal, and indigenous populations or communities that potentially experience disproportionate environmental harms and risks. As part of an agency-wide effort, EPA Region 10 will consider prioritizing enhanced public involvement opportunities for EPA-issued permits that may involve activities with significant public health or environmental impacts on already overburdened communities.[1]

As part of the permit development process, EPA Region 10 conducted a screening analysis to determine whether this permit action could affect overburdened communities using a nationally consistent geospatial tool that contains demographic and environmental data for the United States at the Census block group level. This tool is used to identify permits for which enhanced outreach may be warranted.

The WWTF is located within or near a Census block group that is potentially overburdened because of high particulate matter (PM) 2.5, diesel PM, and ozone levels in the air, high traffic proximity and volume, a high lead paint indicator score, major direct dischargers to water, hazardous waste treatment, storage, and disposal facilities (TSDFs), risk management plan (RMP) facilities, and a high air toxics neurological hazard index (HI). In order to ensure that individuals who live near the facility are able to participate meaningfully in the permit process, EPA is conducting enhanced outreach activities. Specifically, the EPA has notified Spanish-language newspapers and radio stations of the availability of this draft permit and made EPA staff available for interviews.

To address environmental justice, the permit requires the City to post the same effluent data that it reports on its DMRs on its website, so that the public may easily access these data. This serves the additional purpose of discouraging noncompliance, as discussed under the "next generation compliance" section below.

In addition, the EPA encourages permittees to review (and to consider adopting, where appropriate) "Promising Practices for Permit Applicants Seeking EPA-Issued Permits: Ways To Engage Neighboring Communities."[2] Examples of promising practices include: thinking ahead about community's characteristics and the effects of the permit on the community, engaging the right community leaders, providing progress or status reports, inviting members of the community for tours of the facility, providing informational materials translated into different languages, setting up a hotline for community members to voice concerns or request information, follow up, etc.

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[1] For more information, please visit www.epa.gov/compliance/ej/plan-ej/.
[2] For more information, please visit https://www.federalregister.gov/articles/2013/05/09/2013-10945/epa-activities-to-promote-environmental-justice-in-the-permit-application-process#p-104.

I. Next Generation Compliance

This City's permit is part of a pilot project to update the way that the EPA monitors compliance with NPDES permits, as part of the EPA's "next generation compliance" effort.[3]

The EPA requires all major dischargers to report effluent data to the EPA electronically using NetDMR. Under NetDMR, all reports required under the permit are submitted to the EPA as an electronic attachment to the DMR. Once a permittee begins submitting reports using NetDMR, it is no longer required to submit paper copies of DMRs or most other reports to the EPA and IDEQ. However, because of their due dates, some reports must be submitted separately from the electronic DMRs. Further information about NetDMR, including upcoming trainings and contacts, is provided on the following website: http://www.EPA.gov/netdmr.

However, the effluent data reported directly in NetDMR is only a summary of the effluent data. The City's permit also requires the City to submit its complete effluent data for selected pollutants as attachments to its electronic discharge monitoring reports (DMRs). This will allow the EPA to identify any errors in the summary DMR data and will also provide the EPA with data necessary to reissue the permit.

The permit also requires the City to report the summary effluent data that is reported in NetDMR on its own website. Instances of noncompliance that are required to be reported to the EPA within 24 hours must also be posted the City's website within 24 hours. This requirement serves the additional purpose of furthering the EPA's environmental justice efforts, as discussed above.

VIII. Other Legal Requirements

A. Endangered Species Act

The Endangered Species Act requires federal agencies to consult with National Oceanic and Atmospheric Administration Fisheries (NOAA Fisheries) and the U.S. Fish and Wildlife Service (USFWS) if their actions could beneficially or adversely affect any threatened or endangered species. A review of the threatened and endangered species located in Idaho finds that there are no threatened or endangered species located in vicinity of the discharge, therefore ESA consultation is not required.

B. Essential Fish Habitat

Essential fish habitat (EFH) is the waters and substrate (sediments, etc.) necessary for fish to spawn, breed, feed, or grow to maturity. The Magnuson-Stevens Fishery Conservation and Management Act (January 21, 1999) requires the EPA to consult with NOAA Fisheries when a proposed discharge has the potential to adversely affect EFH (i.e., reduce quality and/or quantity of EFH).

The EFH regulations define an adverse effect as any impact which reduces quality and/or quantity of EFH and may include direct (e.g. contamination or physical disruption), indirect

[3] For more information, please visit: www2.epa.gov/compliance/next-generation-compliance.

(e.g. loss of prey, reduction in species' fecundity), site specific, or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions.

The EPA has determined that issuance of this permit is not likely to adversely affect EFH in the vicinity of the discharge. Neither Indian Creek nor the Boise River nor the Snake River within the Middle Snake-Payette (HUC 17050115) and Brownlee Reservoir (HUC 17050201) watersheds downstream from the Boise River are designated as EFH. The permit is conditioned to meet water quality standards in Indian Creek. Thus, the discharge will not affect the distant downstream reaches of the Snake River that are designated as EFH.

The EPA has provided NOAA Fisheries with copies of the draft permit and fact sheet during the public notice period. Any comments received from NOAA Fisheries regarding EFH will be considered prior to reissuance of this permit.

C. State Certification

Section 401 of the CWA requires the EPA to seek State certification before issuing a final permit. As a result of the certification, the State may require more stringent permit conditions or additional monitoring requirements to ensure that the permit complies with water quality standards, or treatment standards established pursuant to any State law or regulation.

D. Permit Expiration

The permit will expire five years from the effective date.

IX. References

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Appendix A: Facility Information

General Information

NPDES ID Number:	ID0022063
Physical Location:	340 West Railroad Street Nampa, ID 83687-1741
Mailing Address:	411 3rd Street South Nampa, ID 83651
Facility Background:	The most recent NPDES for the Nampa WWTF was issued on December 29, 1998, became effective on February 1, 1999, and expired on February 2, 2004. An NPDES application for permit issuance was submitted by the permittee in July 2003. The EPA determined that the application was timely and complete. Therefore, pursuant to 40 CFR 122.6, the permit has been administratively extended and remains fully effective and enforceable. The City submitted updates to the NPDES permit application in 2005, 2008 and 2011. The first NPDES permit was issued to this facility in December 1974.

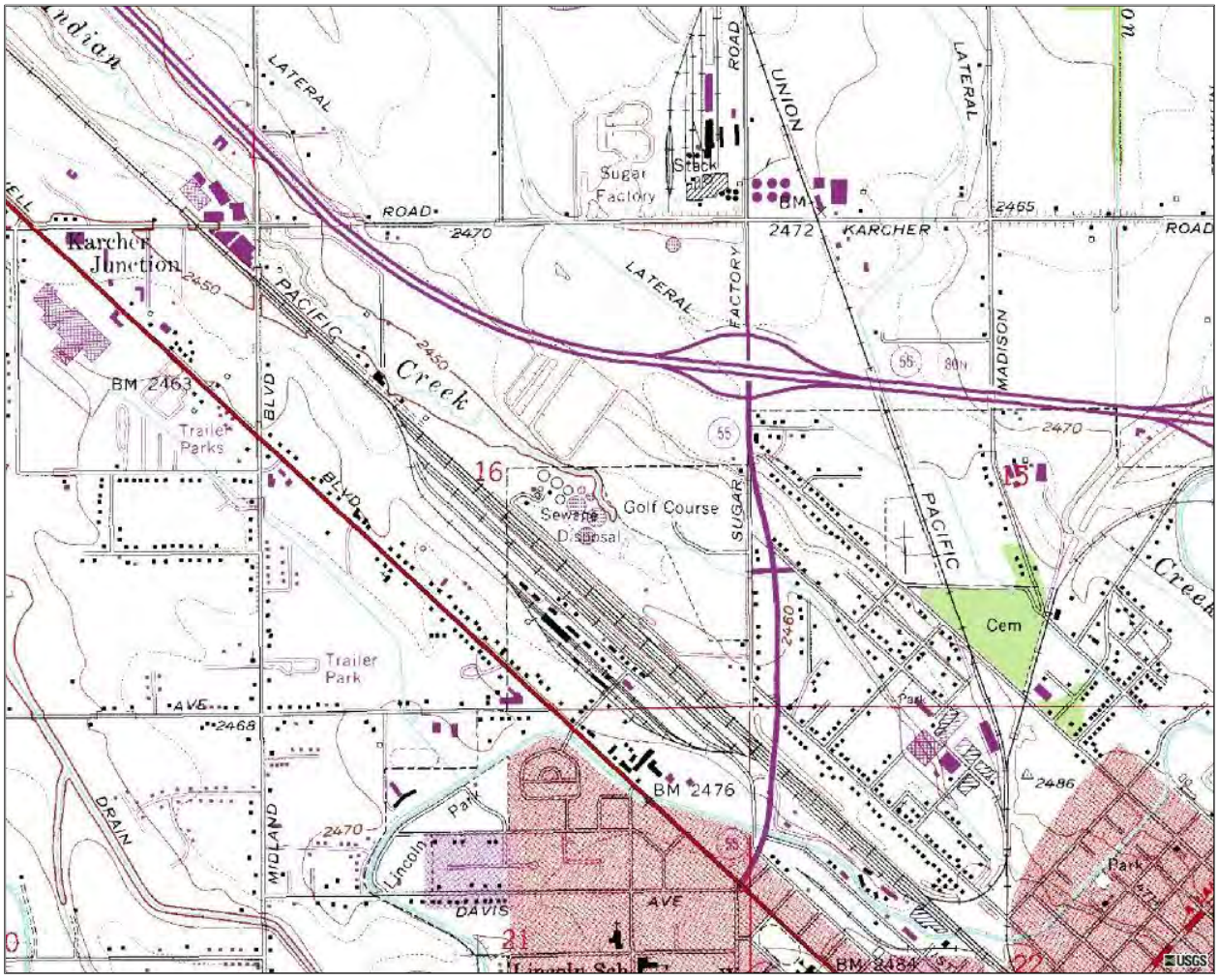
Facility Information

Type of Facility:	Publicly Owned Treatment Works (POTW)
Treatment Train:	The Nampa facility consists of grit removal and screening, three primary clarifiers, three trickling filters, two secondary clarifiers, nitrification activated sludge process, three final clarifiers, chlorination, dechlorination and post-aeration. Sludge (biosolids) from the wastewater treatment facility is anaerobically digested in a two-stage process. The facility produces Class B biosolids which are usually applied to land in southeastern Canyon County. The outfall for this facility goes to Indian Creek, and it does not have a diffuser.
Flow:	The design flow of the facility is 18.0 mgd as a maximum monthly average flow. The average actual effluent flow between 2008 and 2013 is 10.1 mgd, and the maximum monthly average effluent flow was 11.8 mgd.
Outfall Location:	latitude 43° 35’ 50” north, longitude 116° 34’ 52” west

Receiving Water Information

Receiving Water:	Indian Creek
Watershed:	Lower Boise (HUC 17050114)
Beneficial Uses:	Cold water aquatic life, secondary contact recreation, agricultural and industrial water supply, wildlife habitat, and aesthetics.

Figure A-1: Map



Appendix B: Water Quality Criteria Summary

This appendix provides a summary of water quality criteria applicable to Indian Creek.

Idaho water quality standards include criteria necessary to protect designated beneficial uses. The standards are divided into three sections: General Water Quality Criteria, Surface Water Quality Criteria for Use Classifications and Site-Specific Surface Water Quality Criteria. The EPA has determined that the criteria listed below are applicable to Indian Creek. This determination was based on (1) the applicable beneficial uses of the creek (i.e., cold water aquatic life, secondary contact recreation, agricultural water supply, industrial water supply, wildlife habitats and aesthetics), (2) the type of facility, (3) a review of the application materials submitted by the City and (4) the quality of the water in Indian Creek.

A. General Criteria (IDAPA 58.01.02.200)

Surface waters of the state shall be free from:

- hazardous materials,
- toxic substances in concentrations that impair designated beneficial uses,
- deleterious materials,
- radioactive materials,
- floating, suspended, or submerged matter of any kind in concentrations causing nuisance or objectionable conditions or that may impair designated beneficial uses,
- excess nutrients that can cause visible slime growths or other nuisance aquatic growths impairing designated beneficial uses,
- oxygen demanding materials in concentrations that would result in an anaerobic water condition

Surface water level shall not exceed allowable level for:

- radioactive materials, or
- sediments

B. Numeric Criteria for Toxics (IDAPA 58.01.02.210)

This section of the Idaho Water Quality Standards provides the numeric criteria for toxic substances for waters designated for aquatic life, recreation, or domestic water supply use. Monitoring of the effluent has shown that the following toxic pollutants have been present at detectable levels in the effluent.

- Ammonia
- Arsenic (total)
- Cadmium (total recoverable)
- Chlorine (total residual)
- Chromium (total)
- Copper (total recoverable)
- Cyanide
- Lead (total recoverable)
- Mercury (total)
- Nickel (total)

- Nitrate + Nitrite
- Silver (total recoverable)
- Zinc (total recoverable)

Hardness-Dependent Metals

The toxicities of some metals vary with the hardness of the water. Therefore, the water quality criteria for these metals also vary with hardness. EPA uses the hardness of the receiving water when mixed with the effluent to determine the water quality criteria for such metals.

The City of Nampa collected hardness data in Indian Creek upstream and downstream of the facility between 2003 and 2011. Since toxicity decreases (and numeric water quality criteria increase) as hardness increases, EPA has used the 5th percentile hardness measured by the City downstream from the outfall as a worst-case assumption for hardness. The hardness is generally lower from April – October than from November – March, thus, the EPA has calculated the 5th percentile hardness on a seasonal basis. The 5th percentile hardness from is 120 mg/L as CaCO3 from April – October and 200 mg/L as $CaCO_3$ from November – March.

Table B-1: Hardness-Dependent Metals Criteria Values

Parameter	Season	Acute Conversion Factor	Chronic Conversion Factor	Acute Criterion (µg/L)[1]	Chronic Criterion (µg/L)[1]
Cadmium	April – October	0.936	0.901	1.56	0.633
	November – March	0.915	0.880	2.39	0.850
Chromium III	April – October	0.316	0.860	662	86.1
	November – March	0.316	0.860	1005	131
Copper	April – October	0.960	0.960	20.2	13.3
	November – March	0.960	0.960	32.7	20.5
Lead	April – October	0.764	0.764	78.7	3.07
	November – March	0.690	0.690	136	5.31
Nickel	April – October	0.998	0.997	546	60.7
	November – March	0.998	0.997	842	93.5
Silver	April – October	0.850	—	4.72	—
	November – March	0.850	—	11.4	—
Zinc	April – October	0.978	0.986	137	138
	November – March	0.978	0.986	211	213

1. All metals criteria in this table are expressed as dissolved metal.

The hardness-dependent water quality criteria for the metals of concern are expressed as dissolved metal. The dissolved fraction of the metal is the fraction that will pass through a 0.45-micron filter. However, the federal regulation at 40 CFR 122.45(c) requires that NPDES permit effluent limits must be expressed as total recoverable metal. Total recoverable metal is the concentration of the metal in an unfiltered sample. To develop effluent limits for total recoverable metals which are protective of the dissolved metals criteria, "translators" are used in the equations to determine reasonable potential and derive effluent limits. Translators can either be site specific numbers or default numbers. EPA has published guidance related to the use of translators in NPDES permits in *The Metals Translator: Guidance for Calculating a Total Recoverable Permit Limit from a Dissolved Criterion* (EPA 823-B-96-007, June 1996). In the absence of site specific translators, this guidance recommends the use of water quality criteria conversion factors as the default translators. Because site-specific translators were not available, the EPA has used the conversion factors in the Idaho WQS (IDAPA 58.01.02.210.02) in the

reasonable potential and effluent limit calculations for the Nampa WWTF discharge. Table B-1, above, shows the results of the calculations for water quality criteria for hardness-dependent metals in Indian Creek.

C. Surface Water Criteria To Protect Aquatic Life Uses (IDAPA 58.01.02.250)

1. pH: Within the range of 6.5 to 9.0

2. Total Dissolved Gas: <110% saturation at atm. pressure.

3. Dissolved Oxygen: Exceed 6 mg/L at all times.

4. Temperature: Water temperatures of 22°C or less with a maximum daily average of no greater than 19°C. See Appendix G for more information on water quality criteria for temperature.

5. Ammonia:

Ammonia criteria are based on a formula which relies on the pH and temperature of the receiving water, because the fraction of ammonia present as the toxic, un-ionized form increases with increasing pH and temperature. Therefore, the criteria become more stringent as pH and temperature increase. The table below details the equations used to determine water quality criteria for ammonia.

The City of Nampa has collected pH and temperature data in Indian Creek upstream of the facility from 2003 – 2011. These data were used to determine the appropriate pH and temperature values to calculate the ammonia criteria.

As with any natural water body the pH and temperature of the water will vary over time. Therefore, to protect water quality, it is important to calculate the criteria based on pH and temperature values that will be protective of aquatic life at all times. The EPA used the 95th percentile pH and temperature for the calculations. The 95th percentile upstream pH is 8.1 standard units. The 95th percentile upstream temperatures are 12.75 °C from December – February and 20.5 °C from March – November.

Table B-1: Water Quality Criteria for Ammonia

	Acute Criterion[1]	Chronic Criterion[2]
Equations:	$\frac{0.275}{1+10^{7.204-pH}}+\frac{39}{1+10^{pH-7.204}}$	$\left(\frac{0.0577}{1+10^{7.688-pH}}+\frac{2.487}{1+10^{pH-7.688}}\right)\times MIN\left(2.85,1.45\times10^{0.028\times(25-T)}\right)$
Results Dec. – Feb.	4.63	2.10
Results July – March	4.63	1.43

1. No seasonal variation was assumed for pH, therefore, there is no seasonal variation in the acute criterion (which is a function of pH only).

6. Turbidity: Turbidity below any applicable mixing zone set by the Department shall not exceed background turbidity by more than 50 NTU instantaneously or more than 25 NTU for more than ten (10) consecutive days.

D. Surface Water Quality Criteria For Recreational Use Designation (IDAPA 58.01.02.251)

a. Geometric Mean Criterion. Waters designated for primary or secondary contact recreation are not to contain *E. coli* in concentrations exceeding a geometric mean of 126 *E. coli* organisms per 100 ml based on a minimum of 5 samples taken every 3 to 7 days over a 30 day period.

b. Use of Single Sample Values: This section states that that a water sample that exceeds certain "single sample maximum" values indicates a likely exceedance of the geometric mean criterion, although it is not, in and of itself, a violation of water quality standards. For waters designated for secondary contact recreation, the "single sample maximum" value is 576 organisms per 100 ml (IDAPA 58.01.02.251.01.b.i.).

E. Surface Water Quality Criteria for Agricultural Water Supply

The Idaho WQS state that "water quality criteria for agricultural water supplies will generally be satisfied by the water quality criteria set forth in Section 200. Should specificity be desirable or necessary to protect a specific use, *Water Quality Criteria 1972* (Blue Book), Section V, Agricultural Uses of Water, EPA, March, 1973 will be used for determining criteria" (IDAPA 58.01.02.252.02). *Water Quality Criteria 1972* recommends a criterion of 100 mg/L for nitrate.

Appendix C: Low Flow Conditions and Dilution

A. Low Flow Conditions

The low flow conditions of a water body are used to determine water quality-based effluent limits. In general, Idaho's water quality standards require criteria be evaluated at the following low flow receiving water conditions (See IDAPA 58.01.02.210.03) as defined below:

Acute aquatic life	1Q10 or 1B3
Chronic aquatic life	7Q10 or 4B3
Non-carcinogenic human health criteria	30Q5
Carcinogenic human health criteria	harmonic mean flow
Ammonia	30B3, 30Q10 or 30Q5

1. The 1Q10 represents the lowest one day flow with an average recurrence frequency of once in 10 years.
2. The 1B3 is biologically based and indicates an allowable exceedence of once every 3 years.
3. The 7Q10 represents lowest average 7 consecutive day flow with an average recurrence frequency of once in 10 years.
4. The 4B3 is biologically based and indicates an allowable exceedance for 4 consecutive days once every 3 years.
5. The 30Q5 represents the lowest average 30 consecutive day flow with an average recurrence frequency of once in 5 years.
6. The 30Q10 represents the lowest average 30 consecutive day flow with an average recurrence frequency of once in 10 years.
7. The harmonic mean is a long-term mean flow value calculated by dividing the number of daily flow measurements by the sum of the reciprocals of the flows.

Idaho's water quality standards do not specify a low flow to use for acute and chronic ammonia criteria, however, the EPA's *Water Quality Criteria; Notice of Availability; 1999 Update of Ambient Water Quality Criteria for Ammonia; Notice* (64 FR 71976, December 22, 1999) identifies the appropriate flows to be used.

The EPA used ambient flow data collected at USGS Station #13211309, Indian Creek Above Waste Water Plant near Nampa, Idaho (1981 – 1996), and receiving water flow data measured by the permitte (2003 – 2011) to calculate the low flow conditions for Indian Creek upstream of the outfall. The low flows for the station are presented in Table C-2.

Table C-2: Seasonal Low Flows in Indian Creek at the Point of Discharge in CFS

Season	1Q10	7Q10	30Q10	30Q5	Harmonic Mean
March – November	7.88	12.9	17.0	19.8	N/A
December – February	18.0	18.5	19.5	21.4	N/A
April – October (hardness-dependent metals)	11.6	14.6	N/A	N/A	N/A
November – March (hardness-dependent metals)	15.2	17.2	N/A	N/A	N/A
Year Round	N/A	N/A	N/A	N/A	35.8

B. Mixing Zones and Dilution

In some cases a dilution allowance or mixing zone is permitted. A mixing zone is an area where an effluent discharge undergoes initial dilution and is extended to cover the secondary mixing in the ambient water body. A mixing zone is an allocated impact zone where the water quality standards may be exceeded as long as acutely toxic conditions are prevented (EPA 1994). The federal regulations at 40 CFR 131.13 states that "States may, at their discretion, include in their

State standards, policies generally affecting their application and implementation, such as mixing zones, low flows and variances."

The Idaho Water Quality Standards at IDAPA 58.01.02.060 provides Idaho's mixing zone policy for point source discharges. The policy allows the IDEQ to authorize a mixing zone for a point source discharge after a biological, chemical, and physical appraisal of the receiving water and the proposed discharge.

The following formula is used to calculate a dilution factor based on the allowed mixing.

$$D = \frac{Q_e + Q_u \times \%MZ}{Q_e}$$

Where:

D = Dilution Factor
Q_e = Effluent flow rate (set equal to the design flow of the WWTF)
Q_u = Receiving water low flow rate upstream of the discharge (1Q10, 7Q10, 30B3, etc)
%MZ = Percent Mixing Zone

The IDEQ proposes to authorize 25% mixing zones for ammonia, arsenic, cadmium, chlorine, chromium III, chromium VI, copper, cyanide, lead, mercury, nickel, nitrate + nitrite, silver, zinc and whole effluent toxicity (WET). The EPA calculated dilution factors for seasonal critical low flow conditions. All dilution factors are calculated with the effluent flow rate set equal to the design flow of 18 mgd (27.9 CFS). The dilution factors are listed in Table C-3.

Table C-3: Dilution Factors

Season	Acute	Chronic	Chronic Ammonia	Human Health Non-Carcinogen	Human Health Carcinogen
March – November	1.07	1.12	1.15	1.18	N/A
December – February	1.16	1.17	1.18	1.19	N/A
April – October (hardness-dependent metals)	1.10	1.13	N/A	N/A	N/A
Nov. – March (hardness-dependent metals)	1.14	1.15	N/A	N/A	N/A
Year Round	N/A	N/A	N/A	N/A	1.32

C. References

EPA. 1994. *Water Quality Standards Handbook: Second Edition*. EPA 823-B-94-005a. Office of Water. August 1994.
http://water.epa.gov/scitech/swguidance/standards/handbook/

Appendix D: Basis for Effluent Limits

The following discussion explains the derivation of technology and water quality based effluent limits proposed in the draft permit. Part A discusses technology-based effluent limits; Part B discusses water quality-based effluent limits.

A. Technology-Based Effluent Limits

Federal Secondary Treatment Effluent Limits

The CWA requires POTWs to meet performance-based requirements based on available wastewater treatment technology. Section 301 of the CWA established a required performance level, referred to as "secondary treatment," which all POTWs were required to meet by July 1, 1977. The EPA has developed and promulgated "secondary treatment" effluent limitations, which are found in 40 CFR 133.102. These technology-based effluent limits apply to all municipal wastewater treatment plants and identify the minimum level of effluent quality attainable by application of secondary treatment in terms of BOD_5, TSS, and pH. The federally promulgated secondary treatment effluent limits are listed in Table C-1.

Table D-1: Secondary Treatment Effluent Limits
(40 CFR 133.102)

Parameter	30-day average	7-day average
BOD_5	30 mg/L	45 mg/L
TSS	30 mg/L	45 mg/L
Removal for BOD_5 and TSS (concentration)	85% (minimum)	—
pH	within the limits of 6.0 - 9.0 s.u.	

Mass-Based Limits

The federal regulation at 40 CFR 122.45(f) requires that effluent limits be expressed in terms of mass, if possible. The regulation at 40 CFR 122.45(b) requires that effluent limitations for POTWs be calculated based on the design flow of the facility. The mass based limits are expressed in pounds per day and are calculated as follows:

Mass based limit (lb/day) = concentration limit (mg/L[1]) × design flow (mgd) × 8.34[2]

Since the design flow for this facility is 18 mgd, the technology based mass limits for BOD_5 and TSS are calculated as follows:

Average Monthly Limit = 30 mg/L × 18 mgd × 8.34 = 4,504 lbs/day

Average Weekly Limit = 45 mg/L × 18 mgd × 8.34 = 6,755 lbs/day

[1] mg/L is equivalent to parts per million.
[2] 8.34 is a conversion factor equal to the density of water in lb/gallon.

Chlorine

Chlorine is often used to disinfect municipal wastewater prior to discharge. The City of Nampa uses chlorine disinfection.

A 0.5 mg/L average monthly limit for chlorine is derived from standard operating practices. The Water Pollution Control Federation's *Chlorination of Wastewater* (1976) states that a properly designed and maintained wastewater treatment plant can achieve adequate disinfection if a 0.5 mg/L chlorine residual is maintained after 15 minutes of contact time. Therefore, a wastewater treatment plant that provides adequate chlorine contact time can meet a 0.5 mg/L total residual chlorine limit on a monthly average basis. In addition to average monthly limits (AMLs), NPDES regulations require effluent limits for POTWs to be expressed as average weekly limits (AWLs) unless impracticable. For technology-based effluent limits, the AWL is calculated to be 1.5 times the AML, consistent with the "secondary treatment" limits for BOD_5 and TSS. This results in an AWL for chlorine of 0.75 mg/L.

Since the federal regulations at 40 CFR 122.45 (b) and (f) require limitations for POTWs to be expressed as mass based limits using the design flow of the facility, mass based limits for chlorine are calculated as follows:

Monthly average Limit= 0.5 mg/L x 18 mgd x 8.34 = 75.1 lbs/day

Weekly average Limit = 0.75 mg/L x 18 mgd x 8.34 = 113 lbs/day

The EPA has determined that the above technology-based effluent limits would not ensure compliance with water quality standards for chlorine. Therefore, more-stringent water quality based effluent limits are proposed for chlorine.

B. Water Quality-based Effluent Limits

Statutory and Regulatory Basis

Section 301(b)(1)(C) of the CWA requires the development of limitations in permits necessary to meet water quality standards. Discharges to State or Tribal waters must also comply with limitations imposed by the State or Tribe as part of its certification of NPDES permits under section 401 of the CWA. Federal regulations at 40 CFR 122.4(d) prohibit the issuance of an NPDES permit that does not ensure compliance with the water quality standards of all affected States.

The NPDES regulation (40 CFR 122.44(d)(1)) implementing Section 301(b)(1)(C) of the CWA requires that permits include limits for all pollutants or parameters which are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State or Tribal water quality standard, including narrative criteria for water quality, and that the level of water quality to be achieved by limits on point sources is derived from and complies with all applicable water quality standards.

The regulations require the permitting authority to make this evaluation using procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant in the effluent, species sensitivity (for toxicity), and where appropriate, dilution in the receiving water. The limits must be stringent enough to ensure that water quality standards are met, and must be consistent with any available wasteload allocation.

Reasonable Potential Analysis

When evaluating the effluent to determine if the pollutant parameters in the effluent are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State/Tribal water quality criterion, the EPA projects the receiving water concentration (downstream of where the effluent enters the receiving water) for each pollutant of concern. The EPA uses the concentration of the pollutant in the effluent and receiving water and, if appropriate, the dilution available from the receiving water, to project the receiving water concentration. If the projected concentration of the pollutant in the receiving water exceeds the numeric criterion for that specific pollutant, then the discharge has the reasonable potential to cause or contribute to an excursion above the applicable water quality standard, and a water quality-based effluent limit is required.

Sometimes it may be appropriate to allow a small area of the receiving water to provide dilution of the effluent. These areas are called mixing zones. Mixing zone allowances will increase the mass loadings of the pollutant to the water body and will decrease treatment requirements. Mixing zones can be used only when there is adequate receiving water flow volume and the concentration of the pollutant in the receiving water is less than the criterion necessary to protect the designated uses of the water body. Mixing zones must be authorized by the State.

The reasonable potential analysis for ammonia, arsenic, cadmium, chlorine, chromium III, chromium VI, copper, cyanide, lead, mercury, nickel, nitrate + nitrite, silver, zinc, and whole effluent toxicity (WET) was based on a mixing zone of 25%, which was proposed in the IDEQ's draft certification. If IDEQ revises the allowable mixing zone in its final certification of this permit, the reasonable potential analysis will be revised accordingly.

Procedure for Deriving Water Quality-based Effluent Limits

The first step in developing a water quality-based effluent limit is to develop a wasteload allocation (WLA) for the pollutant. A wasteload allocation is the concentration or loading of a pollutant that the permittee may discharge without causing or contributing to an exceedance of water quality standards in the receiving water. Wasteload allocations are determined in one of the following ways:

<u>TMDL-Based Wasteload Allocation</u>

Where the receiving water quality does not meet water quality standards, the wasteload allocation is generally based on a TMDL developed by the State. A TMDL is a determination of the amount of a pollutant from point, non-point, and natural background sources that may be discharged to a water body without causing the water body to exceed the criterion for that pollutant. Any loading above this capacity risks violating water quality standards.

To ensure that these waters will come into compliance with water quality standards, Section 303(d) of the CWA requires States to develop TMDLs for those water bodies that will not meet water quality standards even after the imposition of technology-based effluent limitations. The first step in establishing a TMDL is to determine the assimilative capacity (the loading of pollutant that a water body can assimilate without exceeding water quality standards). The next step is to divide the assimilative capacity into allocations for non-point sources (load allocations), point sources (wasteload allocations), natural background loadings, and a margin of safety to account for any uncertainties. Permit limitations are then developed for point sources that are consistent with the wasteload allocation for the point source.

In January 2000, the EPA approved a TMDL for the lower Boise River. The TMDL included wasteload allocations for TSS and bacteria for the Nampa WWTF. The original wasteload allocations for TSS for the City of Nampa are 3,000 lb/day average monthly and 4,500 lb/day average weekly (see the TMDL at Table 15, on Page 62).

On April 15, 2014, IDEQ granted a portion of the Lower Boise River TMDL's reserve for growth allocation to the City of Nampa. IDEQ revised Table 15 of the *Sediment and Bacteria Allocation Addendum to the Lower Boise River TMDL* (IDEQ 2008) to allow Nampa an average monthly allocation of 4,503 lb/day and an average weekly allocation of 6,755 lb/day. In the draft permit, the EPA has proposed effluent limits for TSS which are identical to these revised wasteload allocations.

The Lower Boise River TMDL included monthly, weekly, and daily wasteload allocations for bacteria for the City of Nampa facility. The WLAs were based on fecal coliform concentrations because, at the time the TMDL was developed, the Idaho water quality standards used fecal coliform as the indicator organism for bacteria for the protection of contact recreation. However, the TMDL also stated that if Idaho's bacteria criteria were revised to require E. coli as the indicator organism rather than fecal coliform then "…compliance with the load allocations in this TMDL could be demonstrated using E. Coli samples, rather than fecal coliform," and that "…[i]f E. Coli are used as the new Idaho criteria for contact recreation when the permits are re-issued, the new E. Coli criteria should be incorporated into the permits in place of fecal coliform requirements." (see Lower Boise River TMDL; Page 74).

The effluent limits apply the current Idaho water quality criteria for E. coli at the end-of-pipe, as explained below in the summary of water quality-based effluent limits, under "E. coli."

Mixing zone based WLA

When the State authorizes a mixing zone for the discharge, the WLA is calculated by using a simple mass balance equation. The equation takes into account the available dilution provided by the mixing zone and the background concentrations of the pollutants. The WLAs for ammonia, chlorine, copper, cyanide and mercury were derived using a mixing zone.

Criterion as the Wasteload Allocation

In some cases a mixing zone cannot be authorized, either because the receiving water is already at, or exceeds, the criterion, the receiving water flow is too low to provide dilution, or the facility can achieve the effluent limit without a mixing zone. In such cases, the criterion becomes the wasteload allocation. Establishing the criterion as the wasteload allocation ensures that the effluent discharge will not contribute to an exceedance of the criteria.

Calculation of Effluent Limits from the Wasteload Allocation

Once the wasteload allocation has been developed, the EPA generally applies the statistical permit limit derivation approach described in Chapter 5 of the *Technical Support Document for Water Quality-Based Toxics Control* (EPA/505/2-90-001, March 1991, hereafter referred to as the TSD) to obtain monthly average, and weekly average or daily maximum permit limits. This approach takes into account effluent variability, sampling frequency, and water quality standards.

Summary - Water Quality-based Effluent Limits

The water quality based effluent limits in the draft permit are summarized below.

Total Phosphorus

As described in Appendix F, EPA has proposed water quality-based effluent limits for total phosphorus in the draft permit, which are consistent with the assumptions and requirements of the draft *Lower Boise River TMDL: 2015 Total Phosphorus Addendum*.

Ammonia

The City's 1999 permit included water quality-based effluent limits for ammonia. When the EPA re-calculated ammonia effluent limits based on current water quality criteria and recent effluent variability, the resulting limits were less stringent than those in the 1999 permit. Because the less-stringent re-calculated ammonia limits are subject to and consistent with the State of Idaho's antidegradation policy, the re-calculated ammonia limits are allowed under the anti-backsliding provisions of the Clean Water Act (Section 303(d)(4)(B)).

Therefore, the draft permit proposes revised water quality-based effluent limits for ammonia. See Appendix E for reasonable potential and effluent limit calculations for ammonia.

pH

The upper bound of Idaho's pH criterion is identical to the upper bound of the technology-based effluent pH limit for pH (9.0). Thus, the upper bound pH water quality criterion must be met at the point of discharge.

The acute dilution factor provided by a 25% mixing zone is 1.16:1 from December – February and 1.07:1 from March – November. Thus, the receiving water has very little capacity to dilute effluent discharges with a pH of less than 6.5 standard units. Therefore, no mixing zone is proposed for pH, and the pH criteria must be met before the effluent is discharged to the receiving water.

Dissolved Oxygen

The draft permit proposes to carry forward the dissolved oxygen limits in the 1999 permit, consistent with the anti-backsliding provisions of the Clean Water Act and federal regulations. These limits were a minimum monthly average of 90% of saturation and a minimum weekly average of 80% of saturation.

The applicable water quality criterion for DO in Indian Creek is a minimum of 6.0 mg/L at all times. Because the DO limits in the prior permit were expressed as averages and as percentages of saturation, they may not always ensure compliance with the water quality criterion, which is expressed as a DO concentration to be exceeded at all times. Therefore, the draft permit also proposes a minimum DO effluent limit of 6.0 mg/L, which is identical to the water quality criterion.

BOD_5

The EPA has determined that the technology-based effluent limits for BOD_5, in combination with the effluent limits for dissolved oxygen, discussed above, are adequately stringent to ensure compliance with water quality standards for dissolved oxygen in Indian Creek.

E. coli

The Idaho water quality standards state that waters of the State of Idaho, that are designated for recreation, are not to contain *E. coli* bacteria in concentrations exceeding 126 organisms per 100

ml based on a minimum of five samples taken every three to seven days over a thirty day period. Therefore, the draft permit contains a monthly geometric mean effluent limit for *E. coli* of 126 organisms per 100 ml (IDAPA 58.01.02.251.01.a.).

The Idaho water quality standards also state that a water sample that exceeds certain "single sample maximum" values indicates a likely exceedance of the geometric mean criterion, although it is not, in and of itself, a violation of water quality standards. For waters designated for secondary contact recreation, the "single sample maximum" value is 576 organisms per 100 ml (IDAPA 58.01.02.251.01.b.ii.).

The goal of a water quality-based effluent limit is to ensure a low probability that water quality standards will be exceeded in the receiving water as a result of a discharge, while considering the variability of the pollutant in the effluent. Because a single sample value exceeding 576 organisms per 100 ml indicates a likely exceedance of the geometric mean criterion, the EPA has imposed an instantaneous (single grab sample) maximum effluent limit for *E. coli* of 576 organisms per 100 ml, in addition to a monthly geometric mean limit of 126 organisms per 100 ml, which directly implements the water quality criterion for *E. coli*. This will ensure that the discharge will have a low probability of exceeding water quality standards for *E. coli*.

Regulations at 40 CFR 122.45(d)(2) require that effluent limitations for continuous discharges from POTWs be expressed as average monthly and average weekly limits, unless impracticable. Additionally, the terms "average monthly limit" and "average weekly limit" are defined in 40 CFR 122.2 as being arithmetic (as opposed to geometric) averages. It is impracticable to properly implement a 30-day geometric mean criterion in a permit using monthly and weekly arithmetic average limits. The geometric mean of a given data set is equal to the arithmetic mean of that data set if and only if all of the values in that data set are equal. Otherwise, the geometric mean is always less than the arithmetic mean. In order to ensure that the effluent limits are "derived from and comply with" the geometric mean water quality criterion, as required by 40 CFR 122.44(d)(1)(vii)(A), it is necessary to express the effluent limits as a monthly geometric mean and an instantaneous maximum limit.

Chlorine

The EPA has determined that the technology-based effluent limits for chlorine are not stringent enough to ensure compliance with Idaho's water quality criteria for chlorine. Therefore, the EPA has calculated water quality-based effluent limits for chlorine. The proposed water quality-based effluent limits for chlorine have been re-calculated based on recent effluent variability.

Residues

The Idaho water quality standards require that surface waters of the State be free from floating, suspended or submerged matter of any kind in concentrations impairing designated beneficial uses. The draft permit contains a narrative limitation prohibiting the discharge of such materials.

Temperature

As explained in Appendix G, the EPA has determined that the discharge from the City of Nampa WWTF has the reasonable potential to cause or contribute to excursions above water quality standards for temperature from July – September. Therefore, water quality-based effluent limits for temperature are proposed for this season.

Cyanide

The EPA has determined that the discharge from the City of Nampa WWTF has the reasonable potential to cause or contribute to excursions above water quality standards for weak acid dissociable cyanide. Therefore, the draft permit proposes revised water quality-based effluent limits for cyanide. See Appendix E for reasonable potential and effluent limit calculations for cyanide.

Copper

The EPA has determined that the discharge from the City of Nampa WWTF has the reasonable potential to cause or contribute to excursions above water quality standards for copper. Therefore, the draft permit proposes revised water quality-based effluent limits for copper. See Appendix E for reasonable potential and effluent limit calculations for copper.

Summary of Effluent Limit Bases

The following table summarizes the general statutory and regulatory bases for the limits in the draft permit.

Table D-4: Summary of Effluent Limit Bases

Limited Parameter	Basis for Limit
BOD_5	Clean Water Act (CWA) Section 301(b)(1)(B), 40 CFR 122.45(f), 40 CFR 133 (technology-based, mass limits)
TSS Monthly Average and Weekly Average Concentration and Removal Rate	CWA Section 301(b)(1)(B), 40 CFR 122.45(f), 40 CFR 133 (technology-based)
TSS Load	CWA Section 301(b)(1)(C), 40 CFR 122.44(d)(1)(vii)(B) (water quality-based, TMDL[1])
Floating, Suspended or Submerged Matter	CWA Section 301(b)(1)(C), 40 CFR 122.44(d), IDAPA 58.01.02.200.05 (water quality-based)
pH	CWA Section 301(b)(1)(C), 40 CFR 122.44(d), IDAPA 58.01.02.250.01.a (water quality-based)
E. Coli	CWA Section 301(b)(1)(C), 40 CFR 122.44(d)(1)(vii)(B), IDAPA 58.01.02.251.01 (water quality-based, TMDL)
Ammonia	CWA Section 301(b)(1)(C), 40 CFR 122.44(d), IDAPA 58.01.02.060, IDAPA 58.01.02.250.02.d (water quality-based, with mixing zone)
Total Phosphorus	CWA Section 301(b)(1)(C), 40 CFR 122.44(d)(1)(vii)(B) (water quality-based, TMDL[2])
Temperature	CWA Section 301(b)(1)(C), 40 CFR 122.44(d), IDAPA 58.01.02.060, IDAPA 58.01.02.250.02.b (water quality-based, with mixing zone)
Chlorine, copper and cyanide	CWA Section 301(b)(1)(C), 40 CFR 122.44(d), IDAPA 58.01.02.060, IDAPA 58.01.02.210.01 (water quality-based, with mixing zone)
Dissolved oxygen (% saturation)	40 CFR 122.44(l) (anti-backsliding)
Dissolved oxygen (mg/L)	CWA Section 301(b)(1)(C), 40 CFR 122.44(d), IDAPA 58.01.02.250.02.a (water quality-based)
Mercury Effluent Limits	CWA Section 301(b)(1)(C), 40 CFR 122.44(d), 40 CFR 131.21, IDAPA 58.01.02.060 (water quality-based, previously approved State water quality standards, with mixing zone)
Mercury Minimization Plan	40 CFR 122.44(k)(3 – 4), IDAPA 58.01.02.210.01 (best management practices)

Notes:
1. The proposed TSS 4-month average loading and concentration limits are based on the draft *Lower Boise River TMDL: 2015 Addendum*. Limits in the final permit will be based on the WLAs in the final, EPA-approved TMDL.
2. The proposed TP limits in the draft permit are based on the draft *Lower Boise River TMDL: 2015 Total Phosphorus Addendum*. Limits in the final permit will be based on the WLAs in the final, EPA-approved TMDL.

C. References

EPA. 1991. *Technical Support Document for Water Quality-based Toxics Control*. US Environmental Protection Agency. Office of Water. EPA/505/2-90-001. March 1991. http://www.epa.gov/npdes/pubs/owm0264.pdf

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Appendix E: Reasonable Potential and Water Quality-Based Effluent Limit Calculations

Part A of this appendix explains the process the EPA has used to determine if the discharge authorized in the draft permit has the reasonable potential to cause or contribute to a violation of Idaho's federally approved water quality standards. Part B demonstrates how the water quality-based effluent limits (WQBELs) in the draft permit were calculated.

A. Reasonable Potential Analysis

The EPA uses the process described in the *Technical Support Document for Water Quality-based Toxics Control* (EPA 1991) to determine reasonable potential. To determine if there is reasonable potential for the discharge to cause or contribute to an exceedance of water quality criteria for a given pollutant, the EPA compares the maximum projected receiving water concentration to the water quality criteria for that pollutant. If the projected receiving water concentration exceeds the criteria, there is reasonable potential, and a water quality-based effluent limit must be included in the permit. This following section discusses how the maximum projected receiving water concentration is determined.

Mass Balance

For discharges to flowing water bodies, the maximum projected receiving water concentration is determined using the following mass balance equation:

$$C_d Q_d = C_e Q_e + C_u Q_u \qquad \text{Equation 1}$$

where,

- C_d = Receiving water concentration downstream of the effluent discharge (that is, the concentration at the edge of the mixing zone)
- C_e = Maximum projected effluent concentration
- C_u = 95th percentile measured receiving water upstream concentration
- Q_d = Receiving water flow rate downstream of the effluent discharge = Q_e+Q_u
- Q_e = Effluent flow rate (set equal to the design flow of the WWTF)
- Q_u = Receiving water low flow rate upstream of the discharge (1Q10, 7Q10 or 30B3)

When the mass balance equation is solved for C_d, it becomes:

$$C_d = \frac{C_e \times Q_e + C_u \times Q_u}{Q_e + Q_u} \qquad \text{Equation 2}$$

The above form of the equation is based on the assumption that the discharge is rapidly and completely mixed with 100% of the receiving stream.

If the mixing zone is based on less than complete mixing with the receiving water, the equation becomes:

$$C_d = \frac{C_e \times Q_e + C_u \times (Q_u \times \%MZ)}{Q_e + (Q_u \times \%MZ)} \qquad \text{Equation 3}$$

Where:

% MZ = the percentage of the receiving water flow available for mixing.

If a mixing zone is not allowed, dilution is not considered when projecting the receiving water concentration and,

$$C_d = C_e \qquad \text{Equation 4}$$

A dilution factor (D) can be introduced to describe the allowable mixing. Where the dilution factor is expressed as:

$$D = \frac{Q_e + Q_u \times \%MZ}{Q_e} \qquad \text{Equation 5}$$

After the dilution factor simplification, the mass balance equation becomes:

$$C_d = \frac{C_e - C_u}{D} + C_u \qquad \text{Equation 6}$$

If the criterion is expressed as dissolved metal, the effluent concentrations are measured in total recoverable metal and must be converted to dissolved metal as follows:

$$C_d = \frac{CF \times C_e - C_u}{D} + C_u \qquad \text{Equation 7}$$

Where C_e is expressed as total recoverable metal, C_u and C_d are expressed as dissolved metal, and CF is a conversion factor used to convert between dissolved and total recoverable metal.

The above equations for C_d are the forms of the mass balance equation which were used to determine reasonable potential and calculate wasteload allocations.

Maximum Projected Effluent Concentration

When determining the projected receiving water concentration downstream of the effluent discharge, the EPA's *Technical Support Document for Water Quality-based Toxics Control* (TSD) (EPA 1991) recommends using the maximum projected effluent concentration (C_e) in the mass balance calculation. To determine the maximum projected effluent concentration (C_e) the EPA has developed a statistical approach to better characterize the effects of effluent variability. The approach combines knowledge of effluent variability as estimated by a coefficient of variation (CV) with the uncertainty due to a limited number of data to project an estimated maximum concentration for the effluent. Once the CV for each pollutant parameter has been calculated, the reasonable potential multiplier (RPM) used to derive the maximum projected effluent concentration (C_e) can be calculated using the following equations:

First, the percentile represented by the highest reported concentration is calculated.

$$p_n = (1 - \text{confidence level})^{1/n} \qquad \text{Equation 8}$$

where,
p_n = the percentile represented by the highest reported concentration
n = the number of samples
confidence level = 99% = 0.99

and

$$RPM = \frac{C_{99}}{C_{P_n}} = \frac{e^{Z_{99} \times \sigma - 0.5 \times \sigma^2}}{e^{Z_{P_n} \times \sigma - 0.5 \times \sigma^2}} \quad \text{Equation 9}$$

Where,

σ^2 = $\ln(CV^2 + 1)$
Z_{99} = 2.326 (z-score for the 99th percentile)
Z_{Pn} = z-score for the P_n percentile (inverse of the normal cumulative distribution function at a given percentile)
CV = coefficient of variation (standard deviation ÷ mean)

The maximum projected effluent concentration is determined by simply multiplying the maximum reported effluent concentration by the RPM:

$$C_e = (RPM)(MRC) \quad \text{Equation 10}$$

where MRC = Maximum Reported Concentration

Chromium VI and Human Health Criterion for Arsenic

For chromium VI and for the human health criterion for arsenic, the EPA has used the 95th percentile effluent concentration to determine if the discharge has the reasonable potential to cause or contribute to excursions above the State of Idaho's water quality criteria, instead of the more conservative 99th percentile, which was used for other parameters and criteria. The EPA believes this is appropriate because the available effluent data for arsenic were reported as total recoverable arsenic, whereas the criterion is expressed as the inorganic form only, and the effluent data for chromium were reported as total chromium, whereas the criterion for chromium VI is expressed as hexavalent chromium only.

In Section 3.3.2, the TSD states that, "although (the 99th percentile) does represent a measure of the upper bound of an effluent distribution, other percentiles could be selected by a regulatory agency." The TSD provides a table of reasonable potential multipliers for both the 95th and 99th percentiles (Tables 3-1 and 3-2). The EPA believes it is appropriate to use a lower (i.e., less conservative) effluent percentile value in the reasonable potential analysis for chromium VI and the human health criterion for arsenic, because there is conservatism inherent in using the "total" effluent data in the reasonable potential analysis, when the criteria are applicable to only a fraction of the total arsenic and chromium. Therefore, the EPA believes, in this case, it is appropriate to use the 95th percentile effluent concentration as the maximum projected effluent concentration for chromium VI and the human health criterion for arsenic, instead of the 99th percentile.

Reasonable Potential

The discharge has reasonable potential to cause or contribute to an exceedance of water quality criteria if the maximum projected concentration of the pollutant at the edge of the mixing zone exceeds the most stringent criterion for that pollutant.

Results of Reasonable Potential Calculations

It was determined that ammonia, chlorine, copper (from April – October), cyanide, mercury and whole effluent toxicity have the reasonable potential to cause or contribute to an exceedance of water quality criteria at the edge of the mixing zone. The results of the calculations are presented in Tables E-1 and E-2 of this appendix.

B. WQBEL Calculations

The following calculations demonstrate how the water quality-based effluent limits (WQBELs) in the draft permit were calculated. The WQBELs for ammonia, copper, cyanide, lead, and mercury are derived from aquatic life water quality criteria. The following discussion presents the general equations used to calculate the water quality-based effluent limits. The calculations for all WQBELs based on aquatic life criteria are summarized in Table E-3.

Calculate the Wasteload Allocations (WLAs)

Wasteload allocations (WLAs) are calculated using the same mass balance equations used to calculate the concentration of the pollutant at the edge of the mixing zone in the reasonable potential analysis (Equations 6 and 7). To calculate the wasteload allocations, C_d is set equal to the acute or chronic criterion and the equation is solved for C_e. The calculated C_e is the acute or chronic WLA. Equation 6 is rearranged to solve for the WLA, becoming:

$$C_e = WLA = D \times (C_d - C_u) + C_u \qquad \text{Equation 11}$$

Idaho's water quality criteria for some metals are expressed as the dissolved fraction, but the Federal regulation at 40 CFR 122.45(c) requires that effluent limits be expressed as total recoverable metal. Therefore, the EPA must calculate a wasteload allocation in total recoverable metal that will be protective of the dissolved criterion. This is accomplished by dividing the WLA expressed as dissolved by the criteria translator, as shown in equation 12, below. As discussed in Appendix B, the criteria translator (CT) is equal to the conversion factor, because site-specific translators are not available for this discharge.

$$C_e = WLA = \frac{D \times (C_d - C_u) + C_u}{CT} \qquad \text{Equation 12}$$

The next step is to compute the "long term average" concentrations which will be protective of the WLAs. This is done using the following equations from the EPA's *Technical Support Document for Water Quality-based Toxics Control* (TSD):

$$LTA_a = WLA_a \times e^{(0.5\sigma^2 - z\,\sigma)} \qquad \text{Equation 13}$$

$$LTA_c = WLA_c \times e^{(0.5\sigma_4^2 - z\sigma_4)} \qquad \text{Equation 14}$$

where,

σ^2 = $\ln(CV^2 + 1)$
Z_{99} = 2.326 (z-score for the 99th percentile probability basis)
CV = coefficient of variation (standard deviation ÷ mean)
σ_4^2 = $\ln(CV^2/4 + 1)$

For ammonia, because the chronic criterion is based on a 30-day averaging period, the Chronic Long Term Average (LTAc) is calculated as follows:

$$LTA_c = WLA_c \times e^{(0.5\sigma_{30}^2 - z\sigma_{30})} \quad \text{Equation 15}$$

where,

$$\sigma_{30}^2 = \ln(CV^2/30 + 1)$$

The LTAs are compared and the more stringent is used to develop the daily maximum and monthly average permit limits as shown below.

Derive the maximum daily and average monthly effluent limits

Using the TSD equations, the MDL and AML effluent limits are calculated as follows:

$$MDL = LTA \times e^{(z_m\sigma - 0.5\sigma^2)} \quad \text{Equation 16}$$

$$AML = LTA \times e^{(z_a\sigma_n - 0.5\sigma_n^2)} \quad \text{Equation 17}$$

where σ, and σ² are defined as they are for the LTA equations above, and,

σ_n^2 = $\ln(CV^2/n + 1$

z_a = 1.645 (z-score for the 95th percentile probability basis)

z_m = 2.326 (z-score for the 99th percentile probability basis)

n = number of sampling events required per month. With the exception of ammonia, if the AML is based on the LTA_c, i.e., $LTA_{minimum} = LTA_c$), the value of ‘‘n’’ should is set at a minimum of 4. For ammonia, In the case of ammonia, if the AML is based on the LTA_c, i.e., $LTA_{minimum} = LTA_c$), the value of ‘‘n’’ should is set at a minimum of 30.

Table E-3, below, details the calculations for water quality-based effluent limits.

Table E-1: Reasonable Potential Calculations

Effluent Percentile value	99%																
				State Water Quality Standard		Max concentration at edge of...											
Parameter	Metal Criteria Translator as decimal Acute	Metal Criteria Translator as decimal Chronic	Ambient Concentration (metals as dissolved) ug/L	Acute ug/L	Chronic ug/L	Acute Mixing Zone ug/L	Chronic Mixing Zone ug/L	LIMIT REQ'D?	Pn	Max effluent conc. measured (metals as total recoverable) ug/L	Coeff Variation CV	s	# of samples n	Multiplier	Acute Dil'n Factor	Chronic Dil'n Factor	COMMENTS
Ammonia Dec - Feb (mg/L)	1.000	1.000	0.439	4.63	2.10	2.47	2.45	YES	N/A	2.8	N/A	N/A	N/A	1.00	1.16	1.18	Previous Max Daily Limit
Ammonia March - Nov (mg/L)	1.000	1.000	0.439	4.63	1.43	2.64	2.487	YES	N/A	2.8	N/A	N/A	N/A	1.00	1.07	1.15	Previous Max Daily Limit
Arsenic (Aquatic Life) Dec - Feb	1.000	1.000	7.9	340	150	10.72	10.71	NO	0.877	9	0.19	0.19	35	1.24	1.16	1.17	
Arsenic (Aquatic Life) March - Nov	1.000	1.000	7.9	340	150	10.96	10.84	NO	0.877	9	0.19	0.19	35	1.24	1.07	1.12	
Cadmium April - Oct	0.936	0.901		1.562	0.633	0.27	0.25	NO	0.877	0.09	1.49	1.08	35	3.53	1.10	1.13	
Cadmium Nov - March	0.915	0.880		2.394	0.850	0.26	0.24	NO	0.877	0.09	1.49	1.08	35	3.53	1.14	1.15	
Chlorine Dec - Feb	1.000	1.000		11	19	646	643	YES	N/A	750	N/A	N/A	N/A	1.00	1.16	1.17	TBEL
Chlorine March - Nov	1.000	1.000		11	19	700	672	YES	N/A	750	N/A	N/A	N/A	1.00	1.07	1.12	TBEL
Chromium III April - Oct	0.316	0.860	4.0	662	86.1	4.56	11.6	NO	0.877	7.0	0.70	0.63	35	2.09	1.10	1.13	
Chromium III Nov - March	0.316	0.860	4.0	1005	131	4.54	11.42	NO	0.877	7.0	0.70	0.63	35	2.09	1.14	1.15	
Copper April - Oct	0.960	0.960	1.6	20.2	13.3	264.50	258.25	YES	0.918	106.0	1.61	1.13	54	2.87	1.10	1.13	
Copper Nov - March	0.960	0.960	1.6	32.7	20.5	257.03	253.06	YES	0.918	106.0	1.61	1.13	54	2.87	1.14	1.15	
Cyanide Dec - Feb	1.000	1.000		22.00	5.20	11.69	11.65	YES	0.599	4.3	0.60	0.55	9	3.16	1.16	1.17	
Cyanide March - Nov	1.000	1.000		22.00	5.20	12.69	12.17	YES	0.599	4.3	0.60	0.55	9	3.16	1.07	1.12	
Lead April - Oct	0.764	0.764	1.0	78.7	3.07	1.31	1.30	NO	0.877	1.00	0.51	0.48	35	1.75	1.10	1.13	
Lead Nov - March	0.690	0.690	1.0	136	5.31	1.18	1.18	NO	0.877	1.00	0.51	0.48	35	1.75	1.14	1.15	
Mercury Dec - Feb	1.000	1.000	0.0027	2.100	0.012	0.0601	0.0599	YES	0.658	0.02	0.63	0.58	11.00	3.04	1.16	1.17	
Mercury March - Nov	1.000	1.000	0.0027	2.100	0.012	0.0650	0.0625	YES	0.658	0.02	0.63	0.58	11.00	3.04	1.07	1.12	
Nickel April - Oct	0.998	0.997	23.0	546	60.7	40.3	39.6	NO	0.877	20.00	0.70	0.63	35	2.08	1.07	1.12	
Nickel Nov - March	0.998	0.997	23.0	842	93.5	39.0	38.9	NO	0.877	20.00	0.70	0.63	35	2.08	1.16	1.17	
Nitrate + Nitrite (mg/L)	1.000	1.000	12.4		100		48.86	NO	0.825	37.2	0.29	0.29	24	1.49		1.18	
Silver April - Oct	0.850			4.72		0.09		NO	0.877	0.06	0.54	0.50	35	1.80	1.07		
Silver Nov - March	0.850			11.4		0.08		NO	0.877	0.06	0.54	0.50	35	1.80	1.16		
WET Dec - Feb	1.000	1.000		3.00	1.00	0.86	0.86	NO	0.866	1.00			32	1.00	1.16	1.17	
WET March - Nov	1.000	1.000		3.00	1.00	0.93	0.90	NO	0.866	1.00			32	1.00	1.07	1.12	
Zinc April - Oct	0.978	0.986	14.0	137	138	56.1	54.8	NO	0.877	49	0.18	0.18	35	1.23	1.07	1.12	
Zinc Nov - March	0.978	0.986	14.0	211	213	52.8	53.1	NO	0.877	49	0.18	0.18	35	1.23	1.16	1.17	

Table E-2: Reasonable Potential Calculations for Chromium VI and Human Health Criteria for Arsenic

Effluent Percentile value	95%																
				State Water Quality Standard		Max concentration at edge of...											
Parameter	Metal Criteria Translator as decimal Acute	Metal Criteria Translator as decimal Chronic	Ambient Concentration (metals as dissolved) ug/L	Acute ug/L	Chronic ug/L	Acute Mixing Zone ug/L	Chronic Mixing Zone ug/L	LIMIT REQ'D?	Pn	Max effluent conc. measured (metals as total recoverable) ug/L	Coeff Variation CV	s	# of samples n	Multiplier	Acute Dil'n Factor	Chronic Dil'n Factor	COMMENTS
Arsenic (Human Health) Mar - Nov	1.00	1.00	7.9		10		9.20	NO	0.918	9	0.19	0.19	35	1.05		1.18	
Arsenic (Human Health) Dec-Feb	1.00	1.00	7.9		10		9.19	NO	0.918	9	0.19	0.19	35	1.05		1.19	
Chromium VI March - Nov	0.98	0.96	4.0	15.7	10.6	7.8	7.5	NO	0.918	7.0	0.70	0.63	35	1.17	1.07	1.12	
Chromium VI Dec - Feb	0.96	0.96	4.0	15.7	10.6	7.34	7.33	NO	0.918	7.0	0.70	0.63	35	1.17	1.16	1.17	

Table E-3: Water Quality-based Effluent Limit Calculations

Statistical variables for permit limit calculation		Dilution (Dil'n) factor is the inverse of the percent effluent concentration at the edge of the acute or chronic mixing zone.																
LTA Probability Basis	99%																	
MDL Probability Basis	99%																	
AML Probability Basis	95%																	
		Permit Limit Calculation Summary									**Waste Load Allocation (WLA) and Long Term Average (LTA) Calculations**							
	Acute Dil'n Factor	Chronic Dil'n Factor	Metal Criteria Translator	Metal Criteria Translator	Ambient Concentration	Water Quality Standard Acute	Water Quality Standard Chronic	Average Monthly Limit (AML)	Maximum Daily Limit (MDL)	Comments	WLA Acute	WLA Chronic	LTA Acute	LTA Chronic	Limiting LTA	Coeff. Var. (CV)	# of Samples per Month
PARAMETER			Acute	Chronic	*ug/L*	*ug/L*	*ug/L*	ug/L	ug/L		*ug/L*	*ug/L*	*ug/L*	*ug/L*	*ug/L*	*decimal*	*n*
Ammonia Dec - Feb	1.16	1.18	1.00	1.00	0.439	4.63	2.10	**1.41**	**5.31**		5.31	2.39	0.51	0.87	0.51	2.80	8
Ammonia March - Nov	1.07	1.15	1.00	1.00	0.439	4.63	1.43	**1.31**	**4.92**		4.92	1.58	0.47	0.58	0.47	2.80	8
Chlorine Dec - Feb	1.16	1.17	1.00	1.00		19	11	**9.6**	**18.6**		22.1	12.8	9.94	8.37	8.37	0.39	20
Chlorine March - Nov	1.07	1.12	1.00	1.00		19	11	**9.2**	**17.8**		20.3	12.3	9.16	8.01	8.01	0.39	20
Copper April - Oct	1.10	1.13	0.96	0.96	1.600	20.21	13.26	**10.7**	**23.1**		23.1	15.4	3.15	3.83	3.15	1.61	1
Copper Nov - Mar	1.14	1.15	0.96	0.96	1.600	32.70	20.52	**17.8**	**38.5**		38.5	24.4	5.26	6.07	5.26	1.61	1
Cyanide Dec - Feb	1.16	1.17	1.00	1.00		22.00	5.20	**4.96**	**9.96**		25.6	6.06	8.2	3.20	3.20	0.60	4
Cyanide March - Nov	1.07	1.12	1.00	1.00		22.00	5.20	**4.75**	**9.53**		23.6	5.80	7.6	3.06	3.06	0.60	4
Mercury Dec - Feb	1.16	1.17	1.00	1.00	0.0027	2.10	0.012	**0.011**	**0.023**		2.44	0.014	0.75	0.0069	0.0069	0.63	4
Mercury March - Nov	1.07	1.12	1.00	1.00	0.0027	2.10	0.012	**0.011**	**0.022**		2.25	0.013	0.69	0.0067	0.0067	0.63	4

C. References

EPA. 1991. *Technical Support Document for Water Quality-based Toxics Control*. US Environmental Protection Agency. Office of Water. EPA/505/2-90-001. March 1991.
http://www.epa.gov/npdes/pubs/owm0264.pdf

Appendix F: Total Phosphorus Reasonable Potential and Limits

A. Limits Consistent with the draft Lower Boise River TMDL 2015 Total Phosphorus Addendum

Federal regulations state that NPDES permits must include effluent limits consistent with the assumptions and requirements of any available wasteload allocation (WLA) in a total maximum daily load (TMDL) for the discharge prepared by the State and approved by the EPA pursuant to 40 CFR 130.7 (40 CFR 122.44(d)(1)(vii)(A)).

At this time, there is no approved TMDL for total phosphorus in the Indian Creek or the Lower Boise River. However, the Idaho Department of Environmental Quality has prepared the draft *Lower Boise River TMDL: 2015 Total Phosphorus Addendum*, ("2015 Draft TP TMDL") which was issued for public review and comment on June 5th, 2015. The 2015 Draft TP TMDL includes WLAs for the City of Nampa. The EPA anticipates that IDEQ will finalize the 2015 Draft TP TMDL in the near future, and that the final TMDL will subsequently be approved by the EPA. Thus, in the draft permit, the EPA is proposing effluent limits for TP that are consistent with the proposed WLAs in the 2015 Draft TP TMDL.

The EPA intends to issue a final NPDES permit to the City of Nampa after the 2015 Draft TP TMDL is finalized by IDEQ and approved by the EPA. The WLAs in the final, approved TMDL may be different from those in the 2015 Draft TP TMDL. The EPA intends to establish TP limits in the final permit that are consistent with the assumptions and requirements of the WLAs in the final, approved TMDL.

The WLAs are 15 lb/day from May 1 – September 30 (see Table 28, Page 94) and 52.6 lb/day from October 1 – April 30 (see Table 35, Page 110). Federal regulations state that effluent limits for publicly owned treatment works (POTWs) that discharge continuously shall be stated as average weekly and average monthly discharge limitations, unless impracticable (40 CFR 122.45(d)(2)). For both the May – September and October – April WLAs, the 2015 Draft TP TMDL states that "DEQ intends that wasteload allocations are to be expressed as average monthly limits, with higher weekly average limits based on the coefficient of variation, in NPDES permits." Thus, the proposed average monthly limits for TP are identical to the WLAs.

Average weekly limits for TP were calculated by adapting the ratio shown in Table 5-3 of the EPA's *Technical Support Document for Water Quality-based Toxics Control* or "TSD" (EPA 1991) to calculate an average weekly limit instead of a maximum daily limit, using the required sampling frequency of twice per week, the 95th percentile probability basis for the average monthly limit, the 99th percentile probability basis for the average weekly limit. Attainment of the proposed average monthly effluent limits for TP will require upgrades to the POTW. Therefore, the historic effluent variability for TP may not be representative of future effluent variability. Therefore, the EPA has assumed that the CV is equal to 0.6, consistent with the recommendation of the TSD when effluent data are not available (see TSD at Page E-3). This results in a ratio between the average monthly and average weekly limit of 1.72:1. Thus, the proposed average weekly limits are:

May – September: 15 lb/day × 1.72 = 26 lb/day

October – April: 52.6 lb/day × 1.72 = 90.5 lb/day

B. Potential Alternative Limits based on Idaho's Narrative Water Quality Criterion for Nutrients

As explained above, IDEQ has completed the 2015 Draft TP TMDL, which includes wasteload allocations for the City of Nampa facility. However, unless and until the TMDL is finalized by IDEQ and approved by the EPA, the regulation requiring that the EPA establish effluent limits that are "consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State *and approved by EPA pursuant to 40 CFR 130.7"* (emphasis added) is inapplicable to the City of Nampa's permit.

If the TMDL is not finalized by IDEQ and approved by the EPA, effluent limits for nutrients would need to be derived directly from Idaho's narrative criterion for excess nutrients (IDAPA 58.01.02.200.06). Such limits would also need to comply with applicable federal regulations, notably 40 CFR 122.44(d)(1)(vi – vii).

Since modeling shows that nuisance levels of periphyton (> 150 mg/m^2 chlorophyll a) can occur under existing phosphorus loading conditions in at least one Boise River segment in every month of the year except May, June and July (see the 2015 Draft TP TMDL at Figure 32, Page 120), when reductions in TP in the Boise River are necessary to meet the 70 µg/L load allocation in the Snake River Hells Canyon TMDL (IDEQ and ODEQ 2004), TP limits would need to be established for all times of the year.

In addition, such limits would likely be more stringent than the limits consistent with the WLA in the 2015 Draft TP TMDL (described above). The 2015 Draft TP TMDL establishes load and wasteload allocations for numerous point and nonpoint sources in the Lower Boise watershed. Unless and until the TMDL is finalized by IDEQ and approved by the EPA, there is no assurance that the other point and nonpoint sources of TP in the Lower Boise watershed will reduce their TP loading, as planned by the TMDL. If the other sources of TP in the watershed do not reduce TP loading, effluent limits more stringent than limits consistent with the WLA in the 2015 Draft TP TMDL (described above) would likely for be necessary for any specific NPDES permit, in order to ensure a level of water quality that is derived from and complies with all applicable water quality standards, as required by 40 CFR 122.44(d)(1)(vii)(A).

The EPA is not proposing specific effluent limits for TP derived directly from Idaho's narrative criterion for excess nutrients at this time. Should the EPA decide to do so in the future, the EPA will reopen the public comment period for this draft permit to propose and take comments on such limits.

C. References

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Appendix G: Reasonable Potential and Effluent Limit Calculations for Temperature

A. Overview

As explained below, the EPA has determined that the discharge of heat from the City of Nampa wastewater treatment facility has the reasonable potential to cause or contribute to violations of Idaho's water quality criteria for temperature from July – September. Therefore, water quality-based effluent limits for temperature are proposed for this season.

B. Applicable Water Quality Standards

The City of Nampa discharges to Indian Creek in the Lower Boise watershed (HUC 17050114), Water Body Unit SW-2. At the point of discharge, Indian Creek is protected for cold water aquatic life, among other uses.

Idaho's water quality criteria for temperature, for waters designated for cold water aquatic life, are water temperatures of 22 °C or less at all times (i.e., an instantaneous maximum temperature of 22 °C) with a maximum daily average (mean) of no greater than 19 °C (IDAPA 58.01.02.250.02.b). The Idaho Water Quality Standards define the "daily mean" as "the average of at least two (2) appropriately spaced measurements…calculated over a period of one (1) day," and further explain that, for temperature, "the daily mean should be calculated from equally spaced measurements, at intervals such that the difference between any two (2) consecutive measurements does not exceed one point zero (1.0) degree C" (IDAPA 58.01.02.010.18).

An EPA-approved site-specific water quality criterion states that, "with regard to the limitations set forth in Section 401 relating to point source wastewater discharges, only the limitations of Subsections 401.01.a. and 401.01.b. and the temperature limitation relating to natural background conditions shall apply to discharges to any water body within the Lower Boise River Subbasin" (IDAPA 58.01.02.278.05). Subsections 401.01.a and 401.01.b state that wastewater must not affect the receiving water outside the mixing zone so that the temperature of the receiving water or of downstream waters will interfere with designated beneficial uses or that daily and seasonal temperature cycles characteristic of the water body are not maintained. Regarding natural background conditions, subsection 401.01.c states that, "if temperature criteria for the designated aquatic life use are exceeded in the receiving waters upstream of the discharge due to natural background conditions, then wastewater must not raise the receiving water temperatures by more than three tenths (0.3) degrees C." The EPA has no information to demonstrate that temperature criteria are exceeded in Indian Creek due to natural background conditions, nor does the EPA have the information necessary to determine whether existing temperatures are higher or lower than the natural background conditions.[1]

[1] The Idaho WQS define "natural background conditions" as "The physical, chemical, biological, or radiological conditions existing in a water body without human sources of pollution within the watershed. Natural disturbances including, but not limited to, wildfire, geologic disturbance, diseased vegetation, or flow extremes that affect the physical, chemical, and biological integrity of the water are part of natural background conditions. Natural background conditions should be described and evaluated taking into account this inherent variability with time and place."

C. Basis for Temperature Effluent Limits

Reasonable Potential

Federal regulations require that effluent limitations in NPDES permits "must control all pollutants or pollutant parameters…which…are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard… (40 CFR 122.44(d)(1)(i))." As explained below, the City of Nampa's discharge of heat has the reasonable potential to cause or contribute to excursions above Idaho's water quality criteria for temperature from July – September.

The EPA has reviewed temperature data submitted by the City of Nampa to determine the temperature of Indian Creek in the immediate vicinity of the outfall. The City provided hourly temperature data for one day per month each month since January 2001, for the effluent as well as Indian Creek upstream and downstream of the outfall (a total of about 3,600 hourly results for each location).

The data show that excursions above Idaho's 19 °C daily average temperature criterion have occurred downstream of the outfall in July, August and September, and excursions above the instantaneous maximum criterion of 22 °C have occurred in August. Furthermore, the temperatures measured downstream of the outfall are warmer than the temperatures measured upstream. During July, August, and September, the average downstream temperatures are warmer than the average upstream temperatures by 1.09 °C, 1.60 °C and 1.61 °C, respectively. In addition, the maximum effluent temperatures measured during July, August, and September are greater than the criteria (22.7, 23.8, and 23.2 °C, respectively). Finally, the downstream temperatures are higher than the upstream temperatures at all hours of the day and night. Thus, the higher downstream temperatures are likely to have been caused by the effluent, which is consistently warm, and are unlikely to have been caused by the downstream monitoring location receiving more daytime solar radiation than the upstream monitoring location.

Because excursions above Idaho's temperature criteria have occurred downstream of the discharge in July, August and September, upstream and downstream data show that the discharge increases the average temperature of Indian Creek by at least 1.09 °C during those months, and the effluent temperature is higher than the criteria, the discharge has the reasonable potential to cause or contribute to excursions above water quality standards for temperature during July, August and September.[2]

Since excursions above the 19 °C daily average temperature criterion have been observed downstream of the discharge during July, August, and September, maximum daily average temperature limits are proposed for each of those months. Excursions above the instantaneous maximum criterion of 22 °C have been observed only in August, thus, an instantaneous maximum limit is proposed only for August.

During the rest of the year (October – June) the hourly temperature data show no excursions above Idaho's numeric temperature criteria downstream of the discharge. Therefore, although

[2] Even if the natural background temperature of Indian Creek is higher than the applicable criteria, the discharge induces a temperature increase greater than the allowable 0.3 °C. Thus, effluent limits for temperature would likely be necessary even if the natural background temperature of Indian Creek were greater than the numeric criteria.

the discharge does increase the temperature of Indian Creek during October – June, the available data indicate that upstream and effluent temperatures are cool enough such that the discharge does not cause or contribute to excursions above temperature criteria from October – June.

Effluent Limits

The EPA has calculated effluent limits for temperature using a mixing zone encompassing 100% of the monthly 1Q10 flow rates of Indian Creek. The EPA estimates that complete mixing will occur within about 441 feet downstream of the discharge, under critical low flow conditions.

To calculate the effluent limits, the EPA used Equation 1, below. In Equation 2, T_d was set equal to the criteria. The EPA has calculated effluent limits based on both the maximum daily average criterion of 19 °C and the instantaneous maximum temperature criterion of 22 °C.

$$T_e = D \times (T_d - T_u) + T_u \qquad \text{(Equation 1)}$$

In July and August, the maximum daily average upstream temperature (T_u) is greater than the criterion of 19 °C. Therefore, dilution may not be considered in the calculation of maximum daily average effluent limits for July and August, and the City must meet the 19 °C maximum daily average criterion at the point of discharge.

The temperature limit calculations are summarized in Tables 1 and 2, below.

Table 1: Effluent Limit Calculations for Temperature: Maximum Daily Average

Month	Dilution Factor	Max. Daily Avg. Upstream Temp (°C)	Criterion (°C)	T Limit (°C)
July	1.45	19.94	19.00	**19.0**
August	1.78	19.84	19.00	**19.0**
September	1.79	18.11	19.00	**19.7**

Table 2: Effluent Limit Calculations for Temperature: Instantaneous Maximum

Month	Dilution Factor	Max. Upstream Temp (°C)	Criterion (°C)	T Limit (°C)
August	1.78	21.01	22.00	**22.8**

Appendix H: Draft Clean Water Act Section 401 Certification

Idaho Department of Environmental Quality

Draft §401 Water Quality Certification

June 5, 2015

NPDES Permit Number(s): ID-002206-3, City of Nampa WWTF

Receiving Water Body: Indian Creek

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has authority to review National Pollutant Discharge Elimination System (NPDES) permits and issue water quality certification decisions.

Based upon its review of the above-referenced permit and associated fact sheet, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the discharge will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02), and other appropriate water quality requirements of state law.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits.

Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- Tier 1 Protection. The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier 1 review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier 2 Protection. The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless deemed necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).
- Tier 3 Protection. The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ is employing a water body by water body approach to implementing Idaho's antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05.a). Any water body not fully supporting its beneficial uses will be provided Tier 1 protection for that use, unless specific circumstances warranting Tier 2 protection are met (IDAPA 58.01.02.052.05.c). The most recent federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

Pollutants of Concern

The City of Nampa WWTF discharges the following pollutants of concern: temperature, five day biochemical oxygen demand (BOD_5), total suspended solids (TSS), pH, *E. coli*, total phosphorus (TP), ammonia, total residual chlorine (chlorine), copper, cyanide, dissolved oxygen, mercury, nitrate, nitrite, Total Kjeldahl nitrogen (TKN), arsenic, cadmium, chromium, lead, molybdenum, nickel, selenium, silver, whole effluent toxicity (WET) and zinc. Effluent limits have been developed for temperature, BOD_5, TSS, pH, *E. coli*, TP, ammonia, chlorine, copper, cyanide, dissolved oxygen, and mercury. No effluent limits are proposed for nitrate, nitrite, TKN, arsenic, cadmium, chromium, lead, molybdenum, nickel, selenium, silver, whole effluent toxicity (WET) and zinc, however monitoring requirements are included in the permit to determine WQS compliance and future permit limits, where needed.

Receiving Water Body Level of Protection

The City of Nampa WWTF discharges to Indian Creek within the Lower Boise Subbasin assessment unit (AU) 17050114SW002_04 (Indian Creek – 4th order below Sugar Avenue in Nampa). This AU has the following designated beneficial uses: cold water aquatic life and secondary contact recreation. In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

The cold water aquatic life use in the Indian Creek is not fully supported due to excess sedimentation/siltation, water temperature and for cause unknown (nutrients suspected) (2012 Integrated Report). The secondary contact recreation beneficial use is not fully supported due to excess *E. coli* bacteria. As such, DEQ will provide Tier 1 protection only for the aquatic life use and recreation beneficial uses (IDAPA 58.01.02.051.02; 58.01.02.051.01).

Protection and Maintenance of Existing Uses (Tier 1 Protection)

As noted above, a Tier 1 review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. In order to protect and maintain designated and existing beneficial uses, a permitted discharge must comply with narrative and numeric criteria of the Idaho WQS, as well as other provisions of the WQS such as Section 055, which addresses water quality limited waters. The numeric and narrative criteria in the WQS are set at levels that ensure protection of designated beneficial uses. The effluent limitations and associated requirements contained in the City of Nampa WWTF permit are set at levels that ensure compliance with the narrative and numeric criteria in the WQS.

Chlorine and Ammonia

While both the current and proposed water quality effluent limits for ammonia and chlorine were developed to protect cold water aquatic life from acute and chronic exposure, the proposed limits are less stringent than the 1999 permit. Two factors contributed to the change in the permit limits for ammonia: 1) The methodology for calculating ammonia criteria in Idaho's WQS was revised in 2002; and, 2) current receiving water temperature and pH data used to calculate ammonia limits varied substantially from data available in 1999.

Two factors contributed to the change in the permit limits for chlorine: 1) An increase in facility design flow; and, 2) new, more comprehensive flow data for Indian Creek determined seasonal high and low flow conditions criteria were more appropriate than the previous permit's flow tier based limits.

The proposed limits for ammonia and chlorine will protect and maintain existing and designated beneficial uses in Indian Creek. These limits do not exceed narrative or numeric criteria in the Idaho WQS and meet the requirements for Tier 1 protection (IDAPA 58.01.02.051.01.).

Water bodies not supporting existing or designated beneficial uses must be identified as water quality limited, and a total maximum daily load (TMDL) must be prepared for those pollutants causing impairment. A central purpose of TMDLs is to establish wasteload allocations for point source discharges, which are set at levels designed to help restore the water body to a condition that supports existing and designated beneficial uses. Discharge permits must contain limitations that are consistent with wasteload allocations in the approved TMDL.

Temperature

The City of Nampa WWTF discharges to Indian Creek (AU 17050114SW002_04), which is impaired for temperature; however a TMDL has not yet been completed. Prior to the development of the TMDL, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04), which as described above, means ensuring compliance with the numeric and narrative criteria in the WQS. The discharge has the potential to cause or contribute to excursions above water quality standards for temperature; therefore, the permit proposes water quality based effluent limits for temperature that will ensure compliance with temperature criteria. In addition, continuous temperature monitoring of the effluent and receiving water are permit requirements; this data will be used to assess whether the discharge affects the temperature of Indian Creek.

Total Phosphorus

Indian Creek is also listed for cause unknown, nutrients suspected. The water body was first listed for nutrients on the 1994 §303(d) list which was promulgated by EPA as part of the first TMDL lawsuit. However, when DEQ migrated to the 2002 cycle the nutrients listing was erroneously deleted. DEQ has an obligation to relist this segment for nutrients (cause unknown) since no rationale was provided that demonstrated nutrients were no longer impairing beneficial uses. Therefore, for the 2012 Integrated Report DEQ is relisting cause unknown (nutrients suspected) in Category 5 until such time that either: 1) water quality data demonstrates that beneficial uses are no longer impaired by nutrients; 2) a TMDL is developed; or 3) readily available data and information shows the original listing was made in error. The draft permit

includes a TP effluent limit to meet the Boise River load allocation from the *Snake River Hells Canyon* (SR-HC) *TMDL* (DEQ 2003). In addition, the *Lower Boise River TMDL 2015 Total Phosphorus TMDL Addendum* is under development for the Boise River which provides a wasteload allocation (WLA) to the City of Nampa WWTF.

The Boise River AU 17050114SW001_06 (Boise River - Indian Creek to mouth), approximately 15 miles downstream from the Boise River outfall, is impaired for TP. Water quality monitoring and modeling completed since 2012 have determined the extent of impairment as well as WLAs expected to restore beneficial uses in the Boise River. The WLAs developed in the draft *Lower Boise River TMDL 2015 Total Phosphorus TMDL Addendum* for the City of Nampa WWTP are proposed as effluent limits in this NPDES permit. The effluent limitations in the permit will result in a decrease of TP in Indian Creek and the Boise River.

The Hells Canyon segment of the Snake River is also impaired because of excess nutrients. The *Snake River Hells Canyon* (SR-HC) *TMDL* (DEQ 2003) established a load allocation for the Boise River based upon a TP concentration of 0.07 mg/L at the mouth of the Boise River. The draft TMDL for TP under development for the Boise River ensures that the load allocation for the SR-HC TMDL will be achieved. DEQ believes the permit will ensure compliance with the TMDL and the applicable narrative criteria.

Sediment and *E. coli* Bacteria

Indian Creek is also impaired for sediment and bacteria. The City of Nampa WWTF discharge meets technology-based limits for sediment (TSS) and water quality-based bacteria limits in its current NPDES permit and has similar requirements in the new draft permit. The *Lower Boise River TMDL 2015 Sediment and Bacteria Addendum* is under development to address sediment and bacteria impairment in Indian Creek. This TMDL is expected to be submitted for approval by EPA in June 2015. DEQ expects the TMDL WLAs for the City of Nampa WWTP will be incorporated into the proposed NPDES permit.

The *Lower Boise River TMDL 2015 Sediment and Bacteria Addendum E. coli* wasteload allocations are based on a bacteria concentration of 126 cfu/100 mL, collected as a 5-sample geometric mean over 30 days; which is consistent with current permit limits. Sediment wasteload allocations are based on 20 mg/L, less 2.5 mg/L for natural background (TMDL section 5.4.6), and are expressed as 4-month averages. This TMDL is concentration based, so the WLAs are based on the design flow:

E. coli WLA (in 10^9 cfu/day) = $Q \times 4.76$

Sediment WLA (in kg/day) = $Q \times 66.2$

Where Q is the design flow of the facility in million gallons per day (mgd).

The coefficients are simply a collection of conversion constants:

E. coli: $126\ cfu/100\ mL \times \frac{3.785\ L/gal \times 10^6\ gal/million\ gal}{0.1L/100mL \times 10^9} = \mathbf{4.76} \times 10^9 cfu/day/mgd$

Sediment: $\frac{(20-2.5)mg}{L} \times \frac{3.785\ L/gal \times 10^6\ gal/million\ gal}{10^6\ mg/kg} = \mathbf{66.2}\ kg/day/mgd$

If the design flow were to increase in the future, then the WLAs would correspondingly increase. The present design flows and WLA are shown in the *Lower Boise River TMDL 2015 Sediment and Bacteria Addendum* Table 27. To ensure consistency with this TMDL, DEQ expects this and future permits to contain a 4-month average effluent limit of 17.5 mg/l TSS with an associated load based on the permitted design flow of the facility and *E. coli* average monthly effluent limits of 126 cfu/100ml and maximum daily limits of 576 cfu/100 ml.

At the confluence of Indian Creek, the Boise River (AU 17050114SW001_06 (Boise River – Indian Creek to mouth) is impaired for sediment and bacteria. The EPA-approved *Lower Boise River TMDL* (DEQ 1999) and TMDL Addendum (2008) establishes load allocations for sediment and bacteria at the mouth of Indian Creek and also wasteload allocations for sediment and bacteria for the City of Nampa WWTF. In accordance with the procedure outlined in the sediment TMDL, the City of Nampa requested an increase in their wasteload allocation from the sediment TMDL reserve for growth. Their design flow has increased from 11.76 million gallons per day (MGD) at the time of TMDL development to 18.0 MGD. DEQ has approved the requested sediment wasteload allocation increase and has adjusted the remaining reserve for growth accordingly. These sediment and bacteria allocations are designed to ensure the Boise River will achieve the water quality necessary to support its existing and designated aquatic life beneficial uses and comply with the applicable numeric and narrative criteria. The effluent limitations and associated requirements contained in the City of Nampa WWTF permit are set at levels that comply with these wasteload allocations.

In sum, the effluent limitations and associated requirements contained in the City of Nampa WWTF permit are set at levels that ensure compliance with the narrative and numeric criteria in the WQS and the wasteload allocations established in the draft *Lower Boise River TMDL 2015 Total Phosphorus TMDL Addendum,* draft *Lower Boise River TMDL 2015 Sediment and Bacteria Addendum,* and EPA-approved *Lower Boise River TMDL.* Therefore, DEQ has determined the permit will protect and maintain existing and designated beneficial uses of Indian Creek in compliance with the Tier 1 provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law

Compliance Schedules

Pursuant to IDAPA 58.01.02.400.03, DEQ may authorize compliance schedules for water quality–based effluent limits issued in a permit for the first time. The City of Nampa WWTF cannot immediately achieve compliance with the effluent limits for TP, temperature, mercury and copper; therefore, DEQ authorizes compliance schedules and interim requirements as set forth below. These compliance schedules provide the permittee a reasonable amount of time to achieve the final effluent limits as specified in the permit. At the same time, the schedules ensure that compliance with the final effluent limits is accomplished as soon as possible.

A nine (9) year and 11 month (two-permit-cycle) compliance schedule is authorized for new TP, mercury and copper effluent limits that cannot be immediately achieved. No conventional treatment options exist to meet some of these effluent limits (mercury and copper). Further, the compliance schedule and annual reporting requirements will allow for site specific data to fill data gaps (i.e. for copper and temperature) and allow a more accurate assessment of treatment performance for all constituents. It is anticipated that the addition of biological nutrient removal and improved tertiary filtration implemented for phosphorus removal will provide some level of enhanced removal for metals as general effluent quality is improved. Improvements to enhance removals of phosphorus and nitrogen through process enhancements, such as longer solids retention time in the biological treatment process, effluent filtration improvements to reduce effluent solids, solids side stream controls to reduce loadings, recycling back to the liquid stream and sustained and stable operational performance will all contribute to improved effluent quality.

A fourteen (14) year and eleven (11) month compliance schedule is authorized for new temperature effluent limits. Treatment improvements to meet the final TP, mercury and copper effluent limits may result in changes to effluent temperature. Continuous effluent and receiving water temperature monitoring and evaluation throughout the compliance schedule will help the facility assess the temperature reduction necessary and the best approach to achieve the final effluent limit.

While the schedules of compliance are in effect, the City of Nampa WWTF must comply with the following interim requirements:

1) The Permittee must submit an annual progress report outlining overall progress made toward reaching the final compliance dates for TP, temperature, mercury, and copper. The annual report of progress must be submitted to DEQ and EPA by December 31st of each year. The first report is due December 31, 2015, and annually thereafter until compliance with the final effluent limits is achieved.

2) At a minimum, the written notice must include:
   a) An assessment of the previous year's TP, temperature, mercury and copper data and comparison to the final effluent limitations in the Permit.
   b) A description of progress made towards meeting the final effluent limitations, including the applicable deliverables required under the tasks in Table 2 or interim requirement 3, below. Include any exceedances of interim Permit limits or anticipated challenges for compliance within the next year. This may include a technological explanation and/or a request to modify the Permit.
   c) Further actions and milestones targeted for the upcoming year.

3) The permittee must comply with the Interim Effluent Limits, Compliance Tasks and Compliance Dates in Table 1 and Table 2:

Table 1: Interim Effluent Limits and Compliance Dates.[1]

Pollutant	Effluent Limit	Compliance Dates
Total Phosphorus (TP)	Not to exceed 6.4 mg/L (seasonal average)	May 1, 2015 through September 30, 2019
	Not to exceed 500 µg/L (monthly average)	May 1, 2020 through September 30, 2020 and every May 1 through September 30 every year thereafter until the final limit is achieved.
	Not to exceed 1500 µg/L (seasonal average)	October 1, 2020 through April 30, 2021 and every October 1 through April 30 every year thereafter until the final limit is achieved.
Mercury, total	0.024 µg/l	1st and 2nd permit cycle

[1] For temperature and copper there is no effluent limit in effect until the end of the compliance schedule.

Table 2. Tasks Required Under the Schedules of Compliance for TP, Temperature, Mercury and Copper.

Task No.	Completion Date	Task Activity
1	December 31, 2015	Report of Progress: The Permittee must submit an annual progress report outlining overall progress made toward reaching the final compliance dates for TP, temperature, mercury, and copper. Deliverable: The annual report of progress must be submitted to DEQ and EPA by December 31st of each year. The first report is due December 31, 2015, and annually thereafter until compliance with the final effluent limits is achieved.
2	December 31, 2019	Wastewater Facility Upgrades: Phase I Upgrades include the following: • Modifications and additions to the existing secondary treatment system such that it is capable of biological phosphorus removal • Installation of a new Primary Effluent Pump Station • New Primary Anaerobic Digester • New Solids Handling Facility with rotary drum thickeners and dewatering centrifuges Deliverable: The permittee must submit by December 31, 2019 a written notice to DEQ and EPA stating that the applicable modifications are constructed and operational.
3	May 1, 2020	Achieve May-September TP interim limit not to exceed 500 µg/L (monthly average).
4	October 1, 2020	Achieve October-April TP interim limit not to exceed 1500 µg/L (seasonal average).
5	December 31, 2020	Evaluate options available to achieve final effluent limitations including, but not limited to, treatment plant upgrades, effluent trading projects, seasonal re-use, and infiltration. Deliverables: • No later than December 31, 2020, the permittee must decide on the final option that will be used to achieve the final effluent limits for TP, mercury and copper. • No later than December 31 2020, the permittee must provide, to DEQ and EPA, a preliminary schedule of design upgrades and a preliminary construction schedule that will be used to achieve compliance with the final limits.
6	Nine (9) years and eleven (11) months from the Effective Date of the Permit (EDP)	Implement selected option(s) to achieve final effluent limitations for TP, mercury and copper. Dependent on the option(s) selected, tasks will include: • Securing funds for treatment facility upgrades • Submission of a final schedule of design upgrades • Submission and approval of final engineering plan • Completion of construction • Commissioning of facility upgrades • Submission and approval of an alternative mitigation plan • Implementation of alternative mitigation plan.
7	Nine (9) years and eleven (11) months from the EDP	No later than 9 years and 11 months from the effective date of the permit, the permittee must be in compliance with the final TP, mercury and copper effluent limits. The permittee must notify DEQ and EPA in writing when the final effluent limit is achieved.
8	Fourteen (14) years and eleven (11) months from EDP	No later than 14 years and 11 months from the effective date of the permit, the permittee must be in compliance with the final temperature effluent limits. The permittee must notify DEQ and EPA in writing when the final effluent limit is achieved.

4) In addition to the tasks above the permittee must comply with the following compliance schedule tasks:

a. **Temperature:** The permittee must comply with the following Compliance Schedule requirements for temperature and complete the tasks and reports described below:

i) Within fifteen (15) months of the EDP, complete collection of at least one year of continuous temperature monitoring data and submit an evaluation of current monthly temperature variations to DEQ and EPA.

ii) No later than December 31, 2017 permanently take out of service one of the existing trickling filters at the Nampa WWTP.

iii) Within fifteen months of the completion of the Phase I Upgrades, complete collection of one year of continuous temperature monitoring data and submit a report to DEQ and EPA including an evaluation of the effect of removal of one trickling filter and Phase 1 upgrades on effluent temperature.

iv) No later than December 31, 2022 complete an evaluation of alternatives that the City may use to achieve the final temperature effluent limits. The evaluation should at a minimum consider: facility improvements, removal of trickling filters, alternative discharge locations, re-use of effluent and possible trading mechanisms such as offsite mitigation, including wetland and habitat restoration.

v) Starting in 2023, and continuing until final effluent limits are achieved, the permittee must submit a Report of Progress to EPA and DEQ detailing the evaluation of each available option, progress made toward achieving the final effluent limitation, and the series of actions that will be taken in the coming year. The Reports must be submitted by December 31st of each year.

vi) No later than June 30, 2024, the City must provide DEQ and EPA with a preliminary schedule of design upgrades and preliminary construction schedules for any additional treatment that will be used to achieve compliance with the final temperature effluent limits.

vii) No later than June 30, 2025 the City must complete the preliminary design of any planned facility upgrades and/or a preliminary plan and schedule for an alternative temperature mitigation approach, which will address the City's effluent temperature limit. The preliminary design and/or plan will select the specific technology/technologies/activities to be used to meet the effluent temperature limits based on the previously completed alternatives evaluation.

viii) No later than December 31, 2026, the City must complete and receive DEQ approval of the final design of any facility upgrades and/or alternative temperature mitigation plan to address the effluent temperature limits.

ix) No later than December 31, 2028, the City must complete construction of the facility upgrades at the Nampa WWTP and/or implement an alternative temperature mitigation plan.

x) No later than fourteen (14) years and eleven (11) months from the effective date of the permit, the permittee must be compliance with the final effluent limits for temperature. The permittee must notify DEQ and EPA in writing when the final effluent limit is achieved.

b. **Copper**: The permittee must comply with the following compliance Schedule requirements for copper and complete the tasks and reports described below:

i) No later than December 31, 2018 complete a wastewater characterization to determine sources of copper within the City's service area. This wastewater characterization will be completed in annual phases focused on different contributors within the City's wastewater system. The phases will continue until a likely source of copper has been determined in the system. The planned annual focus areas are noted below.

ii) Significant industrial users

iii) Significant (categorical) industrial users

iv) Minor industrial users, insignificant wet (ISW) and insignificant dry (ISD)

v) Other commercial and residential customers

vi) No later than June 30, 2019, the City must submit a letter to DEQ if the City determines that no facility improvements or operational changes are necessary to meet the final effluent limits based on the results of the wastewater characterization. .

vii) No later than December 30, 2020 complete an evaluation of alternatives methods the City may use to achieve the final copper effluent limits, if necessary. The evaluation should consider facility improvements and pretreatment controls. The evaluation will be integrated in the City's TP alternatives evaluation as several of the proposed discharge options may impact the effluent copper concentrations.

viii) No later than December 31, 2021, the City must provide a preliminary schedule of design upgrades and preliminary construction schedules for the approach that will be used to achieve compliance with the final limits if facility improvements are necessary.

ix) If design upgrades are necessary to meet final copper effluent limitations, then by December 31, 2022 and of each year thereafter the permittee must provide a Report of Progress to DEQ and EPA which details the progress made toward achieving the final effluent limitation, and the series of actions that will be taken in the coming year.

x) No later than nine (9) years and eleven (11) months from the effective date of the permit, the permittee must be compliance with the final effluent limits for copper. The permittee must notify DEQ and EPA in writing when the final effluent limit is achieved.

Mixing Zones

Pursuant to IDAPA 58.01.02.060, DEQ authorizes a mixing zone that utilizes 25% of the critical flow volumes of Indian Creek for ammonia, chlorine, copper, cyanide, and mercury.

Other Conditions

This certification is conditioned upon the requirement that any material modification of the permit or the permitted activities—including without limitation, any modifications of the permit to reflect new or modified TMDLs, wasteload allocations, site-specific criteria, variances, or other new information—shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401.

Right to Appeal Final Certification

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the "Rules of Administrative Procedure before the Board of Environmental Quality" (IDAPA 58.01.23), within 35 days of the date of the final certification.

Questions or comments regarding the actions taken in this certification should be directed to Lance Holloway, DEQ Boise Regional Office at 208.373.0564 or Lance.Holloway@deq.idaho.gov.

DRAFT

Aaron Scheff
Regional Administrator
Boise Regional Office

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Attorneys for City of Nampa

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **REUSE PROPONENTS' SUBMISSION OF EXHIBIT J**

Pursuant to *Reuse Proponents' Stipulation of Facts*, the Association of Idaho Cities ("AIC"), the Cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Nampa, Pocatello, Post Falls, and Rupert, and the Hayden Area Regional Sewer Board ("HARSB") (collectively, "Municipal Intervenors") and Pioneer Irrigation District ("Pioneer") hereby submit true and correct copy of the documents identified below. Municipal Intervenors and Pioneer are referred to collectively as "Reuse Proponents."

Respectfully submitted this 30th day of June, 2020.

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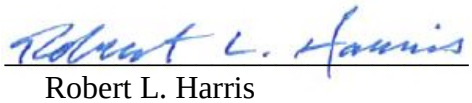

Robert L. Harris

Attorneys for City of Idaho Falls

I HEREBY CERTIFY that on this 30th day of June, 2020, the foregoing was filed, served, and copied as shown below.

DOCUMENT FILED:

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Christopher H. Meyer

Tom Points, P.E.
Public Works Director

Sheri L. Murray
Executive Assistant

March 19, 2019

Ms. Valerie Greer
Idaho Department of Environmental Quality
Boise Regional Office
1445 North Orchard Street
Boise, ID 83705

Subject: City of Nampa Recycled Water Reuse Application

Dear Ms. Greer:

The City of Nampa (City) has identified a recycled water reuse program as the preferred alternative for wastewater treatment plant upgrades. The City arrived at this decision through the recently completed wastewater facility planning process. Facility planning efforts included public engagement through development of the Nampa Wastewater Advisory Group (NWAG) and the Industrial Working Group (IWG). The NWAG and IWG worked to identify priorities for the City's water re-sources and capital investment in the next generation of wastewater treatment for Nampa. These groups overwhelmingly supported pursuing a recycled water program due to the positive community outcomes and environmental benefits.

The City has prepared the materials in the attached application, preliminary technical report, and plan of operations to provide the Idaho Department of Environmental Quality (IDEQ) with information necessary to develop a permit for this reuse project.

Benefits of Reuse
The proposed recycled water reuse project for the Nampa Wastewater Treatment Plant (WWTP) enjoys broad support from the Nampa community, Mayor Kling, and Nampa City Council. City leadership has specifically shown support for water reuse through the following directives passed down to the City's wastewater program:

- Develop a recycled water program for Nampa to maximize the value of Nampa's treated water
- Look for opportunities to maximize the amount of water reused through a combination of industrial and irrigation reuse

The City has also recently committed financially to the next phase for WWTP improvements through the Nampa Sewer Bond Election on May 15, 2018. The sewer bond passed with an 87 percent yes vote. The focal point of the sewer bond funding stressed pursuing opportunities for industrial and irrigation reuse to make the most of the City's available water resources. Recycled water reuse for irrigation source augmentation is the first step in a potential broader water reuse approach.

This project also benefits the Pioneer Irrigation District (PID), Nampa's partner in the irrigation reuse strategy. PID delivers irrigation water to approximately 34,000 acres in western Ada and Canyon Counties, including the City's pressurized irrigation system. In recent years, PID has seen the impacts of changing flow regimes in its supplies as more rural lands are developed for housing and as the climate swings drastically from drought conditions forcing early shutoffs to spring flooding due to excess storage volume in the reservoirs. The consistent discharge from the WWTP provides stability to PID irrigation users and resiliency to the irrigation water supply. Below the proposed recycled water discharge point, the Phyllis Canal distributes irrigation water to approximately 17,000 acres north to the Riverside Canal in Caldwell and west to Greenleaf. The City and PID have entered into an agreement for reception and use of Class A recycled water from the City to the Phyllis Canal at flows up to 41 cubic feet per second.

Water quality benefits to Indian Creek are also realized through eliminating the Nampa WWTP discharge during the summer months. Routing recycled water to Phyllis Canal decreases total phosphorus loading to Indian Creek and the Lower Boise River each year from May 1 through September 30. The recycled water discharge to Phyllis Canal also eliminates thermal loading from the Nampa WWTP during months when Indian Creek is impaired for temperature.

Proposed Permit Requirements

The City proposes to meet the following recycled water effluent limits at the discharge to Phyllis Canal for use as agricultural and municipal irrigation supply augmentation.

Standard requirements for Class A recycled water including oxidized, clarified, and disinfected recycled water are proposed for operations under a reuse permit. Class A recycled water protects the beneficial uses of water in the Phyllis Canal. Water not meeting Class A standards will be discharged to Indian Creek under the Nampa Wastewater NPDES Permit. Class A requirements are also in-line with the approach of other, similar recycled water systems.

Temperature limits are not required in the recycled water reuse permit; and since the intended use of Phyllis Canal is agricultural and municipal irrigation, the intended uses are not affected by water temperature. Having no temperature limit on the recycled water allows the City to avoid integrating chillers into the treatment system at the Nampa WWTP and mitigates the adverse effects of this energy intensive process. Avoiding unnecessary temperature control is critical for the feasibility of a recycled water program for the City.

The City proposes a total nitrogen limit of 30 mg/l for the recycled water discharge to Phyllis Canal. This limit is consistent with requirements for non-groundwater recharge Class A recycled water. Background concentrations of nitrogen in the Phyllis Canal are comparatively low at less than 2 mg/l. Mixing the recycled water discharge with the Phyllis Canal irrigation water results in a canal concentration around 5 mg/l.

The City proposes a total phosphorus limit of 0.35 mg/l for discharge to the Phyllis Canal. Canal background water quality has consistently been measured at or below this limit, so average water quality in the canal is not expected to exceed this concentration. Changing the receiving water for the

City's phosphorus load during the summer months from Indian Creek to the Phyllis Canal removes phosphorus from the Indian Creek and Lower Boise River system and provides an opportunity for the phosphorus to be beneficially used as the irrigation water is applied to crops and lawns throughout the PID service area. This proposed limit allows for a more economical filtration approach with consistent operation throughout the year and removes more total phosphorus than the total maximum daily load requires.

Considering the use for the Class A recycled water as agricultural and municipal irrigation supply augmentation, the City believes the end of the distribution pipe to Phyllis Canal is the most appropriate compliance point. This compliance point establishes a clear distinction between recycled water and irrigation water and limits signage requirements for the system. Once the water enters the canal it is considered irrigation water and is used as such downstream from the discharge.

The City is currently planning for a compliance deadline of 2026 for total phosphorus reduction in wastewater effluent and a 2031 deadline for temperature. Because of the design and construction of improvements necessary at the Nampa WWTP, the recycled water program will not start up until 2026 at the earliest. However, the City needs the certainty of a recycled water reuse permit in hand before beginning the design process. Therefore, the City requests a 10-year permit term coinciding with the City's National Pollutant Discharge Elimination System permit timing. The first renewal would be in 2031.

The City also hopes to maintain close communication and collaboration with the IDEQ throughout the application review and permit development process. Should you have any questions during review, or wish to schedule a meeting, please do not hesitate to contact me or Nate Runyan, Deputy Public Works Director (Water), at 208-468-4493.

Sincerely,

Tom Points, P.E.
Public Works Director

ec: Nate Runyan, P.E., City of Nampa
Matt Gregg, P.E., Brown and Caldwell

Enclosure

Recycled Water Reuse Permit Application

Contents

Figures:

Appendices:

March 19, 2019

Idaho Department of Environmental Quality

Regional Office Contact

Name, title: Valerie Greer, Lead Reuse Engineer

Regional office: Boise Regional Office

Address: 1445 N. Orchard St., Boise, ID, 83705

Phone/e-mail: 208-373-0459/Valerie.Greer@deq.idaho.gov

1. Application for Recycled Water Reuse Permit

Instructions: Complete the following form and attachments as completely as possible. Failure to provide sufficient information will delay processing of the application and final action on the permit. A pre-application meeting between the applicant and Idaho Department of Environmental Quality (DEQ) is strongly encouraged to discuss site-specific issues and level of detail needed. If clarification is needed, contact DEQ's Boise Regional Office at (208) 373-0550.

Type of application (attach appropriate checklists) New ☒ Renewal ☐: Permit No.: Major modification ☐ Minor modification ☐ Waiver ☐	
Legal name of applicant:	City of Nampa
Responsible Official and title (see Form A for definition of Responsible Official and Authorized Representative)	Tom Points, Public Works Director
Authorized Representative and title (attach Form A for designating Authorized Representative)	Andy Zimmerman, Wastewater Superintendent
Mailing address:	411 3rd St S, Nampa, ID 83651
Facility address, if different:	340 W Railroad St., Nampa, ID, 83867
Phone/fax:	(208) 465-2200
E-mail address:	pointst@cityofnampa.us
Company Internet address:	www.cityofnampa.us
Attachments (check all that apply): ☒ Form A ☒ Section 2. Facility Information ☒ Section 3. Plan of Operation Checklist/Preliminary Technical Report Checklist ☒ Preliminary Technical Report ☒ Plan of Operation ☒ Other: Cover Letter	
"I certify that the information provided in this submittal is, to the best of my knowledge, true, accurate and complete and I acknowledge that knowing submission of false or incomplete information may result in permit revocation as provided for in IDAPA 58.01.17.920.01, non-issuance of the permit, or other enforcement action as provided for under Idaho law." Signature of Responsible Official:	
Title: Public Works Director	
Date: 03/19/19	

Form A: Responsible Official/Duly Authorized Representative Designation Form

Use the following form to specify facility contacts.

Permittee name: Nampa Wastewater Treatment Plant	
Permit number: N/A	
I hereby certify that I am qualified to be the responsible official for the above-named permittee.	
Specifically, I,	
☐	am an officer of the corporation.
	My title is:
☐	perform policy or decision-making functions similar to that of an officer of the corporation.
	Explain:
☐	am a general partner in a partnership.
☐	am the owner of a sole proprietorship.
☒	am a principal executive officer, ranking elected official, or a person of decision-making authority of a municipality, state, federal, or other public agency who can legally bind the permittee with respect to the permit.
	My office/title is: City of Nampa Public Works Director
	My agency is: City of Nampa, ID
I hereby designate the following person or position title as a duly authorized representative: Andy Zimmerman, City of Nampa Wastewater Superintendent	
I certify that the individual filling this position is responsible for the overall operation of the regulated facility or an individual having overall responsibility for environmental matters.	
Signature of responsible official:	
Signature of duly authorized representative designee:	
Date:	

The Responsible Official is the facility contact person authorized by the permittee to communicate with DEQ on behalf of the permittee on any matter related to the permit, including without limitation, the authority to communicate with and receive notices from DEQ regarding notices of violation or noncompliance, permit violations, permit enforcement, and permit revocation.

The Responsible Official is responsible for providing written certification of permit application materials, annual report submittals, and other information submitted to DEQ as required by the permit. Any notice to or communication with the responsible official is considered a notice to or communication with the permittee.

The Responsible Official may designate an Authorized Representative to act as the facility contact person for any of the activities or duties related to the permit, except signing and certifying the permit application, which must be done by the Responsible Official.

The designated Authorized Representative shall act as the Responsible Official and shall bind the permittee as described above. The designation of an Authorized Representative must a) be made in writing by the Responsible Official and attached to the permit application using Form A and b) specify an individual having responsibility for the overall operation of the regulated facility, such as the plant manager, superintendent, or an individual having overall responsibility for environmental matters.

2. Facility Information

Type of facility from which wastewater is generated	Municipal, Class A facility
Types of wastewater produced	- Domestic wastewater from the City of Nampa - Pretreated industrial wastewater from food processing and manufacturing industries
Method(s) of wastewater treatment	Headworks, primary clarification, activated sludge secondary treatment, secondary clarification, tertiary filtration (in design phase), and disinfection
For municipal wastewater systems, provide and collection and treatment system classifications. Refer to IDAPA 58.01.16.202.01.a located at: *Wastewater Rules*	Collection: Class level IV Treatment: Class level IV Classification Forms that were submitted for recent plant upgrades are included at the end of this application form
For municipal wastewater treatment, designate "class" of recycled water generated and method(s) of reuse	☒Class A ☐Class B ☐Class C ☐Class D ☐ Class E Class A recycled water provided for municipal and agricultural irrigation supply augmentation
For industrial wastewater treatment, describe the different types of recycled water streams generated and method(s) of reuse	N/A
Facility ownership	☒ Public (specify type): POTW ☐ Private
Site elevation (feet above sea level)	2,420 ft amsl to 2,465 ft amsl
USGS Quadrangle	Area of analysis is mostly located within the Nampa and Caldwell quadrangles. Also includes portions of the Lake Lowell and Notus quadrangles.
Legal location (township, range, section)	Nampa WWTP: Nampa Quadrangle: Section 16, T3N R2W Proposed discharge locations to Phyllis Canal: 1A: Section 22, T3N, R2W 1B: Section 22, T3N, R2W 2A: Section 21, T3N, R2W 2B: Section 21, T3N, R2W 3: Section 21, T3N, R2W
County	Canyon
Representative soil profile for method of reuse	Soils in the area of analysis consist primarily of silt loams including Power, Greenleaf-Owyhee, Purdam, Bram series, and Baldock loam. An overview of these soils is included in Section 6.3 of the Preliminary Technical Report.

Seasonal high ground water, if available	Depth to seasonal high ground water: 5 to 35 ft below ground surface (bgs) Season encountered: Summer An overview of groundwater is included in Section 6.6 of the Preliminary Technical Report
Depth, thickness, and flow direction of aquifer(s) located at or near the reuse facility	Shallow aquifer may extend to 250 ft bgs across the area of analysis. Deep aquifer may be confined or unconfined below 250 ft bgs. Both aquifers flow to the west or northwest. More information on the aquifer system is included in Section 6.6 of the Preliminary Technical Report.
Beneficial uses of ground water **(Check all that apply)**	☒ Agriculture ☒ Industrial ☒ Domestic ☐ Aquaculture ☐ Other (identify):
Nearby surface water(s) and distance(s) to nearest reuse area	Indian Creek Distance to nearest reuse area: Area of analysis includes two drains that return to Indian Creek. See discussion of surface water in Section 6.5 of the Preliminary Technical Report and the conceptual diagram of surface waters and irrigation conveyances in Figure 8.
Beneficial uses of surface water **(Check all that apply)**	☐ Agriculture ☐ Industrial ☐ Domestic ☐ Aquaculture ☐ Aquatic life ☐Salmonid spawning ☐ Primary Recreation ☐ Secondary Recreation ☒ Other (identify): Agricultural and Municipal Irrigation Supply Note: Beneficial uses of surface water are listed in the Water Quality Rules, 58.01.16, sections 110 through 160.
Operator Certification Requirements (for municipal systems only)	Operators at the Nampa WWTP are licensed in accordance with IDAPA 24.05.01. Andy Zimmerman and Shannon Johnson, are certified level IV operators.
Engineer/consultant that prepared application documents: Firm Person(s) Address Phone/fax/email	Brown and Caldwell Andy Weigel, P.G. 950 W Bannock Suite 350 Boise, ID 83702 Phone: 208-389-7730 Fax: 208-389-7750 Email: aweigel@brwncald.com

3. Plan of Operation Checklist/Preliminary Technical Report Checklist

For facilities with an existing reuse permit, use these checklists as a guide to update your plan of operation and prepare a preliminary technical report for submittal with the permit application. A pre-application workshop will be held one year prior to permit expiration to discuss permit application requirements and answer questions regarding application content.

For facilities applying for a new reuse permit, provide an outline of the plan of operation with the permit application. If reuse facilities are in the design and construction phase, submit a detailed plan of operation at the 50% completion point of construction. After 1 year of operating the reuse facility, the plan must be updated to reflect actual operating procedures. A pre-application workshop between the applicant and DEQ is *strongly encouraged*.

Consult the DEQ Guidance or other information source listed in the right-hand column of the checklists for assistance in developing the plan of operation or preliminary technical report. If additional clarification is needed, contact your DEQ regional office.

The preliminary technical report is the core of the application. This report shall describe how the facility will comply with the "Recycled Water Rules" (IDAPA 58.01.17) and conform to DEQ guidance (*Guidance for Reclamation and Reuse of Municipal and Industrial Wastewater*). The application should include those checklist items **as applicable and necessary to characterize the wastewater treatment and reuse systems.**

Plan of Operation and Preliminary Technical Report Checklists

Plan Section and Requirements	Plan of Operation	Prelim. Technical Report	DEQ Guidance Section No. or other source of information
Section 1. Operation and Management Responsibility			
a. Attach organizational chart showing positions responsible for operation and maintenance of wastewater treatment and reuse systems. For municipal systems, include operator training and certification requirements, certification credentials for operators, and any other operator certification information.	X	X	Classification and Licensure
b. Describe operator and manager responsibilities.	X		
c. Describe process for updating the plan of operation as operational and/or facility changes occur.	X		
d. If a party other than the applicant operates and maintains any portion of the wastewater treatment or recycled water reuse system, provide a copy of the signed contract or agreement. The contract or agreement must contain language outlining how the system will be operated to meet the conditions and requirements of the reuse permit.		X	

Plan Section and Requirements	Plan of Operation	Prelim. Technical Report	DEQ Guidance Section No. or other source of information
Section 2. Permits and Other Regulatory Requirements			
a. Attach copies of the reuse permit, National Pollutant Discharge Elimination System (NPDES) permit, planning and zoning conditional use permits, and all other applicable permits, licenses, and approvals.	X	X	NPDES Permits in Idaho
b. List applicable ordinances, rules, statutes, and standards.	X		
Section 3. Land Application Site			
a. A topographic map identifying and showing the location and extent of wastewater inlets, outlets, and storage structures and facilities, land application area, wells, springs, wetlands, surface waters, FEMA floodplains, service roads, natural or man-made features necessary for treatment, buildings and structures, and process chemical and residue storage facilities. See 58.01.17.300.03.e	X	X	Recycled Water Rules
b. A topographic map extending ¼ mile beyond the outer limits of the facility site identifying and showing the location and extent of wells, springs, wetlands, surface waters, public and private drinking water supply sources, applicable source water assessment areas, public roads, dwellings, and public gathering places. See 58.01.17.300.03.f	X	X	Recycled Water Rules
c. Description of and a regional map showing important land features (cities, major roads, major surface water bodies, county/state lines) in relation to the reuse facility.		X	
d. A scaled map showing hydraulic management units (HMUs) and associated acres, ground water monitoring wells, and wastewater and recycled water lagoons.	X	X	
e. A scaled map showing the recycled water and supplemental water (if used) irrigation system, including piping, appurtenances, and the type & efficiency of irrigation system used for each HMU.	X	X	
f. Description of land uses adjacent to reuse facility.		X	
g. Identify ownership of the reuse sites, including documentation. If not owned by the applicant, include copies of leases and agreements for the reuse sites. For leased or rental reuse sites, provide a signed agreement between applicant and landowner that clearly states the applicant will have sufficient control of the site to meet reuse permit requirements.		X	
Section 4. General Plant Description			
a. Describe wastewater treatment design basis and/or criteria.	X	X	
b. Describe wastewater treatment processes and/or unit operations used to generate recycled water for reuse, including design capacities. For municipal systems, include disinfection processes and disinfection level. (See 58.01.17.601 for municipal recycled water classifications)	X	X	Municipal Disinfection Class

Plan Section and Requirements	Plan of Operation	Prelim. Technical Report	DEQ Guidance Section No. or other source of information
c. Provide plot plans and process and instrumentation diagrams. (P&IDs)	X	X	
d. Provide hydraulic profile, including key inverts and elevations.	X		
e. Characterize wastewater and recycled water streams, including daily, monthly, & annual flow rates, seasonal variability, chemistry and microbiology. Provide source of data for this characterization.	X	X	Guidance 3.1, 3.2, 3.3, 3.4
f. Describe wastewater treatment and reuse system efficiencies.	X		
Section 5. Description, Operation, and Control of Unit Operations and Processes			
a. Describe unit operation/process purpose and control strategy.	X		
b. Describe normal operations. (e.g., flow patterns, typical process and reuse system flow rates, and sludge production rates)	X		
c. Describe process monitoring and control systems.	X		
d. Provide operating instructions for equipment with reference to manufacturer's operation and maintenance (O&M) manuals, standard operating procedures (SOPs), or other applicable documents.	X		
e. Discuss common operating problems and solutions. (troubleshooting guide)	X		
f. List laboratory tests for process control.	X		
g. List laboratory tests for compliance determination.	X		
h. Describe start-up procedures.	X		
i. Provide emergency operating plans and procedures.	X		
Section 6. Wastewater and Recycled Water Treatment and Storage Lagoons			
a. Describe all treatment and storage ponds and lagoons, including date constructed, purpose, capacity, liner material, last seepage rate test date and result, scheduled seepage rate tests, and operating parameters (e.g., minimum freeboard and minimum depth).	X	X	Guidance 6.3
b. Describe lagoon maintenance.	X		Guidance 6.3.4
c. Sludge accumulation monitoring	X		
Section 7. Reuse Site Features and Characteristics			
a. Describe fencing and posting (signs) used on each HMU. Fencing and posting guidance is shown in Tables 6.4 and 6.5 of the Guidance.	X	X	Guidance 6.5
b. Describe backflow prevention equipment for each irrigation well, domestic well and public water system that has an interconnection with a wastewater, recycled water system, or other source of contamination.	X		

Plan Section and Requirements	Plan of Operation	Prelim. Technical Report	DEQ Guidance Section No. or other source of information
c. Climatic characteristics – provide meteorological data of the site, including precipitation, high and low temperature data, frost-free days, and wind speed and direction.		X	Guidance 2.1.1, 4.1.1.1
d. Soils i. Describe the soil types present at all reuse sites. Use Natural Resources Conservation Service (NRCS) soil survey information if available or site-specific information, ii. provide and interpret available soil monitoring results, and iii. for sites applying or proposing to apply during the non-growing season, provide calculations used to determine acceptable non-growing season hydraulic loading rates. (See Guidance Section 4.4.9)		X	Guidance 2.1.2, 4.4.9, 7.4.3
e. Topography – describe configuration of land surface: elevation, slope, relief, and aspect and the relationship to land application design.		X	Guidance 2.1.3
f. Surface Water i. Identify and describe the location of surface water(s) located near the wastewater treatment and reuse sites. ii. List applicable DEQ beneficial uses of surface water. (See 58.01.02, sections 110 through 160) iii. Describe the influence of the wastewater treatment system and reuse site on nearby surface waters.		X	Beneficial Uses of Surface Water
g. Ground Water i. Describe the ground water conditions including depth to first water, depth to regional ground water, confined or unconfined (if known), ground water flow direction, and seasonal variations in depth or flow direction. ii. Describe the ground water monitoring well network, including location, depth, construction, completion, lithology, and aquifer parameters for each monitoring well (attach well logs). Describe the gradient position of each monitoring well and the purpose it serves in the network. Identify wells that no longer produce samples. iii. Provide the location of public wells, private wells, irrigation wells, and injection wells located within a one-quarter mile of the reuse site(s). Include copies of well logs if available. iv. Conduct a well location acceptability analysis for the wells identified. (see Guidance Section 6.6.4) v. Provide and interpret ground water monitoring or modeling results.		X	Guidance 2.1.4, 6.6, 7.1, 7.2, 7.7.4

Plan Section and Requirements	Plan of Operation	Prelim. Technical Report	DEQ Guidance Section No. or other source of information
Section 8. Reuse Site Loading Rates			
a. Describe how the facility tracks recycled water and irrigation water hydraulic loading for each HMU.	X	X	Guidance 4.1, 7.5.2.2
b. Provide the design and typical recycled water and irrigation water hydraulic loading rates by month for each HMU and the basis used to establish design rates.	X	X	Guidance 4.1.1
c. Describe irrigation scheduling methods and practices used.	X	X	Guidance 4.1.1.2
d. Describe the source(s) of supplemental irrigation water and typical hydraulic loading rate by month.	X	X	Guidance 4.1.1.2.1, 4.1.1.2.2
e. Attach documentation of water rights for supplemental irrigation water (if used). Confirm water rights, in combination with recycled water volume are sufficient to meet crop water needs.	X	X	
f. Describe non-growing season application practices.	X		Guidance 4.1.2
g. If storage ponds/lagoons are used, include monthly water balances for the storage system, including all inputs and outputs to demonstrate sufficient capacity is provided for the system.	X	X	
h. Describe how the facility calculates and manages loading rates for relevant constituents (e.g., nitrogen, phosphorus, chemical oxygen demand, NVDS) for each HMU. Loading rate information should identify respective loadings from each source, such as recycled water, waste solids, and fertilizers.	X	X	Guidance 4.2.1, 4.2.2
i. Identify the land limiting constituent for the land application system.	X	X	Guidance 4.
Section 9. Reuse Site Vegetation			
a. Cropped sites: describe the crop rotation plan. Include crop type, approximate planting and harvest dates, expected yield, expected crop uptake values for relevant constituents, method used to calculate crop uptake, anticipated commercial fertilizers application rates, any other anticipated source of nutrients or constituents of concern, irrigation water requirement (IWR) for each crop type and the basis used to determine IWR.	X	X	Guidance 2.2
b. Silvicultural (forest) site: describe dominant forest and understory species, respective percentage of the site occupied by each, and age class and successional stage of the forest. Describe management of forested sites. Include pest and weed control, harvest, thinning, new planting, and anticipated dates of these operations.	X	X	Guidance 2.2.2
c. Native vegetation site: describe dominant vegetation species and respective percentage of the site occupied by each. Describe the management of sites with native vegetation, including pest and weed control and other operations, if any, and anticipated dates of these operations.	X	X	

Plan Section and Requirements	Plan of Operation	Prelim. Technical Report	DEQ Guidance Section No. or other source of information
Section 10. Reuse Site Management			
a. Site management history – describe past uses and management of reuse sites including important events and dates, agronomic practices, and other relevant land use practices.		X	
b. Compliance Activities: If applying for a permit modification or renewal, provide a summary of the status of each compliance activity in the existing permit.		X	
c. Site Management Plans - If the site has previously developed management plans listed below (or other site-specific plans), provide updated plans as necessary to reflect current operations. For new sites or if the applicable management plan(s) have not been developed for existing sites, prepare the following plans:	X	X	
i. Buffer Zone Plan – Address buffer zones for dwellings, areas of public access, surface waters, private and public water sources, and irrigation and monitoring wells. Compare proposed or existing buffer zone distances with DEQ guideline buffer distances and describe any proposed mitigation measures to reduce buffer zone distances. Include a scaled map showing buffer zones (existing or proposed).	X	X	Guidance 6.5, 6.6
ii. Grazing management: describe planned grazing activities, including type and number of animals, grazing rotation, and time of year.	X	X	Guidance 6.4
iii. Nuisance management: describe administrative and engineering controls to prevent nuisance conditions, such as odors, overspray, vector attraction, and noise. Include specific design considerations, operation and maintenance procedures, and management practices to be employed. Describe procedures for handling and responding to complaints about facility-caused nuisances.	X	X	Guidance 2.3.2 Air Quality Pollutants and Odors
iv. Waste solids management: describe type and quantity of waste solids generated, process by which wastes are generated, physical and chemical characteristics, and waste storage systems. Describe disposal or recycling of these wastes, identify locations of disposal or recycling sites, and discuss criteria for selecting these sites. (See 58.01.16.650 of the Wastewater Rules). Waste solids management plans should be submitted prior to stock-piling, disposal, or reuse for DEQ review and approval.	X	X	Sludge and Biosolids Wastewater Rules
v. Nonvolatile Dissolved Solids (NVDS) Management Plan – Systems with high NVDS (referred to as salts) loading rates may cause elevated ground water total dissolved solids (TDS) levels. The NVDS management plan is used to identify sources of salt and reduce NVDS-loading rates as necessary to satisfy the *Ground Water Quality Rule*, IDAPA 58.01.11.	X	X	Guidance 4.2.2.5

Plan Section and Requirements	Plan of Operation	Prelim. Technical Report	DEQ Guidance Section No. or other source of information
vi. Runoff management: describe administrative and engineering controls and best management practices used to prevent runoff of recycled water from the reuse site. Include provisions/practices to prevent run-on of storm water onto reuse sites.	X	X	Guidance 4.1.3
vii. Weed management.	X		Guidance 6.8
Section 11. Quality Assurance Project Plan			
Prepare and implement a quality assurance project plan (QAPP) to assist in planning for collection, analysis, and reporting of all monitoring in support of permit and explaining data anomalies when they occur. At a minimum, the QAPP must include the following: i. Number of measurements, number of samples, type of sample containers, preservation of samples, holding times, analytical methods, analytical detection, and quantitation limits for each target compound, type and number of quality assurance field samples, precision and accuracy requirements, sample preparation requirements, sample shipping methods, and laboratory data delivery requirements. ii. Maps indicating the location of each monitoring and sampling point. iii. Personnel qualification and training. iv. Names, addresses, and telephone numbers of the laboratories used by or proposed to be used by the permittee. v. Example formats and tables that will be used by the permittee to summarize and present all data in the annual report. The QAPP format and content should adhere to recommendations and references in the quality assurance and data processing sections of the DEQ guidance. Note: For existing facilities having a QAPP, include with the preliminary technical report. For new facilities, QAPP requirements will be discussed during the pre-application conference.		X	Guidance 7.1.5, 7.1.6, 7.1.7
Section 12. Monitoring Activities			
a. Describe recycled water monitoring.	X	X	Guidance 7.5, 7.7.8
b. Describe supplemental irrigation water monitoring.	X	X	Guidance 7.5
c. Describe ground water monitoring.	X	X	Guidance 7.2, 7.7.3.1, 7.7.4
d. Describe soil monitoring.	X	X	Guidance 7.4, 7.7.6, 7.7.7
e. Describe crop tissue monitoring.	X	X	Guidance 7.6, 7.7.9
f. Describe any other monitoring (e.g., meteorological and vadose zone).	X	X	Guidance 7.3, 7.7.5

Plan Section and Requirements	Plan of Operation	Prelim. Technical Report	DEQ Guidance Section No. or other source of information
Section 13. Maintenance			
Provide maintenance information, including the following: preventative maintenance schedules; troubleshooting charts and guides; maintenance record system; location of manufacturer's manuals; management of spare parts inventory; vendors, outside contractors and suppliers.	X		
Section 14. Records and Reports			
a. Provide general overview of records kept, recordkeeping system, and reports generated.	X		
b. Describe daily operating logs and provide examples.	X		
c. Describe laboratory records and reports and provide examples.	X		
d. Describe reporting procedures for permit violations.	X		

IDAHO PUBLIC WASTEWATER TREATMENT PLANT CLASSIFICATION WORKSHEET

OFFICE USE DO NOT WRITE HERE
System Class _____
Upgrade ___ STD 5 Yr ___
Approved by _____
Date_____

Name of System:_____

Legal Owner of Treatment System _____

System Address: _____

City: _____ **State:**_____ **Zip Code:** _____

Contact Person:_____ **Title:** _____

Business Phone Number: (___)_____ **Email** _____

Treatment System - Design Flow/Actual Flow ____/____
(MGD) (MGD)

Treatment Plant Classification Worksheet is (Check one):

☐ **Initial System Rating** ☐ **System Upgrade** ☐ **Standard 5 Year Rating**

Date of last system classification rating (if applicable) _____

☐ **Attach a flow schematic or hydraulic flow diagram of the treatment facility to this treatment plant classification worksheet when submitting to DEQ.**

Instructions:

Use this rating form for all types of public wastewater treatment plants, facilities, or systems[D-16] that treat domestic and/or industrial wastewater including, but not limited to traditional biological and mechanical treatment processes, large soil absorption systems, community drainfields, and wastewater lagoon systems. Fill out ONE form for the wastewater treatment facility including all sequential, parallel or multiple treatment processes for both effluent and solids that provide treatment of all wastewater introduced into the system.

How to Assign Points:

Evaluate each item listed in the table below and place the specified point value next to each item selected. *Each unit process should have points assigned only once* .Add the total number of points selected to determine the class of the treatment system. Definitions describing all configurations, names, and/or reasons why rating points are or are not assigned to a particular item are provided for those items with a small D-number behind the item, i.e. D-1. Check the definition if unsure whether a particular treatment plant process qualifies for the point value shown.

Treatment facilities will be classified as VSWW, Class I, Class II, Class III or Class IV with IV being the largest and most complex. *Mail the completed, signed form to the Department of Environmental Quality 1410 N. Hilton, Boise, ID 83706 Attention: Mike May. Keep a photocopy of the original form for your files.*

Item	Points	Your System
System Size (2 to 20 points)		
Number of Connections (for information only)	(not scored)	
Maximum population served, peak day (1 point minimum to 10 point maximum)	1 point/10,000 or part	

Item	Points	Your System
Design flow (average/day) or peak months (average/day) Whichever is larger (1 point min to 10 point max)	1 point/MGD or part	
Variation in Raw Waste (0 to 6 points) [1]		
Variations do not exceed those normally or typically expected	0 points	
Recurring deviations/excessive variations of 100% to 200% in strength/flow	2 points	
Recurring deviations/excessive variations of more than 200% in strength/flow	4 points	
Raw wastes subject to toxic waste discharges	6 points	
Impact of septage of truck-hauled waste (0 to 4 points)	0-4 points	
Preliminary Treatment Process		
Plant pumping of main flow	3 points	
Screening, comminution	3 points	
Grit removal	3 points	
Equalization	1 point	
Primary Treatment Process		
Primary clarifiers	5 points	
Imhoff tanks, septic tanks, or similar (combined sedimentation/digestion)[D-8]	5 points	
Secondary Treatment Process		
Fixed-film reactor[D-7]	10 points	
Activated sludge[D-1]	15 points	
Stabilization ponds or lagoon without aeration	5 points	
Stabilization ponds or lagoon with aeration	8 points	
Membrane Biological Reactor (MBR) – Basic MBR which combines activated sludge (minus secondary clarification) and membrane filtration.[D-17]	15 points	
Tertiary Treatment Process		
Polishing ponds for advanced waste treatment	2 points	
Chemical/physical advanced waste treatment w/o secondary[D-5]	15 points	
Chemical/physical advanced waste treatment following secondary[D-4]	10 points	
Biological or chemical/biological advanced waste treatment[D-2]	12 points	
Nitrification by designed extended aeration only	2 points	
Ion exchange for advanced waste treatment	10 points	
Reverse osmosis, electrodialysis and other membrane filtration techniques for advanced waste treatment	15 points	
Advanced waste treatment chemical recovery, carbon regeneration	4 points	
Media filtration (removal of solids by sand or other media) [D-13]	5 points	
Additional Treatment Processes		
Chemical additions (2 points each for a max of 6 points)[D-3]	0-6 points	
Dissolved air floatation (for other than sludge thickening)	8 points	
Intermittent sand filter	2 points	
Recirculating intermittent sand filter	3 points	
Microscreens	5 points	
Generation of oxygen	5 points	
Solids Handling		
Solids stabilization (used to reduce pathogens, volatile organic chemicals &		

Item	Points	Your System
odors include lime or similar treatment and thermal conditioning)[D-15]	5 points	
Gravity thickening	2 points	
Mechanical dewatering of solids[D-11]	8 points	
Anaerobic digestion of solids	10 points	
Aerobic digestion of solids	6 points	
Evaporative sludge drying	2 points	
Solids reduction (including incineration, wet oxidation)	12 points	
On-site landfill for solids	2 points	
Solids composting[D-14]	10 points	
Land application of biosolids by contractor [D-9]	2 points	
Land application of biosolids by facility operator in responsible charge	10 points	
Disinfection (0 to 10 points maximum)		
No disinfection	0 points	
Chlorination (including chlorine dioxide or chloramines) or ultraviolet irradiation	5 points	
Ozonation	10 points	
Effluent Discharge (0 to 10 points maximum)		
No discharge	0 points	
Discharge to surface water receiving stream[D-6]	0 points	
Mechanical post aeration[D-12]	2 points	
Land treatment with surface disposal or land treatment with subsurface disposal [D-10]	4 points	
Direct recycle and reuse	6 points	
Instrumentation (0 to 6 point maximum)		
SCADA or similar instrumentation systems to provide data with no process operation	0 points	
SCADA or similar instrumentation systems to provide data with limited process operation	2 points	
SCADA or similar instrumentation systems to provide data with moderate process operation	4 points	
SCADA or similar instrumentation systems to provide data with extensive or total process operation	6 points	
Laboratory Control (0 to 15 point maximum) [2]		
Bacteriological/Biological Laboratory Control (0 to 5 point maximum)		
Lab work done outside the treatment plant	0 points	
Membrane filter procedures	3 points	
Use of fermentation tubes or any dilution method; fecal coliform determination	5 points	
Chemical/Physical Laboratory Control (0 to 10 point maximum)		
Lab work done outside the treatment plant	0 points	
Push-button or visual (colorimetric) methods for simple tests such as pH, settleable solids	3 points	
Additional procedures such as DO, COD, BOD, gas analysis, titrations, solids, volatile content	5 points	
More advanced determinations such as specific constituents; nutrients, total		

Item	Points	Your System
oils, phenols	7 points	
Highly sophisticated instrumentation such as atomic absorption, gas chromatography	10 points	
TOTAL POINTS FOR YOUR SYSTEM		

System Classification Key			
*VSWWS***		*Class II*	*31 to 55 points*
Class I	*30 points or less*	*Class III*	*56 to 75 points*
Class IV	76 points or greater		
YOUR SYSTEM CLASSIFICATION		**VSWWS, I, II, III, IV (Circle one)**	

Footnote [1] The key concept is frequency and/or intensity of deviation or excessive variation from normal or typical fluctuations; such deviation can be in terms of strength, toxicity, shock loads, I/I, with points from 0-6.

Footnote [2] The key concept is to credit laboratory analyses done on-site by plant personnel under the direction of the operator in direct responsible charge with points from 0-15.

**The Very Small Wastewater System Classification is applicable to a system comprised of one of the following wastewater treatment processes: aerated lagoon (s); non-aerated lagoon(s); primary treatment; or LSAS.

_____/_____

Signature of Legal Owner or Owner's Representative Date

Wastewater Treatment Definitions

D-1. **Activated Sludge** - Wastewater treatment by aeration of suspended organisms followed by secondary clarification, including extended aeration, oxidation ditches, Intermittent Cycle Extended Aeration system (ICEAS), and other similar processes. A sequencing batch reactor with the purpose of providing this form of treatment would be rated under this category.

D-2. **Biological or chemical/biological advanced waste treatment** - The advanced treatment of wastewater for nutrient removal including nitrification, denitrification, or phosphorus removal utilizing biological or chemical processes or a combination. If the facility is designed to nitrify based solely on detention time in an extended aeration system, only the points for nitrification by designed extended aeration should be given.

D-3. **Chemical addition** - The addition of a chemical to wastewater at an application point for the purposes of adjusting pH or alkalinity, improving solids removal, dechlorinating, removing odors, providing nutrients, or otherwise enhancing treatment, excluding chlorination for disinfection of effluent and the addition of enzymes or any process included in the Tertiary Chemical/Physical Processes. The capability to add a chemical at different application points for the same purpose should be rated as one application; the capability to add a chemical(s) to dual units should be rated as one application; and the capability to add a chemical at different application points for different purposes should be rated as separate applications.

D-4. **Chemical/physical advanced treatment following secondary** - The use of chemical or physical advanced treatment processes following (or in conjunction with) a secondary treatment process. This would include processes such as carbon adsorption, air stripping, chemical coagulation, and precipitation, etc.

D-5. **Chemical/physical advanced treatment without secondary** - The use of chemical or physical advanced treatment processes without the use of a secondary treatment process. This would include processes such as carbon adsorption, air stripping, chemical coagulation, precipitation, etc.

D-6. **Discharge to Receiving Water** - Treatment processes present at the facility are designed to achieve NPDES permit limitations that have already factored in the sensitivity of the receiving stream. Consequently, no additional points are assigned to rate the receiving stream separately from the facility treatment processes.

D-7. **Fixed-film reactor** - Biofiltration by trickling filters or rotating biological contactors followed by secondary clarification.

D-8. **Imhoff tanks (or similar)** - Imhoff tanks, septic tanks, spirogester, clarigester, or other single unit for combined sedimentation and digestion.

D-9. **Land application of biosolids by contractor** - The land application or beneficial reuse of biosolids by a contractor outside of the control of the operator in direct responsible charge of the wastewater treatment facility.

D-10. **Land treatment and disposal (surface or subsurface)** - The ultimate treatment and disposal of the effluent onto the surface of the ground by rapid infiltration or rotary distributor or by spray irrigation. Subsurface treatment and disposal would be accomplished by infiltration gallery, injection, or gravity or pressurized drain field.

D-11. **Mechanical dewatering** - The removal of water from sludge by any of the following processes and including the addition of polymers in any of the following: vacuum filtration; frame, belt, or plate filter presses; centrifuge; or dissolved air floatation.

D-12. **Mechanical post-aeration** - The introduction of air into the effluent by mechanical means such as diffused or mechanical aeration. Cascade aeration would not be assigned points.

D-13. **Media Filtration** - The advanced treatment of wastewater for removal of solids by sand or other media or mixed media filtration.

D-14. **Solids composting** - The biological decomposition process producing carbon dioxide, water, and heat. Typical methods are windrow, forced air-static pile, and mechanical.

D--15. **Solids stabilization** - The processes to oxidize or reduce the organic matter in the sludge to a more stable form. These processes reduce pathogens or reduce the volatile organic chemicals and thereby reduce the potential for odor. These processes would include lime (or similar) treatment and thermal conditioning. Other stabilization processes such as aerobic or anaerobic digestion and composting are listed individually.

D-16 **Wastewater Treatment Facility**. Any physical facility or land area for the purpose of collecting, treating, neutralizing or stabilizing pollutants including treatment plants, the necessary intercepting, outfall and outlet sewers, pumping stations integral to such plants or sewers, equipment and furnishing thereof and their appurtenances. A treatment facility may also be known as a treatment system, waste treatment system, waste treatment facility, or waste treatment plant (IDAPA 58.01.16.010).

D-17 **Membrane Biological Reactor (MBR) Point Factoring** - The points assigned to the basic MBR unit does not include points for any additional treatment processes such as phosphorus removal, nitrification, denitrification, land application, rapid infiltration basins, lagoons, etc. Points must be assigned separately to each additional treatment process beyond the basic MBR unit. Additional treatment processes may vary on a case-by-case basis.

IDAHO PUBLIC WASTEWATER COLLECTION SYSTEM CLASSIFICATION WORKSHEET

OFFICE USE ONLY
DON'T WRITE HERE

System Class _____

Approved by: _____

Date: _____

Name of System: _____

Legal Owner of Treatment System: _____
System Address: _____
City: _____ **State:** _____ **Zip Code:** _____

Contact Person: _____ **Title:** _____

Business Phone Number: (___)_____ **Email:** _____

Collection System Classification Worksheet is (check one):

☐ **Initial System Rating** ☐ **System Upgrade** ☐ **Standard 5 yr Rating**

Date of last system classification rating (if applicable) _____

Collection System - Design Flow /Actual Flow _____/_____

Item	Points	Your System
System Size (Minimum 3 points)		
Miles of Line	1 point/10 miles or part	
Number of Connections = _____ (Use Connection Equivalencies)	1 point /250 or part	
Number of Manholes	1 point/150 or part	
Lift Stations	1 point/each	
Miles of Force Mains	1 point/mile or part	
Odor Abatement		
Chemical Feed System	2 points	
Air Entrainment System	2 points	
Bio-filter System	2 points	
Maintenance Management System		
Manual Maintenance Management System	3 points	
Manual Mapping System	3 points	
Computerized Maintenance Management System	5 points	
Computerized Mapping System	5 points	
Alarm or SCADA System for Lift Stations	5 points	
TOTAL POINTS FOR YOUR SYSTEM		

System Classification Key		
VSWWS**	Class I 0-30 points	
Class II 31-55 points	Class III 56-75 points	Class IV 76 or greater points
YOUR SYSTEM CLASSIFICATION	**VSWWS, I, II, III, IV (Circle one)**	

**The Very Small Wastewater System Classification is applicable to a system that serves 500 connections with a system size of six points or less.

_____/_____
Signature of Legal Owner or Owner's Representative Date

Mail form to: Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706, Attn: Mike May

Recycled Water Reuse Permit Application
Preliminary Technical Report

Prepared for
City of Nampa
Nampa, Idaho
March 19, 2019

Recycled Water Reuse Permit Application
Preliminary Technical Report

Prepared for
City of Nampa
March 19, 2019

Brown AND Caldwell
950 W Bannock Street, Suite 350
Boise, Idaho, 83702

Table of Contents

List of Tables

List of Abbreviations

ac	acre
amsl	above mean sea level
BC	Brown and Caldwell
bgs	below ground surface
BOD	biochemical oxygen demand
cfm	cubic feet per minute
cfs	cubic feet per second
City	City of Nampa
COLD	cold water aquatic life
EPA	U.S. Environmental Protection Agency
ft	feet
ft^2	square feet
ft bgs	feet below ground surface
gpm	gallons per minute
gs	growing season
hp	horsepower
I/I	infiltration and inflow
IDEQ	Idaho Department of Environmental Quality
IDAPA	Idaho Administrative Procedure Act
in/hr	inch per hour
IWR	Irrigation Water Requirement
kW	kilowatt
lb/ac-gs	pounds per acre per growing season
LF	linear feet
mgd	million gallons per day
mg/l	milligrams per liter
mJ/cm^2	millijoule per square centimeter
MG	million gallons
MPN	most probably unit
MS4	Municipal Separate Storm Sewer System
NOAA	National Oceanic and Atmospheric Administration
NPDES	National Pollutant Discharge Elimination System
NTU	Nephelometric Turbidity Unit
PCR	primary contact recreation
PI	pressurized irrigation
PID	Pioneer Irrigation District
RAS	return activated sludge
S.U.	standard unit
TDH	total design head
TDS	total dissolved solids
TKN	total Kjeldahl nitrogen
TN	total nitrogen
TP	total phosphorus
TSS	total suspended solids
WAS	waste activated sludge
WWTP	wastewater treatment plant

Executive Summary

The City of Nampa (City) is authorized to discharge treated wastewater effluent from the Nampa Wastewater Treatment Plant (WWTP) to Indian Creek under U.S. Environmental Protection Agency National Pollutant Discharge Elimination System (NPDES) Permit No. ID0022063 (Appendix A). The City is seeking a recycled water reuse permit from the Idaho Department of Environmental Quality authorizing discharge of Class A recycled water from the Nampa WWTP as agricultural and municipal irrigation supply augmentation water to the Phyllis Canal. The discharge will occur annually between approximately May 1 and September 30. Once the water enters the canal it is considered irrigation water and is managed by Pioneer Irrigation District for use downstream from the discharge point. The design flow planned for this discharge is 31 cubic feet per second (cfs). The Phyllis Canal typically conveys irrigation water at a rate of approximately 200 cfs along the reach of the proposed recycled water discharge location.

This preliminary technical report includes background information and a discussion of proposed activities and operations to support the City's requested target effluent limits as described below:

- Class A recycled water concentrations for constituents of concern.
- 30 mg/L total nitrogen (recycled water use is not groundwater recharge)
- 0.35 mg/L total phosphorus (TP)
- No temperature limit

This reuse project is expected to improve water quality in Indian Creek by removing Nampa WWTP discharges to the creek for 5 months out of the year. Compared to the Nampa WWTP NPDES permit conditions, the proposed recycled water reuse permit conditions would achieve a 24 percent average decrease in total phosphorus loading to Indian Creek and a 60 percent average decrease in total nitrogen loading during the proposed period of recycled water discharge to the canal.

The City and PID have entered into an agreement for receipt and use of Class A recycled water from the City to the Phyllis Canal at flows up to 41 cfs. PID provides irrigation service to approximately 34,000 acres in western Ada County and Canyon County, including the City's pressurized irrigation system. Below the proposed recycled water discharge point, the Phyllis Canal distributes irrigation water to approximately 17,000 acres north and west, ultimately discharging to tributaries of the Riverside Canal in Caldwell and other irrigation facilities west to Greenleaf.

Total nitrogen concentrations (average 1.7 mg/l) are much lower than the proposed recycled water effluent limit of 30 mg/l, and the mixed concentration in the canal would be about 5.5 mg/l under the discharge conditions of this water reuse project. This would benefit agricultural users because the irrigation water has historically been deficient in nitrogen. Because nitrogen fertilizer application is a common practice in this area, the City and PID will cooperate to educate customers in the service area about the increasing total nitrogen levels to avoid over application of total nitrogen that may exceed agronomic uptake rates of crops and landscaped areas in the portion of the PID service area downstream of the recycled water discharge location.

Section 1

Introduction and Background

The City of Nampa (City) is authorized to discharge treated wastewater effluent from the Nampa Wastewater Treatment Plant (WWTP) to Indian Creek under U.S. Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Permit No. ID0022063. The permit was issued September 20, 2016, effective November 1, 2016, through October 31, 2021. The permit is included at the end of the application as Appendix A.

In early 2018, the City completed a wastewater facility plan (BC, 2018) that was accepted by the Idaho Department of Environmental Quality (IDEQ) in spring 2018. The facility plan describes irrigation supply augmentation as the preferred alternative for wastewater management between May 1 and September 30. This alternative was selected through public engagement and a business case evaluation that compared multiple identified alternatives.

Therefore, the City is seeking a recycled water reuse permit from the IDEQ and has developed this application to provide information to support development and issuance of a permit. This document serves as the City's preliminary technical report in anticipation of approval to convey Class A recycled water treated at the Nampa WWTP to be discharged as agricultural and municipal irrigation supply augmentation water to the Phyllis Canal annually between May 1 and September 30. The maximum design flow planned for this discharge is 31 cubic feet per second (cfs). The Phyllis Canal typically conveys irrigation water at a rate of approximately 200 cfs along the reach of the proposed recycled water discharge location.

The Phyllis Canal is owned and operated by the Pioneer Irrigation District (PID). The City and PID have entered into an agreement for receipt and use of Class A recycled water from the City to the Phyllis Canal at flows up to 41 cfs. PID provides irrigation service to approximately 34,000 acres in western Ada County and Canyon County, including the City's pressurized irrigation system. Below the proposed recycled water discharge point, the Phyllis Canal distributes irrigation water to approximately 17,000 acres north and west, ultimately discharging to tributaries of the Riverside Canal in Caldwell and other irrigation facilities west to Greenleaf.

This Preliminary Technical Report includes a discussion of the organization of the Nampa WWTP and permits and regulatory documents in Sections 2 and 3, respectively. Section 4 includes several figures that provide reference for the recycled water discharge, the PID service area, and the broader area of analysis. Section 5 describes the wastewater treatment design and characterization of wastewater, while Section 6 discusses the applicability of treatment lagoons and storage ponds.

Sections 7 through 10 provide background information for the area of analysis pertinent to the reuse permit conditions, as well as a discussion of loading rates and the management conditions in the area of analysis. Sections 11 and 12 provide a preliminary discussion of the monitoring of recycled water prior to discharge to Phyllis Canal and the quality assurance and quality control procedures the City will employ to maintain compliance with permit requirements.

Table 1-1 below shows where key sections of the Recycled Water Rules are addressed in the Preliminary Technical Report and Plan of Operations.

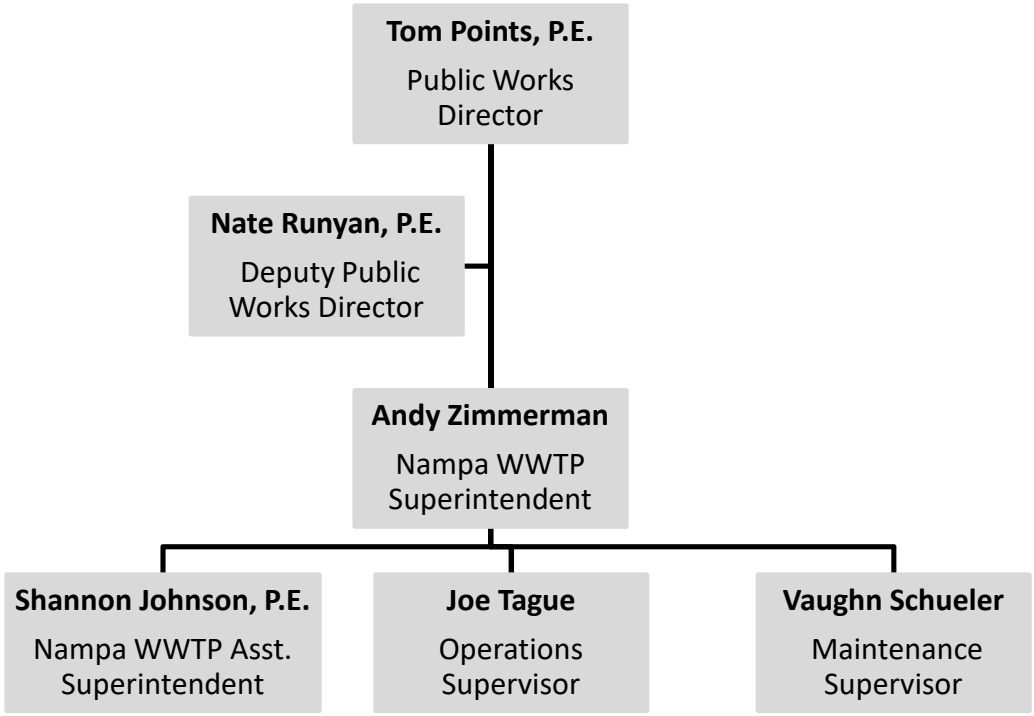
Table 1-1. Recycled Water Rules Requirement Discussion Location in Application			
Section of Recycled Water Rules	Description of Recycled Water Rule	Preliminary Technical Report Section	Plan of Operations Section
601	Municipal Recycled Water: Classification, Treatment, Use	Section 5	Section 5
602	Municipal Recycled Water: Classification and Uses Tables	Section 3	Section 3
603	Municipal Recycled Water: Access, Exposure and Signage	Section 7, Section 10	Section 8
604	Reuse Facilities: Buffer Distances	Section 10	Section 8
605	Municipal Recycled Water: Preliminary Engineering Reports	Section 5	Section 5, Section 6
606	Reuse Facility: Plan and Specification Review	Section 5	Section 5
607	Municipal Recycled Water: Distribution Pipelines	Section 4	Section 4
608	Municipal Recycled Water: Pumping Stations	Section 5, Section 7	NA
609	Municipal Recycled Water: Lagoons	Section 6	Section 7
610	Municipal Recycled Water: Class A Recycled Water Filtration	Section 5, Section 8	Section 5, Section 6
611	Municipal Recycled Water: Reliability and Redundancy	Section 6	NA
612	Demonstration of Technical, Financial, and Managerial Capacity of Municipal Reuse Facility	Section 2	Section 2
613	Reuse Facility: Rapid Infiltration System	Section 7	NA
614	Ground Water Recharge: Class A Recycled Water	Section 5, Section 7	Section 3
615	Subsurface Distribution of Recycled Water	Section 4	Section 4

Section 2

Operation and Management Responsibility

2.1 Organizational Chart

The personnel and positions identified in the organizational chart below are responsible for operating and maintaining the wastewater and reuse water systems for the City of Nampa Wastewater Treatment Plant.



In accordance with IDAPA 24.05.01 all wastewater treatment operators, collections operators, and laboratory analysts have a wastewater treatment operator license, ranging from level I through level IV. Andy Zimmerman and Shannon Johnson are certified Class IV operators.

2.2 Applicant Operation Documentation

The Applicant is the sole owner and operator of the City of Nampa WWTP, including all recycled water treatment, conveyance, and discharge equipment and operations.

Section 3

Permits and Other Regulatory Requirements

3.1 Permits and Regulatory Documents

Discharges from the Nampa WWTP to Indian Creek are authorized under EPA NPDES Permit No. ID0022063. The permit was issued September 20, 2016, effective November 1, 2016, through October 31, 2021. The permit is included at the end of the application as Appendix A.

The City has also completed an agreement with PID, dated March 8, 2018, authorizing the City to discharge up to 41 cfs (annual average) of recycled water to the Phyllis Canal every year between May 1 and October 1. A copy of the fully executed agreement is included as Appendix B.

Other than the IDEQ Wastewater Reuse Permit associated with this application, no other permitting is anticipated at this time to maintain the treatment and discharge of Class A Recycled Water to the Phyllis Canal.

During the design phase of the reuse water pipeline from the Nampa WWTP to Phyllis Canal, permits and agreements required for constructing the pipeline and discharge structure will be identified and scheduled to be attained in a sequence amenable to design and construction timing.

Section 4

Land Application Site

4.1 Topographic Maps

Figure 1 is a topographic map identifying the Nampa WWTP in relation to the Phyllis Canal. Figure 2 provides a view of the potential routes a recycled water pipeline may take from the Nampa WWTP to the Phyllis Canal. Figure 3 presents the PID service area downstream from the proposed recycled water discharge point. The area within the red polygon includes an approximately 1/4-mile buffer of the area. The customers served by PID in this area include the cities of Nampa and Caldwell. Both cities have several pump stations and diversions installed along the Phyllis canal and associated drains and laterals to supply irrigation water to each city's irrigation utility customers. Other major PID customers in this area include unincorporated subdivisions, private residences, and farms. Additional information on the major crop types in this area is included in Section 9. Downstream (north and west) irrigation districts including Riverside Irrigation District and the Black Canyon Irrigation District also rely heavily on irrigation water and return flows (both surface water and shallow groundwater) managed by PID.

4.2 Regional Map and Description

A broader regional map surrounding the PID area is included as Figure 4. Included for reference, Figure 5 is map developed by the Idaho Department of Water Resources that identifies the jurisdictions of all irrigation companies and cooperatives operating in Canyon County.

4.3 Scaled Map (Hydraulic Management Units)

Hydraulic management units are not applicable for this permit, considering the discharge of recycled water directly to the Phyllis Canal as opposed to application to a specific hydraulic management unit.

4.4 Scaled Map (Recycled Water and Supplemental Water)

The scaled map presented in Figure 2 identifies multiple proposed pipeline routes and associated discharge points. All pipeline routes begin near the Nampa WWTP outfall to Indian Creek and discharge at points along a 1-mile section of the Phyllis Canal. Pipeline routes will be further evaluated in the predesign phase of Nampa WWTP upgrades, and the selected route will be reported to the IDEQ.

4.5 Description of Land Use

As seen in Figure 2, land uses adjacent to pipeline routes and discharge points may vary slightly. The table below identifies the adjacent land uses for each proposed pipeline route and discharge point. It is important to note that regardless of the pipeline route chosen, the discharge point will be located on PID property.

Table 3-1. Land Uses Adjacent to Pipeline Route Options					
	Option 1A	Option 1B	Option 2A	Option 2B	Option 3
Land uses adjacent to pipeline route	• industrial • transportation • commercial	• industrial • transportation • commercial • public • residential	• industrial • transportation • commercial • public • residential	• industrial • transportation • commercial • public • residential	• industrial • transportation • commercial
Land use adjacent to PID property at discharge point	• commercial	• residential	• residential	• public	• commercial

4.6 Identify Ownership

The recycled water pipeline will be buried from the Nampa WWTP to the discharge point. The discharge to Phyllis Canal will be located on PID property, but the pipeline and associated infrastructure will be owned by the City. The City and PID have entered into an agreement authorizing the discharge of Class A recycled water to the Phyllis Canal, with the pipeline and associated infrastructure to be authorized under a subsequent license agreement in the future once final location and design are selected and completed. A copy of the existing discharge agreement is included as Appendix B.

Section 5

General Plant Description

5.1 Wastewater Treatment Design

The Nampa WWTP receives wastewater from domestic (residential/commercial) dischargers, industrial dischargers, infiltration and inflow (I/I) from seasonal irrigation sources, and I/I from sources other than irrigation users. The current design total rated hydraulic (maximum month) capacity is 18 million gallons per day (mgd). The recent *Nampa Wastewater Program Facility Plan* (*Facility Plan*) provides flow and loading projections through 2040. The future expected influent flow to the Nampa WWTP is 20.1 mgd.

In addition to future growth, the City considered applicable regulatory requirements for both NPDES and Recycled Water discharge. These combined factors are summarized in Table 5-1, below.

Table 5-1. Nampa WWTP Recycled Water Program Design Conditions

Parameter	Summer Design Condition	Winter Design Condition [1]
Maximum month flow	20.1 mgd	20.1 mgd
Effluent TSS	Monthly average: 30 mg/l Weekly average: 45 mg/l 4-month average: 17.5 mg/l	Monthly average: 30 mg/l Weekly average: 45 mg/l 4-month average: 17.5 mg/l
Effluent BOD_5	Monthly average: 10 mg/l	Monthly average: 30 mg/l Weekly average: 45 mg/l
Effluent total phosphorus	0.35 mg/l	Monthly average: 52.4 lbs/day (0.35 mg/l) [1,2]
Effluent total nitrogen	30 mg/l [3]	30 mg/l
Effluent ammonia	Monthly average: 1.31 mg/l (March–November) Daily maximum: 4.92 mg/l (March–November)	Monthly average: 1.41 mg/l (December–February) Daily maximum: 5.31 mg/l (December–February)
Other	Class A Recycled Water (IDAPA 58.01.17) requirements	Class A Recycled Water (IDAPA 58.01.17) requirements for industrial reuse stream (1 – 2 mgd)

[1] The values listed assume discharge to an irrigation canal during the summer season. During the winter season NPDES permit limits apply.

[2] Effluent TP limits are on a pounds per day basis. Concentration is provided for reference only.

[3] Effluent total nitrogen limits are estimated to be lower for summer discharge as a conservative assumption based on the requirements of the Recycled Water Rules (IDAPA 58.01.17, Section 607.02.d). The requirements for this discharge will be further refined through additional permit negotiations.

BOD = biochemical oxygen demand.

lbs/day = pounds per day.

mgd = million gallons per day.

mg/l = milligrams per liter.

5.2 Wastewater Treatment Process

The Nampa WWTP operates as a secondary treatment facility that uses conventional aerated activated sludge units for biological oxidation of the wastewater. The Nampa WWTP will be upgraded

to provide full-scale recycled water. The goal is to provide Class A recycled water (as defined in IDAPA 58.01.17.601) to local industries and irrigation users for reuse. The processes that will be installed to achieve this include tertiary filtration, additional disinfection, an industrial pump station and pipeline, and an irrigation reuse pump station and pipeline. All water quality requirements for municipal Class A recycled water, as prescribed by IDAPA 58.01.17, are summarized for reference in Table 5-2.

Table 5-2. Class A Recycled Water Classification and Additional Requirements

Description		Requirement	IDAPA 58.01.17 Section
Oxidized		Yes	601.01
Clarified		Yes	601.01
Filtered		Yes	601.01
Disinfected		Yes	601.01
Total coliform (organisms/ 100 milliliters)	Median results for last x-days for which analysis have been completed	2.2 7-day median	601.01.a.ii
	Maximum in any sample	23	601.01.a.ii
	Monitoring frequency	Daily, or as determined	601.01.a.iii
Disinfection requirements contact time		Contact time of 450 mg-min L with 90 min of modal time OR disinfection to 5log inactivation of virus	601.01.a.i
Turbidity (NTU)	24-hr - mean, not to exceed	Granular or cloth media: 2 **Membrane filter: 0.2** [1]	601.01.b.i
	Maximum in any sample	Granular or cloth media: 5 **Membrane filter: 0.5** [1]	601.01.b.i
	Monitoring frequency	Continuous	601.01.b.ii
Maximum Total nitrogen (mg/L)		**Groundwater recharge: 10** [2] Residential irrigation and other non-recharge uses: 30 OR As required based on an analysis of ground water impacts	601.01.c.i
BOD5 (mg/L)	Monthly arithmetic mean, not to exceed	**Ground water recharge: 5** [2] Residential irrigation and other non-recharge uses: 10	601.01.c.iii
	Monitoring frequency	Weekly composite	601.01.c.iii
pH	Any sample	Between 6.0 and 9.0	601.01.c.ii
	Monitoring frequency	Daily grab or continuous monitoring	601.01.c.ii

[1] *Membrane filtration identified as tertiary treatment technology per the Facility Plan; should unit process assumptions change during preliminary design; water quality requirement assumptions should be revisited.*

[2] *Per IDAPA 58.01.17 Section 607.02.d, "Class A recycled water may be mixed with other irrigation water in an unlined pond if the Class A recycled water is permitted for ground water recharge." Since the project assumes no additional lining of PID canals will occur, groundwater quality assumptions will be assumed.*

The necessary unit processes and the associated design capacity of the systems required to provide Class A recycled water at the Nampa WWTP are summarized in Table 5-3. These design criteria will be further defined through preliminary and final design stages of the project.

Table 5-3. Recycled Water Program Unit Processes Required & Preliminary Design Criteria

Unit Process	Unit Process Assumptions
Aeration basin modifications	• Aeration Basin #4 construction • Sized identical to existing aeration basins: 134 ft x 160 ft x 21 ft • 3,304,000-gallon capacity
Blower building	• Six 700-hp blowers (five duty, one standby), 9,750 cfm sizing • 12,000-ft^2 building • 500-kW generator
RAS piping and WAS pumping	• Two WAS pumps (10 hp each) • WAS pump TDH: 50 ft • 60 LF of 18-inch RAS piping and fittings • 275 LF 30-inch piping
Mixed liquor return pumps	• Four pumps, 17,000 gpm (24 mgd) each • 10 feet TDH • 125 hp mixed flow pumps, one per treatment train
Final Clarifier No. 4	• Circular clarifier, 120-ft diameter with mechanism
Solids facility expansion	• 1,650-ft^2 building expansion • Two rotary drum thickeners, 440 gpm capacity each • One centrifuge, 200 gpm capacity
Struvite reactor	• 3,888-ft^2 building • Struvite reactor equipment and piping • 1,185 LF of 10-inch piping
Filter lift pump station	• Building enclosure • Three vertical turbine pumps • 20-inch vertical turbine solids handling • Flow: 9,450 gpm • TDH: 30 feet • Power: 100 hp • 500-kW generator • 530 LF of 42-inch piping
Sand or Membrane filtration [1]	Sand Filtration • 1,900- ft^2 building • 9 filter cells, 108 modules, 40-inch filter bed • Three rotary screw compressors (two duty, one standby) • Coagulant feed system Membrane Filtration • 12,000-ft^2 building (200 ft x 60 ft x 36 ft) • 105-ft long, 40-ft wide, 16-ft deep membrane tanks • 36 membrane cassettes and 2,808 modules installed • Six permeate pumps • Two positive displacement blowers (one duty, one standby)

Table 5-3. Recycled Water Program Unit Processes Required & Preliminary Design Criteria

Unit Process	Unit Process Assumptions
Ultraviolet disinfection: Class A	• 5,460-ft² building • Four channels, Nine banks per channel • Disinfection dose: 100 mJ/cm²
Effluent force main for irrigation reuse	• 6,000 LF of 42-inch high density polyethylene pipe
Effluent pump station for irrigation reuse	• Three vertical turbine pumps • References Project Group A Primary Effluent Pump Station • 20-inch vertical turbine solids handling • Flow: 9,450 gpm • TDH: 30 feet • Power: 100 hp • Building enclosure: 14 ft x 54 ft
Effluent pump station & force main for industry	• Two submersible pumps, duplex-type arrangement • TDH: 40–80 ft • 10,000 LF of 12-inch polyvinyl chloride force main • 840 LF of 42-inch piping industrial flow (1–2 mgd) disinfected to Class-A standards using in-pipe ultraviolet treatment • Disinfection dose: 100 mJ/cm²
Digester #5	• One mixing pump, 125 hp motor • Flare relocation
Primary thickening	• Thickening feed pumps, two duty/one standby, 30 hp motors • Rotary drum thickeners, two duty/one standby • Thickened primary sludge pumps, two duty/one standby, 15 hp motors • Polymer makeup and feed systems • Centrate pumps: two duty/one standby, 20 hp motors

[1] *Title 22 approved technology per IDAPA 58.01.17 Section 610.01. Filtration technology is still being evaluated as part of the project pre-design phase.*

Any potable water used as seal water for recycled water pump seals shall be protected from backflow with an approved backflow prevention device or air gap per IDAPA 58.01.17 Section 608.02a.

cfm = cubic feet per minute.

ft = feet.

ft² = square feet.

gpm = gallons per minute.

hp = horsepower.

kW = kilowatt.

LF = linear feet.

mJ/cm² = millijoule per square centimeter.

RAS = return activated sludge.

TDH = total design head.

WAS = waste activated sludge.

Process flow diagrams for the liquid and the solid streams are provided in Figures 6 and 7, respectively.

5.3 Characterize Wastewater and Recycled Water Streams

The Nampa WWTP receives and treats wastewater flow and loadings from four sources: domestic (residential/commercial) dischargers, industrial dischargers, I/I from seasonal irrigation, and I/I from sources other than seasonal irrigation influences. The wastewater collected from the service area contains both organic and inorganic loadings.

Domestic flow is independent of seasonal and climate conditions and tends to follow a diurnal flow pattern that reflects timing of water usage in the community. Industrial discharges come from a range of industries in the service area, including food processing plants, sanitation, and technology services. Industrial discharges are less consistent than domestic discharges and tend to be higher strength in terms of biochemical oxygen demand (BOD), total suspended solids (TSS), total Kjeldahl nitrogen (TKN), and total phosphorus and other loadings. I/I resulting from seasonal irrigation increases throughout the summer and peaks in the early fall. The non-seasonal irrigation I/I is driven by precipitation and groundwater variations (these are independent of irrigation influences).

The City's wastewater flow varies seasonally. Flow volumes are highest from June to January because of irrigation season and industrial food processors' peak discharge during the late fall and winter. The annual average flow to the Nampa WWTP has gradually decreased over recent years, caused by a reduction in local industry and subsequent industrial discharges to the municipal sewage system. The load has also decreased over the past 2 years due to the reduction in industrial discharges. The average monthly flow has not decreased at the same rate as the influent load, most likely because the industrial flows have not decreased at the same rate as loads and there has been growth in domestic discharge, which constitutes flow with lower concentrations of BOD and TSS, yielding less load for the same flow.

A wastewater characterization study was performed as part of the *Facility Plan* development. The results of the study were documented in *TM T-49 Nampa WWTP Capacity Assessment*. For more information on wastewater characteristics, refer to Appendix C of the *Facility Plan.*

The *Facility Plan* included developing *TM T-46 Flow and Loads,* which evaluated current conditions and developed future projections based on population growth. The current condition was based on available Nampa WWTP data from 2012 through 2015. Table 5-4 is the resulting current flow and load condition for the Nampa WWTP.

Table 5-4. Nampa Wastewater Current Flows and Loads

	Flow (mgd)			BOD (lbs/day)			TSS (lbs/day)			TKN (lbs/day)			TP (lbs/day)		
	Annual Average	Maximum Month	Peak Day	Annual Average	Maximum Month	Peak Day	Annual Average	Maximum Month	Peak Day	Annual Average	Maximum Month	Peak Day	Annual Average	Maximum Month	Peak Day
Domestic	7.67	7.67	7.67	16,132	19,578	40,564	17,807	19,898	37,414	2,524	2,880	4,175	373	414	700
Industrial [1, 2]	2.82	2.82	4.23	20,389	20,389	30,583	10,632	10,632	15,948	1,988	1,988	2,983	345	345	517
Irrigation-related I/I [3]	0.95	2.28	2.38	–	–	–	–	–	–	–	–	–	–	–	–
Non-irrigation I/I	0.14	0.34	2.30	–	–	–	–	–	–	–	–	–	–	–	–
Total Influent [4]	11.6	13.1	16.6	36,521	39,967	71,147	28,439	30,530	53,362	4,512	4,868	7,158	718	759	1,217

TP = total phosphorus.

[1] For industrial customers, the Average Annual flow capacity represents the allowable daily discharge. Values are rounded to the nearest hundredth mgd and whole value lbs/day for flow and load, respectively.

*[2] Peak Day = 1.5 * monthly average for industrial flows and loads.*

[3] Seasonal irrigation is calculated to increase during irrigation season (April–September) by approximately 1.9 mgd. This period represents approximately half the year; therefore, the monthly average is 1.9 divided by 2 = 0.95 mgd. Estimates were developed based on Nampa WWTP influent data from 2008 through 2015. Seasonal irrigation average, maximum month, and peak day flows are assumed to not change over time.

[4] Total flows = total industrial permitted flow + total domestic flow + seasonal irrigation + other I/I; Total loads = total industrial permitted load + total domestic load; values are rounded to the nearest tenth mgd for flow and nearest lbs/day for loads.

The *Facility Plan* evaluated future flow and loading conditions through 2040, which will inform the design of the Preferred Alternative. During the summer season, the full 20.1 mgd maximum month flow would be treated to Class A recycled water quality and then discharged to an irrigation canal. The City plans to produce 1–2 mgd of treated Class A water for industrial reuse that would be available year-round. During the winter, the City would operate under its existing NPDES permit and discharge the treated effluent to Indian Creek. Table 5-5 summarizes these future flow and loading conditions.

Table 5-5. Nampa Wastewater 2040 Flow and Loading Projections

	Flow (mgd)			BOD (lbs/day)			TSS (lbs/day)			TKN (lbs/day)			TP (lbs/day)		
	Annual Average	Maximum Month	Peak Day	Annual Average	Maximum Month	Peak Day	Annual Average	Maximum Month	Peak Day	Annual Average	Maximum Month	Peak Day	Annual Average	Maximum Month	Peak Day
Domestic	13.69	13.69	13.69	30,652	38,136	83,029	35,330	41,892	90,700	4,693	5,483	9,079	708	848	1,347
Industrial [1,2]	3.8	3.8	5.7	32,907	32,907	49,360	23,150	23,150	34,725	2,906	2,906	4,360	762	762	1,143
Irrigation-related I/I [3]	0.95	2.28	2.38	–	–	–	–	–	–	–	–	–	–	–	–
Non-irrigation I/I	0.14	0.34	2.30	–	–	–	–	–	–	–	–	–	–	–	–
Total influent flow and loads [4]	18.6	20.1	24.1	63,560	71,040	132,390	58,480	65,040	125,430	7,600	8,390	13,440	1,470	1,610	2,490

[1] *Peak Day = 1.5 * monthly average for industrial flows and loads.*

[2] *For industrial customers, the Average Annual flow capacity represents the allowable daily discharge. Values are rounded to the nearest hundredth mgd and whole value lbs/day for flow and load, respectively.*

[3] *Seasonal irrigation is calculated to increase during irrigation season (April–September) by approximately 1.9 mgd. This period represents approximately half the year; therefore, the monthly average is 1.9 divided by 2 = 0.95 mgd. Estimates were developed based on Nampa WWTP influent data from 2008 through 2015. Seasonal irrigation average, maximum month, and peak day flows are assumed to not change over time.*

[4] *Total flows = total industrial permitted flow + total domestic flow (2040) + seasonal irrigation + other I/I; total loads = total industrial permitted load + total domestic load (2040); values are rounded to the nearest tenth mgd for flow and 10 lbs/day for loads.*

Section 6

Wastewater and Recycled Water Treatment and Storage Lagoons

6.1 Treatment and Storage Ponds

Per the Guidance Manual, storage ponds are typically required for the following applications:

- precipitation causes excessive hydraulic loading
- cultivating practices prevent wastewater application
- winter weather precludes operation or a reduction in the rate of application
- flow variations in quality require equalization
- when an emergency backup for the treatment system is required

Treatment ponds and storage lagoons are not included as part of this project because the Nampa WWTP will maintain its permitted Indian Creek outfall for winter discharges and as an alternative backup system during the irrigation season, as required for additional reliability and redundancy requirements for Class A recycled water by IDAPA 58.01.17 Section 609 Municipal Recycled Water: Lagoons Class A requirements do not apply.

Section 7

Reuse Site Features and Characteristics

7.1 Fencing and Posting

Buffer zones and fencing are not required for Class A recycled wastewater per IDAPA 58.0117 Section 602.02, Table 3. However, the discharge location and security for instrumentation will provide a buffer zone and a physical barrier to the discharge point. The discharge pipe will be located on PID property (which prohibits access to canal roads by unauthorized personnel). Security fencing or other measures will be installed at the discharge location, similar to City irrigation pump stations located along the Phyllis Canal. In the secured fenced area, signs that read "Caution: Recycled Water—Do Not Drink" or equivalent signage in both Spanish and English will be posted on the fence on all sides.

Warning labels will be installed on designated facilities and equipment within the secured fenced area. The labels will read, "Caution: Recycled Water—Do Not Drink" or equivalent signage, in both Spanish and English.

All piping, valves, and other appurtenances for the pipeline from the Nampa WWTP to the discharge point to Phyllis Canal, both buried and exposed, will be purple in color (Pantone 512, 522, or equivalent). If fading or discoloration of buried purple pipe is experienced during construction, then identification tape or locating wire will be installed that reads "Caution: Recycled Water—Do Not Drink" in either white or black font on purple tape, in both Spanish and English. The overall width of the tape will be at least 3 inches. Identification tape will be installed 18 inches above the transmission pipe longitudinally, will be centered over the pipe, and shall run continuously along the length of the pipe.

Public outreach will also be part of educational programming pursued in conjunction with added signage and fencing. The addition of nutrients to the Phyllis Canal is anticipated to be a benefit for the irrigated crops and lawns in the PID service area. Because fertilizer application is a common practice in this area, the City and PID will cooperate to educate customers in the service area about the increase in nutrient levels in irrigation water to avoid over application of fertilizers.

More broadly, the City will meet with water user groups, environmental advocacy groups, and others to facilitate a dialogue concerning the City's use of recycled water and address concerns as they are brought to the City. The City also hopes to maintain close communication and collaboration with the IDEQ throughout the application review and permit development process.

7.2 Climatic Characteristics

According to Koppen-Geiger climate zones, Nampa, Idaho, and surrounding areas exhibit a BSk climate, or a "cold semi-arid environment," marked by hot dry summers and moderate winters. The area receives most precipitation in the cold season while the warm season is mostly dry. Total annual rainfall averages around 10.94 inches, and the bulk of the annual precipitation is received between November and May. The winter months are characterized by uniform widespread precipitation while the warm season months have more irregular convective showers and

thunderstorms. Temperatures represent a high desert regime, with an average annual temperature of 51.6 degrees Fahrenheit. The spring last freeze date is typically around May 3 in Nampa, while the fall first freeze is around October 12. These dates result in a total of 163 frost-free days on average. (National Oceanic and Atmospheric Administration [NOAA], 2018).

The Site is not located in a particularly windy area, but there are times when strong gusts of wind occur. The most significant control on wind direction in the Treasure Valley and the city of Nampa is exerted by the northwest to southeast orientation of the surrounding mountain ranges. Because the valley slopes from southeast to northwest, a southeast drainage wind often occurs during the night and early morning hours. During the afternoon, the east end of the valley typically heats up faster than the west end creating surface low pressure, which in turn creates a northwest wind. Monthly average wind speeds range from 5.9 to 8.5 miles per hour, with occasional strong wind gusts (NOAA, 2018).

The weather parameters that most affect crop evapotranspiration are radiation, air temperature, humidity, and wind speed (FAO, 1998). The evapotranspiration rates of crops directly correlate with their water requirement. An additional discussion of crop types and evapotranspiration rates is included in Section 9.

Monthly and annual average climate data is included below in Table 7-1.

Table 7-1. Monthly and Annual Climate

	Maximum Temp [1] (F)	Minimum Temp [1] (F)	Average Temp [1] (F)	Precipitation [1] (in)	Wind Speed [2] (mph)
January	38.7	22.6	30.6	1.21	5.9
February	45.5	25.7	35.6	0.96	7.4
March	56.6	31.7	44.1	1.26	8.0
April	64.6	36.5	50.5	1.08	8.5
May	73.3	44.1	58.7	1.29	7.8
June	82.5	51.4	67.0	0.68	7.6
July	91.9	57.0	74.5	0.26	7.0
August	90.7	55.1	72.9	0.23	6.6
September	79.9	45.9	62.9	0.48	6.4
October	66.4	36.5	51.4	0.75	6.6
November	50.0	28.7	39.4	1.27	7.4
December	39.2	21.8	30.5	1.47	6.9
Annual Average	65.0	38.1	51.6	10.94	7.18

[1] *Temperature and precipitation data from National Climatic Data Center—NOAA.*

[2] *Wind speed from Nampa Municipal Airport 2010–present*

7.3 Soils

The area of analysis used for soils is the PID service area located downstream from the proposed recycled water discharge point. This area is approximated by the red polygon in Figure 3 and is located primarily on sediments of the Bonneville Flood slack waters that inundated the Snake River Valley and lower Boise Valley. The flood deposits overlay terrace gravels of the ancestral Boise River. In addition, basalt flows erupted onto the Snake River Plain during the Pleistocene and inundated ancestral valleys and plains. The basalt flows underlay sediments in the eastern portion of the area of analysis. The following geologic units as described by the Geologic Map of the Boise Valley and Adjoining Area, Western Snake River Plain, Idaho (Othberg et al., 1992) are found within the area:

- Basalt Flows of Indian Creek Buried by Loess and Stream Sediments: tan massive silt, stratified clay, silt, and sand with basalt approximately 20–50 ft below the surface. Pedogenic clay 10–20 percent.
- Sandy Silt of Bonneville Flood Slack Water: thin bedded tan silt, silty sand, and fine sand (10–20 ft thick) buries this loess, duripan, and sandy pebble gravel of Wilder Terrace (10–25 ft thick) and Whitney Terrace.
- Sandy Alluvium of Side-Stream Valleys and Gulches: medium to coarse sand interbedded with silty fine sand and silt. Sediment is derived mostly from weathered granite and reworked Tertiary sediments. Minor pedogenic clay and calcium carbonate are present. Thickness is variable.
- Clay of Bonneville Flood Slack Water: light tan silty clay 3–7 ft thick that buries gravel of the Boise Terrace.
- Alluvium of the Boise and Snake River: sandy cobble gravel to sandy pebble gravel that is 20–46 ft thick.

Soils in the area of analysis consist primarily of silt loams including Power, Greenleaf-Owyhee, Purdam, Bram series, and Baldock loam. The soils are described in the Soil Survey of Canyon Area (U.S. Department of Agriculture, 1972). These soils formed from mixed alluvium, lacustrine deposits, or loess. The soils are well drained for the most part except where depth to water is shallow and the soils are saturated. Soil depths within the area of analysis range from 60 to 65 inches.

Infiltration rates are moderately high (0.2–0.6 inch per hour [in/hr]) for soils in the area of analysis with the exception of Purdam, which commonly has a cemented layer at 20–40 inches below ground surface (bgs) that limits infiltration rates to very low to moderately low (0–0.06 in/hr). The soils range from non-saline to very saline.

7.4 Topography

The area of analysis is located on the western Snake River Plain geographical feature, a northwest-trending basin bounded by normal faults. The Lower Snake River Valley slopes downward from southeast to northwest with elevation decreasing from Mountain Home, Idaho (3,146 ft above mean sea level [amsl]), to Ontario, Oregon (2,150 ft amsl).

The irrigation conveyances within the area of analysis distribute and drain water almost exclusively to the north and west (Figure 4) through a network of canals, laterals, and drains. Land application of effluent will be completely within PID. The canal section near the proposed discharge location has an elevation of approximately 2,465 ft amsl. The Phyllis Canal terminus is located southeast of Greenleaf, Idaho, at an elevation of 2,420 ft amsl.

A topographic map can be found on Figure 3.

7.5 Surface Water

The Nampa WWTP currently discharges effluent to Indian Creek, which flows northwest from the Nampa WWTP toward the Lower Boise River. The Nampa WWTP is situated within PID service area, approximately 1 mile from the Phyllis Canal. Recycled water is proposed to be discharged to the Phyllis Canal at one of the locations shown on Figure 2. PID provides irrigation water to around 22,000 acres of both agricultural and developed land downstream of the City's proposed recycled water addition point.

7.5.1 Nearby Surface Waters

7.5.1.1 Lower Boise River

The lower Boise River is a 64-mile-long stretch of river starting at Lucky Peak Dam and flowing northwest through Ada and Canyon Counties to its confluence with the Snake River near Parma, Idaho. The lower Boise River basin drains 1,290 square miles of rangeland, agricultural fields, forests, and growing urban areas, and provides freshwater for a variety of uses including recreation, municipal supply, environmental flows, hydropower, and the primary use of agricultural irrigation. The irrigation conveyance system in the lower Boise River basin is complex; a network of canals and laterals divert water from the lower Boise River for agricultural and municipal irrigation. Local organizations responsible for water allocation and distribution include irrigation districts, canal companies, ditch companies, and individual irrigators.

The Lower Boise River Subbasin, Hydrologic Unit Code 17050114, comprises 17 water body units. The Boise River section from Indian Creek's confluence to the river's mouth (SW-1) has two beneficial uses as listed by Rules of the Department of Environmental Quality, IDAPA 58.01.02, "Water Quality Standards": cold water aquatic life (COLD) and primary contact recreation (PCR). COLD is designated by water quality appropriate for the protection and maintenance of a viable aquatic life community for cold water species. PCR refers to 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 (IDAPA 58.01.02 Section 100).

Certain stretches of the Lower Boise River are impaired by pollutants. The IDEQ's 2014 Integrated Report (IDEQ, 2017) reports impairments to the lower Boise River from Indian Creek to the river's mouth (ID17050114SW001_06). These impairments include sedimentation/siltation, fecal coliform, and total phosphorus.

7.5.1.2 Indian Creek

Indian Creek is a tributary of the Boise River, beginning southeast of the Treasure Valley and flowing northwest through Ada and Canyon counties. Indian Creek's confluence with the New York Canal near Kuna, Idaho, serves as artificial headwaters for the waterway. Indian Creek splays from the New York Canal and flows northwest through Nampa and Caldwell, intersecting the Riverside Canal at the western limits of Caldwell. During non-irrigation season (~November–March), Indian Creek's flow is naturally discharged into the Boise River. During irrigation season (~April–October), most of Indian Creek's flow is diverted to Riverside Canal, leaving minimal flow to discharge directly to the Boise River. Riverside Canal is a diversion of the Boise River that conveys water to irrigated lands west and north of Caldwell, Idaho.

Indian Creek from Sugar Avenue to its mouth (SW-2) has two designated beneficial use designations: COLD and secondary contact recreation, which refers to water quality appropriate for recreational uses on or about the water and which are not included in the primary contact category (IDAPA 58.01.02 Section 100). The outfall from the Nampa WWTP is located along this reach of Indian Creek.

The IDEQ's 2014 Integrated Report (IDEQ, 2017) also reports impairments of Indian Creek from Sugar Avenue to the Boise River (ID17050114SW002_04). These impairments include sedimentation/siltation and *Escherichia coli*.

7.5.1.3 Major Irrigation Conveyances extending beyond the Area of Analysis

The following are major canals in the area that have some interaction with the waterways and/or irrigation conveyances within the area of analysis. Further discussion of interactions is included in Section 7.5.1.4. Information about major irrigation conveyances extending beyond the area of

analysis is the result of interviews with PID staff that took place between May 2018 and February 2019 (PID, 2019).

Notus Canal

The Notus Canal is owned and operated by Black Canyon Irrigation District. The first unit of the canal begins at the Wilson (Caldwell Canal) Feeder (described in Section 7.5.1.4) and is made up of diverted flow from Wilson drain. From the feeder, Notus Canal, flows northeast and crosses underneath Indian Creek. It then follows Indian Creek for the distance of about 2 miles before it heads north, under the Boise River. In this stretch it makes deliveries to 184 acres of land inside the PID service area before beginning deliveries to Golden Gate Irrigation District customers on the north side of Caldwell. After the Notus Canal emerges on the north side of the Boise River, deliveries are made to Black Canyon Irrigation District Customers in the agricultural area north and east of Notus, Idaho, between U.S. Highway 26 and Interstate 84.

Caldwell Highline Canal

The Caldwell Highline Canal is another Canal owned and operated by PID. The Caldwell Highline Canal originates as a diversion off the Boise River approximately 2.5 miles downstream from where State Highway 16 crosses the Boise River, flowing to the west/southwest. The Caldwell Highline Canal provides irrigation water for area to the north and east of Caldwell, Idaho, and north of Nampa. The canal eventually crosses over Indian Creek and terminates near the point at which Elijah Drain joins Wilson Drain.

Riverside Canal

The Riverside Canal is owned and operated by the Riverside Irrigation District. Riverside Canal begins as a diversion off the Boise River just north of Caldwell, approximately 2 miles upstream from the mouth of Indian Creek. The Riverside Canal intercepts Indian Creek for a quarter mile stretch as it flows through Caldwell and heads west toward Greenleaf, Idaho. The West End drain (described further in Section 7.5.1.4) flows into the Riverside Canal near canal mile 8. Below this point, the Riverside canal winds through western Canyon County approximately 22 miles before its tailwaters reach the Snake River. In this stretch, the Riverside Canal delivers water via laterals and diversions and receives water from drains and return flows from fields.

7.5.1.4 Phyllis Canal, Laterals, Drains, and Conveyances inside the Area of Analysis

Information about the Phyllis Canal, laterals, drains, and other conveyances inside the area of analysis is the result of PID and City staff interviews, discussions, and site visits conducted to document actual conditions at critical locations within the PID service area. Site visits were conducted during the 2018 irrigation season. Multiple interviews and discussions with PID and City staff took place between May 2018 and February 2019 (PID, 2019). The Phyllis Canal is a man-made canal diverting from the Boise River near Eagle Island and extending west through Canyon County to near Greenleaf, Idaho. In the area of the proposed recycled water discharge points (shown on Figure 1), flow is maintained at around 200 cfs throughout the irrigation season (typically mid-April through mid-October). This flow is distributed through the PID service area via a system of laterals, ditches, drains, and pumps to provide water to agricultural and residential land and customers served by the Nampa and Caldwell irrigation utilities. The Phyllis Canal marks the southern and western borders of the PID service area. All the laterals in this area are on the north side of the Canal, and flow direction in the majority of laterals and drains is to the north and the west. A limited number of deliveries to individual customers are made off the south side of the canal.

Downstream of where the Phyllis Canal crosses over Indian Creek, the Canal receives inputs from drains and tailwaters of conveyances operated by the Nampa Meridian Irrigation District and the

Wilder Irrigation District. These inputs typically total between 65 and 75 cfs and are discussed in more detail in the text below. Receiving tailwater flow results in a substitution of water flowing through the Phyllis Canal such that the volume of water present at proposed recycled water discharge points is replaced by the time the Phyllis Canal reaches Pipe Gulch Drain. At its terminus, between 2 and 4 cfs flow down a chute into Pipe Gulch Drain which flows (mostly) north into the West End Drain. The West End Drain ultimately discharges into the Riverside Canal.

The irrigation conveyances within PID's jurisdiction are designed to distribute irrigation water to customers efficiently and reliably. Under typical operations, the demand for water is higher than the water volume available for delivery by the Phyllis Canal. The deficiency is typically made up from groundwater pumping and irrigation rotation. PID does have the ability to spill water to drains from the Phyllis Canal for flood control purposes during significant storm events, but routine canal operations do not spill water from the Canal. These diversion gates and interactions are shown in Figures 9 and 10 and Table 7-2. Figure 9 is a map of the PID service area focusing on the area of analysis. Figure 10 focuses on the upper half of the area of analysis to provide greater detail of irrigation conveyances and the proposed recycled water discharge locations.

The text below provides a detailed accounting for water delivery points and irrigation conveyances from the point at which Phyllis Canal crosses Indian Creek to where the Pipe Gulch (receiving water at the terminus of the Phyllis Canal) enters the Riverside Canal. Notes in the text correspond to locations on Figures 9 and 10 for ease of reference.

The Phyllis Canal crosses over Indian Creek [1] via a short aqueduct at a point approximately 400 feet due east from the intersection of 7th Avenue North and 2nd Street North in Nampa. PID has the ability at this intersection to spill water from Phyllis Canal to Indian Creek during storm events, or PID can pump water from Indian Creek (pumping capacity up to 20 cfs) into the Phyllis Canal to supplement irrigation supply at this point in the canal. The latter use is the routine operation.

The area of proposed recycled water discharge locations [2] is less than 1 mile downstream from the Indian Creek crossing, between a point just upstream of the intersection of Northside Blvd and 2nd Street South to just south of the intersection of Caldwell Boulevard and West Orchard Ave. The first water delivery below the discharge is a small pump station [3] operated by PID (1 cfs) that provides water to about 50 acres on the southwest side of Caldwell Boulevard. The first major delivery is to the 15.0 Lateral [4] at approximately 32 cfs (slightly more than the maximum recycled water design flow) to serve 1,600 acres of developed and agricultural land within the City. This area includes more irrigable land than the PID irrigation system can deliver. The shortfall is made up by pumping from wells (two owned and operated by PID and other private wells operated by property owners as needed) and irrigation rotation.

The City has one pressurized irrigation (PI) pump station [5: Eaglecrest pump] located on the main branch of the 15.0 Lateral and another on the South Branch farther downstream [6: Moss Point pump]. A third Nampa PI pump station is situated along the Elijah Drain in close proximity to the South Branch pump station [7: Crestwood pump]. Another City PI pump station is situated just south of the intersection of West Moss Lane and Midway Road [8: Asbury Park pump]. The four Nampa-owned PI pump stations supply irrigation water for lawn watering in the surrounding subdivisions. The City of Caldwell also maintains a PI pump station at the end of the North Branch of the 15.0 Lateral [9], used to supply irrigation water for the same purposes. Each City-owned PI pump station in the PID service area is capable of pumping 2 to 4 cfs. Consistently meeting water demand from the Nampa PI pump stations in this area is a perpetual challenge for the City's irrigation utility. Customers reliant on water delivered from these four pump stations often experience low water pressures during peak hours.

Under current operations, a small operational spill occurs somewhat regularly to the Moses Drain at the end of both the North [10] and South Branches [11] of 15.0 Lateral. The Moses Drain then conveys return flows to Indian Creek. The spill is a result of maintaining hydraulic head throughout the lateral to adequately fill water orders for customers near the end of the delivery laterals. To eliminate this spill, the City and PID plan to install an automated flow control system on both branches of 15.0 Lateral that is regulated by the City's PI pump stations at locations 6, 7, and 8. Level sensors at the end of each branch will trigger the PI pump stations to turn on (or adjust pumping rates if already operating) to increase withdrawals from the lateral in the amounts necessary to maintain a no-spill (zero discharge) condition at the end of each branch of the 15.0 Lateral. Additional controls may be placed at the headgate to 15.0 lateral to provide further regulation of flows, which will prevent water from spilling into Moses Drain and subsequently, Indian Creek.

Approximately 1,000 feet downstream from the 15.0 Lateral are the Hatfield Lateral and the Horton Pump Station [12]. These typically both divert between 2 and 3 cfs to serve neighborhoods in the immediate vicinity. In the next 2 miles the Phyllis Canal crosses over the Elijah Drain [13] and the Joseph Drain [14] (which joins the Elijah approximately ½ mile downstream of this crossing). Both drains are piped under the Phyllis Canal. At the Elijah Drain crossing, PID has the ability to pump water from the Elijah Drain to the Phyllis Canal, as needed to supplement irrigation supply, at a rate up to 10 cfs. PID also operates a flood control gate at the Elijah Drain crossing that is used to regulate canal levels when runoff from exceptionally large storm events is collected upstream in the Phyllis Canal.

Just over 1 mile downstream from the Joseph Drain is the Isaiah Drain [15]. The Phyllis Canal has no plumbing connection to either drain. Between the two drains PID delivers water to another City PI pump station [16: Orchard Heights pump] and Stevens Lateral [17] (about 14 cfs). The Isaiah Drain joins the Elijah Drain about 3 miles north of the Phyllis Canal.

The Elijah feeder is situated along the Elijah Drain, with its gate [18] located approximately 750 ft north of the intersection of Midway Road and Moss Lane. The feeder diverts nearly all Elijah Drain flows (leaving only about 1 cfs in the drain) and delivers the water to Unit 1 of the Notus Canal [19] (described above). Below the feeder, Elijah Drain picks up flows from shallow groundwater and runoff from fields and joins the Wilson Drain about 1.25 miles downstream.

Approximately 1 mile downstream from the Elijah Drain crossing, the Phyllis Canal crosses over the Wilson Drain [20]. This crossing is also used as a flood control point to regulate flows in response to storm events that result in large volumes of stormwater runoff entering the canal. At the Wilson Drain crossing, PID has the ability to pump water from the Wilson Drain to the Phyllis Canal at a rate up to 15 cfs, as needed to supplement irrigation supply. About 14 cfs is diverted into Stone Lateral [21] from the Phyllis Canal between the Elijah Drain and the Wilson Drain.

Over the next 2 miles the Phyllis Canal delivers about 6 cfs to the McCarthy Lateral [22], then crosses over the Jonah Drain [23] and the Upper Embankment Drain [24]. There is no plumbing connection between the Phyllis Canal and the Jonah Drain. The farthest downstream Nampa PI pump station (Midway Park pump station) is installed just downstream of the Jonah Drain. The Upper Embankment Drain is used to regulate canal levels when runoff from exceptionally large storm events is collected upstream in the Phyllis Canal.

Just over 1.5 miles due north of where the Phyllis Canal crosses over the Upper Embankment Drain, flows from the Wilson Drain, Jonah Drain, and Upper Embankment Drain are diverted into the Wilson (Caldwell Canal) Feeder [25]. The feeder diverts nearly all Wilson Drain flows (leaving only about 1 cfs of flow in the drain) and delivers the water to a diversion [26] which sends a portion of the flow to the east, forming the Notus Canal, and the rest of the flow to the west to make the Caldwell Lowline

Canal. Both Canals are described above. Below this point, the Wilson drain picks up flows from shallow groundwater and runoff from fields before finally flowing into Indian Creek approximately 0.25 mile southeast of the intersection of South 21st Street and South Georgia Avenue in Caldwell, Idaho [27].

Below the Wilson Drain crossing, the Phyllis Canal continues on for another 12 miles to a concrete chute [28] located southwest of the intersection of Top Road and Lower Pleasant Ridge Road where between 1 and 4 cfs runs down into Pipe Gulch Drain. Over these 12 miles, the Phyllis Canal delivers water to 12 laterals. The largest diversion on this stretch is to 25.1 Lateral [29] at 26 cfs. The 11 smaller lateral diversions range from 0.8 to 7.2 cfs. A gate above the Bardsley Gulch Drain [30] creates a flood control point that can be used to regulate flows in response to storm events. In this final stretch, the Phyllis Canal also picks up about 50 cfs of water from drains and tailwaters of conveyances operated by the Nampa Meridian Irrigation District and the Wilder Irrigation District on the south side of the Phyllis Canal. The largest input is from the Deer Flat Canal [31], which consistently adds between 10 and 20 cfs.

All the drains situated in the lower reach of the Phyllis Canal (the area west of Wilson Drain, south of the Riverside Canal, and north of the Phyllis Canal) flow into the Riverside Canal. The majority of the drain flows, including Pipe Gulch Drain, get there by way of the West End Drain, which joins the Riverside Canal a mile north of Greenleaf [32].

Figures 9 and 10 provide overview maps of the PID service area focusing on the area of analysis. The maps' numbered sites correspond with attributes discussed above, and a quick reference table is included on each figure. Table 7-2 lists the diversion flows and inputs along the Phyllis Canal downstream from the proposed recycled water discharge location.

Table 7-2. Phyllis Canal Diversions and Inputs

Diversion	Miner's Inches	CFS
Individual headgate deliveries (proposed recycled water discharge location to Smith Road) [1]	(299.80)	(6.00)
15.0 Lateral	(1,587.87)	(31.76)
Hatfield Lateral	(112.69)	(2.25)
Pumping from Elijah Drain	–	10
Wilde Lateral	(65.76)	(1.32)
Stevens Lateral	(692.54)	(13.85)
Stone Lateral	(689.90)	(13.80)
Pumping from Wilson Drain	–	15
Individual headgate deliveries (Smith Road to tail)	(3,170.21)	(63.40)
McCarthy Lateral	(297.14)	(5.94)
25.1 Lateral	(1,299.87)	(26.00)
Small returns from irrigated land on south side of Phyllis Canal	–	30–40
Lonkey Lateral	(91.37)	(1.83)
Mesler Lateral	(358.25)	(7.17)
Douglas Lateral	(151.61)	(3.03)
Cowling Lateral	(40.67)	(0.81)
Torbett Lateral	(160.32)	(3.21)
Hitchcock Lateral	(86.79)	(1.74)

Table 7-2. Phyllis Canal Diversions and Inputs		
Diversion	Miner's Inches	CFS
Smiley Lateral	(88.21)	(1.76)
Return flow from Deer Flat Canal	–	10–20
Fisher Lateral	(298.01)	(5.96)
Whittig Lateral	(186.00)	(3.72)
Talcott Lateral	(60.50)	(1.21)
Shelp Lateral	(161.50)	(3.23)
Pipe Gulch Laterals	(213.20)	(4.26)
Total diversions	(10,112.21)	(206.25)
Total inputs	-	65–75

[1] *Includes two City PI pump stations located in the Phyllis Canal.*

7.5.2 Influence on Nearby Surface Waters

This reuse project is expected to improve water quality in Indian Creek by removing the Nampa WWTP effluent discharge from an impaired reach of Indian Creek from May 1 through September 30 annually. Projected water quality impacts to Indian Creek are identified in Table 7-3. Projected water quality impacts use Indian Creek water quality data from 2012 as background conditions for the Creek. This is the same time period dataset used by the EPA to develop effluent limits for the City's wastewater NPDES permit and the Lower Boise River TMDL: 2015 Total Phosphorus Addendum. The full dataset is included in Appendix C.

Table 7-3. Projected Indian Creek Impacts					
With WWTP Effluent Discharge (Permit Condition) [1]					
	May	June	July	August	September
Flow (cfs)	85.9	69.1	68.9	71.4	97.2
TP load (lbs/day)	76	60	64	73	81
TN load (lbs/day)	2,450	2,783	2,550	2,794	2,929
Without WWTP Effluent Discharge (Made possible by Reuse Permit) [2]					
Flow (cfs)	54.9	38.1	37.9	40.4	66.2
TP load (lbs/day)	59	43	47	57	64
TN load (lbs/day)	778	1,111	878	1,122	1,257
TP load decrease (%)	-22%	-28%	-26%	-23%	-21%
TN load decrease (%)	- 68%	- 60%	- 66%	- 60%	- 57%

TN = total nitrogen.

TP = total phosphorus.

[1] *With WWTP Effluent (Permit Condition) represents effluent flow of 31 cfs with 0.1 mg/l total phosphorus and 10 mg/l total nitrogen.*

[2] *Without WWTP Effluent (Made possible by Reuse Permit) represents the background condition of Indian Creek (2012 data) with no effluent discharge.*

Representative background water quality conditions were determined for Phyllis Canal by reviewing a historical dataset and conducting additional water quality monitoring. The dataset consists of water quality samples collected by the City throughout the irrigation season during 2007, 2008, and 2009 and another set of 19 samples collected near the end of the irrigation season in 2018. Results of

water quality analyses conducted during each round of sampling are included in Appendix D. Monthly average concentrations for total dissolved solids (TDS), total nitrogen (TN), total phosphorus (TP), and temperature are shown in Table 7-4.

Table 7-4. Background Phyllis Canal Data Summary

Month	Total Dissolved Solids [1] (mg/l)	Total Nitrogen [2] (mg/l)	Total Phosphorus [3] (mg/l)	Temperature [2] (°C)
May	138	1.43	.31	11.3
June	138	1.46	.25	13.7
July	138	1.51	.30	17.1
August	138	1.99	.32	17.3
September	138	1.59	.32	16.0

[1] TDS concentrations are available for 2018 only and do not span the whole irrigation season.

[2] TN and temperature concentrations represent data from 2007–2009 and 2018.

[3] TP concentrations are substantially higher in the dataset from 2007–2009 (average 0.30 mg/L) than in the dataset from 2018 (average 0.08). To simulate the highest phosphorus load that would be delivered to crops via canal water, monthly averages from 2007–2009 were used to represent background TP concentrations in Phyllis Canal.

Background water quality data and the proposed recycled water effluent concentrations were used in mixing calculations to determine the influence of discharging Class A recycled water to the Phyllis Canal. Under the proposed conditions of this recycled water reuse permit, the recycled water discharged to the canal will be treated to 700 mg/l for TDS, 30 mg/l for TN, and .35 mg/l for TP. Effluent will not be treated for temperature. Phyllis Canal background data and mixing scenarios for total dissolved solids, total nitrogen, total phosphorus, and temperature are shown in Tables 7-5 through 7-8.

Table 7-5. Total Dissolved Solids Mixing

	May	June	July	August	September
Background Phyllis Canal					
Flow (cfs) [1]	200	200	200	200	200
TDS concentration (mg/L)	138	138	138	138	138
Class A Recycled Water from WWTP					
Flow [2] (cfs)	31	31	31	31	31
TDS concentration (mg/L)	700	700	700	700	700
Phyllis Canal after Recycled Water Mixing					
Flow (cfs)	231	231	231	231	231
TDS concentration (mg/L)	213	213	213	213	213

[1] 200 cfs is the typical target flow rate in the canal along the proposed recycled water discharge reach when fully operational.
[2] 31 cfs is the planned maximum design flow.

Table 7-6. Total Nitrogen Mixing					
Background Phyllis Canal					
	May	June	July	August	September
Flow [1] (cfs)	200	200	200	200	200
TN concentration (mg/l)	1.43	1.46	1.51	1.99	1.59
Daily load (lbs)	1,542	1,575	1,629	2,146	1,715
Class A Recycled Water from WWTP					
Flow [2] (cfs)	31	31	31	31	31
TN concentration (mg/l)	30	30	30	30	30
Daily load (lbs)	5,015	5,015	5,015	5,015	5,015
Phyllis Canal after Recycled Water Mixing					
Flow (cfs)	231	231	231	231	231
TN concentration (mg/l)	5.26	5.29	5.33	5.75	5.40
Daily load (lbs)	6,557	6,589	6,643	7,161	6,730

[1]200 cfs is the typical target flow rate in the canal along the proposed recycled water discharge reach when fully operational.
[2] 31 cfs is the planned maximum design flow.

Table 7-7. Total Phosphorus Mixing					
Background Phyllis Canal					
	May	June	July	August	September
Flow [1] (cfs)	200	200	200	200	200
TP concentration (mg/L)	0.31	0.25	0.30	0.32	0.32
Daily load (lbs)	337.6	271.8	327.9	340.8	343.0
Class A Recycled Water from WWTP					
Flow [2] (cfs)	31	31	31	31	31
TP concentration (mg/L)	0.35	0.35	0.35	0.35	0.35
Daily load (lbs)	58.5	58.5	58.5	58.5	58.5
Phyllis Canal after Recycled Water Mixing					
Flow (cfs)	231	231	231	231	231
TP concentration (mg/L)	0.32	0.27	0.31	0.32	0.32
Daily load (lbs)	396.1	330.3	386.4	399.3	401.5

[1] 200 cfs is the typical target flow rate in the canal along the proposed recycled water discharge reach when fully operational.
[2] 31 cfs is the planned maximum design flow.

Table 7-8. Temperature Mixing					
Background Phyllis Canal					
	May	June	July	August	September
Flow [1] (cfs)	200	200	200	200	200
Temperature (°C)	11.3	13.7	17.1	17.3	16.0
Class A Recycled Water from WWTP					
Flow [2] (cfs)	31	31	31	31	31
Temperature (°C)	18.3	20.2	22.5	22.9	21.4
Phyllis Canal after Recycled Water Mixing					
Flow (cfs)	231	231	231	231	231
Final Temperature (°C)	12.20	14.57	17.78	18.01	16.73

[1] 200 cfs is the typical target flow rate in the canal along the proposed recycled water discharge reach when fully operational.
[2] 31 cfs is the planned maximum design flow.

7.6 Groundwater

The area of analysis is located within the Treasure Valley aquifer system, a sedimentary aquifer located in a complex series of interbedded, tilted, faulted, and eroded sediments up to 6,000 ft deep. The aquifer contains a shallow flow system composed of sand and gravel (Terrace Gravels of the Boise River) and a deep regional flow system composed of fine sand, silt, and gravel found in the Glenns Ferry Formation. The shallow system extends to approximately 250 feet below ground surface (ft bgs). The deep regional system is often separated from the shallow system by a blue or grey clay that commonly shows up in well drillers' reports throughout the valley. The deep aquifer system is confined or semi-confined and extends below 250 ft bgs (Cosgrove and Taylor, 2007).

7.6.1 Groundwater in the Area of Analysis

Depth to groundwater across the area of analysis is relatively shallow and typically ranges from 5 to 35 ft bgs. Groundwater flow is generally to the west or northwest. Recharge to the shallow aquifer system occurs from canal seepage, irrigation infiltration, and stream channel losses. Discharge from the shallow aquifer often occurs at drains or streams in the area. Recharge to the deep regional flow system occurs in the eastern part of the Treasure Valley, and some recharge enters as underflow from the Boise Foothills to the north. Regional flow is believed to discharge primarily to the Boise or Snake Rivers west of the area. Groundwater residence times range from days to tens of years in the shallow system to hundreds to tens of thousands of years in the deep regional system (IDWR, 2001).

Groundwater quality within the Treasure Valley is generally good, and groundwater is usually safe for human consumption. Nitrate, bacteria, arsenic, fluoride, gross alpha, radon, and uranium are the main constituents that are found to exceed Maximum Contaminant Levels in the valley. Arsenic, uranium, and nitrate have been detected in exceedance of the Maximum Contaminant Levels throughout Nampa. As a result, much of the area of analysis is located within a Nitrate Priority Area (IDEQ, 2016).

Many wells including municipal, domestic, irrigation, and injection wells are located within the area of analysis. Municipal drinking water supply wells are shown on Figures 9 and 10. Table 7-9 describes minimum distances these public supply wells need to be from various sites according to IDAPA 58.01.08 – Idaho Rules for Public Drinking Water Systems. Nampa's drinking water wells adhere to these requirements thus far. This permit would contribute recycled water to irrigation conveyances within a safe buffer from drinking water wells. The 15.0 Lateral is the closest lateral off the Phyllis Canal to these two wells, with distances of 500 ft and 2,500 ft. One of the wells is 200 ft

from the Elijah Drain, which can receive flood control flows from the Phyllis Canal in response to large precipitation events.

Table 7-9. Minimum Distances from a Public Water System Well [1]	
Gravity Wastewater Line	50 feet
Any potential source of contamination	50 feet
Pressure wastewater line	100 feet
Class A Municipal Reclaimed Wastewater Pressure Distribution line	50 feet
Individual home septic tank	100 feet
Individual home disposal field	100 feet
Individual home seepage pit	100 feet
Privies	100 feet
Livestock	50 feet
Drainfield: standard subsurface disposal module	100 feet
Absorption module: large soil absorption system	150–300 feet, see IDAPA 58.01.03
Canals, streams, ditches, lakes, ponds, and tanks used to store non-potable substances	50 feet
Storm water facilities disposing storm water originating off the well lot	50 feet
Municipal or industrial wastewater treatment plant	500 feet
Reclamation and reuse of municipal and industrial wastewater sites	See IDAPA 58.01.17
Biosolids application site	1,000 feet

[1] *IDAPA 58.01.08.900.*

7.6.2 Modelled Impacts on Groundwater Quality

Section 8 describes reuse site loading rates and demonstrates that constituents in the recycled water discharged to the canal are not anticipated to exceed crop uptake rates in the areas irrigated by the Phyllis Canal. Therefore, the only significant pathway for groundwater constituents of concern (nitrogen and total dissolved solids) is through seepage from the bottom of the Phyllis Canal. To better understand the impacts that canal seepage (with the water quality described in Section 7.5.2) may have on groundwater, the City completed a modelling analysis that identifies the range of anticipated impacts.

As discussed in Section 7.5 the flow and water quality conditions in the Phyllis Canal begin to change quickly with distance from the recycled water discharge location due to diversions and inputs into the canal from drains and tailwaters. Therefore, the City set up IDEQ's Water Reuse/Land Treatment System model to represent conditions in the shallow aquifer below the Phyllis Canal in the area of analysis, focusing specifically on the area just downstream of the recycled water discharge location. A series of iterations were completed to identify model sensitivity to critical variables as well as the range of likely groundwater mixing scenarios based on conditions in and around the area of analysis. A detailed description of modeling activities is included in Appendix E.

Well logs and geological maps in the area of analysis were reviewed to assist with determining model domains and hydrogeologic inputs to the model including hydraulic conductivity, hydraulic gradient, aquifer material, aquifer porosity, and aquifer thickness. Model domains, well locations, local geology, and representative well logs are shown on Figure 11.

Background groundwater quality was determined with analyte data contained in the State of Idaho's Environmental Data Management System. Wells were identified in the vicinity of anticipated impact and included wells directly upgradient of the Class A Recycled water discharge location (Figure 11). Well and analyte data was filtered to include only wells in the shallow aquifer (85 feet or less) and a water quality sampling date within the past 10 years. Background analyte concentration is a model input and is calculated as the average of the filtered data.

The Groundwater Contaminant Transport model results in a vertical and lateral dilution of background groundwater concentration for nitrate and TDS. This is the expected result because percolate concentration is less than background groundwater concentration for both constituents. Sensitivity analysis of uncertain input parameters modified the spatial extent of dilution, but all cases resulted in lower concentrations in the near field.

Section 8

Reuse Site Loading Rates

8.1 Tracking of Recycled Water and Irrigation

Recycled water discharged to the Phyllis Canal will be monitored and recorded using automated in-pipe flow monitoring equipment. Data is recorded and stored on secure City servers and will be used to meet analysis and reporting requirements.

8.2 Design and Loading Rates

The area of analysis covers approximately 22,000 acres throughout the Nampa area. Of the total area, around 17,000 acres use irrigation water from Phyllis Canal and its distribution system of pumps and laterals. The land use in this area ranges from highly developed/urbanized properties to diverse agricultural fields with crops ranging from alfalfa to beans and mixed vegetables. This land use data was used to develop the Irrigation Water Requirement (IWR), which in turn was used to estimate hydraulic and constituent loading rates. IWR calculations are described in detail in Appendix F.

The IWR was calculated based on the following equation:

$$IWR = IR_{net}/E_i$$

Where

IWR = irrigation water requirement

IR_{net} = net irrigation requirement

E_i = irrigation efficiency

The net irrigation water requirement calculations used data supplied by the Kimberly Research Institute for individual crops that are typically grown in the area and were used to develop individual IWRs for each subdivided land area and land use or crop. To maintain a conservative analysis approach, acreage for developed land uses was reduced by 20–80 percent to account for the comparatively smaller percentage of land that is composed of lawns and landscaping, as detailed in Appendix F, Table F-1.

The IWR sets the basis for hydraulic loading on the land application area and the expected volume of water to be applied for constituent loading calculations. The IWR represents the amount of irrigation that should be applied to a specific crop over the growing season to substantially meet this requirement. For this analysis, the term growing season is defined as the period when recycled water will be discharged to the Phyllis Canal each year (May 1 to September 30). A summary of the IWR for the estimated 17,442 irrigated acres serviced by the Phyllis Canal below the proposed recycled water discharge location is provided in Table 8-1. Background calculations and assumptions associated with the total water available and the IWR are included in Appendix F.

Table 8-1. Total Water Available vs. Irrigation Water Requirement		
Month	Total Water Available (MG/Month)	Total Water Required (MG/Month)
May	4,824	3,382
June	4,667	4,515
July	4,822	5,589
August	4,863	4,614
September	4,631	2,774
Totals	23,806	20,874

Constituent loading rates were calculated using the IWR and the blended canal water quality data for TN and TP found in Tables 7-6 and 7-7, respectively. The loading rates are calculated using the following equation:

$$M = (Q \times C \times k)/A$$

Where

M = mass of constituent applied per area (lb/ac-gs)
Q = flow rate (MG/gs)
C = constituent concentration (mg/l)
A = unit area (ac)
K = unit conversion from mg/l to lbs/MG (1 mg/l = 8.34 lb/MG)

A monthly summary of the daily constituent crop loading rates is provided in Table 8-2.

Table 8-2. Nutrient Loading Rates [1]		
Month	TN (lbs/day)	TP (lbs/day)
May	5,231	291
June	7,217	402
July	8,647	481
August	7,138	397
Sept	4,435	247

[1] *Average day.*

Table 8-3 provides a summary of the expected IWR and expected TN and TP loading for each month during the growing season.

Table 8-3. Expected IWR, Total Nitrogen, and Total Phosphorus by Month

Month	IWR (total)	Land Applied Area (total)	TN Load	TP Load	TN	TP
	MG	Acres	lbs/month	lbs/month	lbs/acre/month	lbs/acre/month
May	3,382	17,442	162,161	9,025	9.3	0.5
June	4,515	17,442	216,497	12,049	12.4	0.7
July	5,589	17,442	268,043	14,917	15.4	0.9
August	4,614	17,442	221,280	12,315	12.7	0.7
Sept	2,774	17,442	133,039	7,404	7.6	0.4
Total GS	20,874	–	1,001,020	55,709	11.48 [2]	0.6 [2]

[1] *Land applied area includes only assumed vegetated percentage of land within the 3,300-acre sample area described above.*

[2] *Value represents average load per acre.*

8.3 Irrigation Scheduling Methods

Irrigation water is typically supplied to the area of analysis beginning in April and ending in October. Class A recycled water is scheduled to be discharged to the Phyllis Canal at a rate up to 31 cfs from May 1 through September 30 each year.

8.4 Source(s) of Supplemental Irrigation Water

Supplemental irrigation water considerations are not applicable for this project.

8.5 Water Rights Documentation

There will be no supplemental water used for irrigation or mixing purposes as part of this project.

8.6 Monthly Water Balances

There are no storage lagoons or ponds associated with this project. An overview of the monthly water balance for the Phyllis Canal and the area of analysis is described below.

The PID currently delivers approximately 12,000 acre feet of irrigation water per month to customers in the service area downstream from the proposed recycled water discharge location. This volume corresponds to an average approximate flow rate of 200 cfs in the Phyllis Canal at the proposed recycled water discharge location. This water is distributed to irrigated lands through laterals, direct diversions, and pumps. Water orders change every day.

The additional flow from recycled water added to the system may be balanced using various methods throughout the irrigation season depending on growing season temperatures and precipitation, storage water availability, fluctuations in water orders, and changes in drainage flows entering the Phyllis Canal from upgradient irrigation users and surface waters. To operate the irrigation system efficiently, PID maintains only as much flow as is needed to deliver water up to the last customers on each ditch or lateral. The primary locations PID will use to regulate flow in the canal to maintain operational flows and avoid spillback are both located upstream from the recycled water discharge point. PID can control flow in the canal by diverting more or less water from the Fivemile Creek feeder and by pumping more or less water from Indian Creek. This method of operation mitigates risk of the addition of recycled water resulting in excess water in the system.

8.7 Facility Calculations and Management of Loading Rates

Loading rates are the result of mixing the Class A Recycled water discharged from the Nampa WWTP and the background concentrations in Phyllis Canal. With design flows up to 31 cfs, the Class A recycled water will make up approximately 15 percent of the Phyllis Canal flow at the discharge point. Considering the end of the discharge pipe as the point of compliance and the approximately 17,000 irrigated acres of PID service area downstream from the discharge location, constituent loading is not anticipated to exceed agronomic uptake rates of crops in the PID service area.

Table 8-4 below provides the design effluent concentrations of relevant constituents.

Table 8-4. Design Effluent Concentrations of Relevant Constituents

Constituent	Design Effluent Concentration
pH	6.0–9.0 S.U.
BOD-5 day	10 mg/l
Total coliform	7-day median: 2.2 MPN/100 ml Max single sample: 23 MPN/100 ml
Turbidity	For filtration by cloth or sand/granular media: Daily mean: ≤ 2 NTU Instantaneous max: ≤ 5 NTU For membrane filtration*: Daily mean: ≤ 0.2 NTU Instantaneous max: ≤ 0.5 NTU *To be met prior to disinfection.
Total nitrogen	30 mg/L (max month: 5.75 mg/L in Phyllis Canal after mixing)
Total phosphorus	0.35 mg/L (max month: 0.32 mg/L in Phyllis Canal after mixing)
Total dissolved solids	700 mg/l (max month: 213 mg/L in Phyllis Canal after mixing)
Total suspended solids	30 mg/l

MPN = most probable number.

NTU = Nephelometric Turbidity Units.

S.U. = standard unit.

8.8 Land Limiting Constituent

Considering the end of the recycled water discharge pipe as the point of compliance and the approximately 17,000 irrigated acres of PID service area downstream from the discharge point, constituent or hydraulic loading is not anticipated to exceed agronomic uptake rates of crops in the PID service area.

Applying fertilizers is a common practice within the area of analysis. The addition of Class A recycled water from the Nampa WWTP is expected to elevate nutrient levels in Phyllis Canal, which could reduce the amount of fertilizer addition required by irrigators. The City and PID will partner to educate water users in the PID service area downstream of the recycled water discharge location about the existing nutrient levels in the Phyllis Canal and the nutrient levels expected with the addition of the recycled water.

To determine the land limiting constituent, this analysis used the loading rates and land area described in Section 8.2 above. The calculated loading rates were compared against typical crop

uptake rates, which were found through an online literature review. These crop uptake rates are included in Table 8-5 below.

Table 8-5. Typical Uptake Rates [1,2]

Type	TN (lbs/acre/gs)	TP (lbs/acre/gs)
Turf grass	196	27
Alfalfa	482	45
Grass pasture	95	12
Winter wheat	84	16
Beans	331	42
Peas	81	10
Corn	116	22
Sugar beets	137	25
Grass hay	94	13
Other vegetables [3]	110	11

[1] Nutrient uptake rates from USDA-NRCS, 2019

[2] Uptake rates are typically provided as a traditional growing season total. Nutrient uptake rates have been discounted by 13% to align with this application's definition of the growing season as May 1 to September 30.

[3] Values used for this category are representative of an average of typical values for other crops, mostly vegetables, with a smaller footprint in the area of analysis.

A comparison of the loading rates and crop uptake rates for sample crops is provided below in Table 8-6. This table compares the loading rates discussed in Section 8.2 against the standard crop uptake rates listed above. The table indicates that constituent loading for TN and TP is anticipated to be well below typical crop uptake rates. As constituent loading rates relate to crop uptake rates and the beneficial use of the Phyllis Canal as irrigation water, the results in Table 8-6 indicate that there is substantial additional capacity in the area of analysis for TN and TP beyond the requested effluent limits.

Table 8-6. Applied Nutrient Load percent of Typical Uptake

Type	TN	TP
Turf grass	29%	12%
Alfalfa	12%	7%
Grass pasture	61%	26%
Winter wheat	68%	20%
Beans	17%	8%
Peas	71%	33%
Corn	50%	15%
Sugar beets	42%	13%

Grass hay	61%	24%
Other vegetables	52%	28%

Section 9

Reuse Site Vegetation

9.1 Cropped Sites

The Pioneer Irrigation District serves over 34,000 acres of land in Canyon and Ada Counties. The area of analysis included in this report encompasses a total of approximately 22,000 acres. Of this area, approximately 17,000 acres are irrigated by water managed by PID. The total area is split almost evenly between developed and agricultural land. Table 9-1 displays crop acreage totals in the area of analysis. Developed land accounts for 10,692 acres and is divided between high density, medium density, low density, and areas of open developed space. In Figure 12, developed land is denoted by shades of red. Alfalfa, corn, winter wheat, and dry beans are the top four crops by acreage, together totaling another 6,036 acres. Grass and pasture, such as grazing fields make up 2,528 acres.

Table 9-1. Pioneer Irrigation District Land Use

Crop/Land Type	Acres	Percent of Total
Developed/open space	5,336	24%
Developed/low intensity	3,987	18%
Developed/medium intensity	1,169	5%
Developed/high intensity	200	1%
Alfalfa	2,985	13%
Grass/pasture	2,528	11%
Corn	1,459	7%
Winter wheat	879	4%
Dry beans	714	3%
Sugar beets	544	2%
Onions	377	2%
Herbs	347	2%
Fallow/idle cropland	294	1%
Peas	248	1%
Shrubland	232	1%
Other hay/non-alfalfa	192	1%
Other crops/Land types (less than 40 acres)	682	3%
Total	22,172	100%

Source: National Agricultural Statistics Service (NASS): CropScape, 2017.

9.2 Forest and Native Vegetation

There is no forested area within the area of analysis. There is a small amount of uncultivated or fallow land. No irrigation water from the PID system is applied to acreages of fallow or uncultivated lands.

Section 10

Reuse Site Management

10.1 Site Management History

The area of analysis includes rural acreage, subdivisions, and portions of the municipalities of the cities of Nampa and Caldwell. As the population of Canyon County grows, land uses in the area of analysis are increasingly changed from agricultural to urban/residential. As residential subdivisions are developed in the PID service area many of them install pressurized irrigation systems to supply water to residents for the primary purpose of landscape irrigation. PID has provided service to this area since 1901.

10.2 Site Management Plans

Site management plans included in this application are limited to activities conducted at the Nampa WWTP and activities associated with the piping and appurtenances located at the discharge point to Phyllis Canal. Management plan considerations are described below.

10.2.1 Buffer Zone Plan

The City is requesting authorization to discharge Class A recycled water only. Therefore, buffer zones are not required for this project.

10.2.2 Grazing Management

There are approximately 2,500 acres of grass and pasture within the area of analysis. The activities identified in the City's operations are not anticipated to have any impact on grazing activities, rotation, or time of year.

10.2.3 Nuisance Management

The actual discharge of Class A recycled water to the Phyllis Canal is not anticipated to result in excess noise, odor, overspray, or other nuisance conditions. The City will undertake a public outreach campaign to educate neighbors close to the discharge pipe about the project. The City will also post signage with contact information for nuisance complaints or emergency situations.

Nuisance odors at WWTPs are primarily due to influent flows and large open tanks early in the treatment process such as clarifiers, lagoons, aeration basins, and filters. The Nampa WWTP has several planned improvements to the overall treatment process that will result in lower odor than other WWTP designs. Lagoons are absent from the WWTP process and trickling filters are odor contributors that will be demolished as part of Phase 2 construction at the treatment plant. Other potentially odorous elements of the plant are housed in covered structures such as the centrate tank, wet well from solids handling, headworks operations, and solids handling. Class B biosolids that are produced in Nampa also have lower odor due to higher volatile solids reduction.

Discharged waters have been treated extensively through the WWTP process. By the time waters are discharged from the plant they are relatively free from odor. Minor chlorine odors from residual disinfection are possible but unlikely and minimal.

10.2.4 Waste Solids Management

In the treatment process, waste activated sludge is pumped through two thickening feed pumps to three rotary drum thickeners after the addition of polymer for more efficient thickening. The thickened waste activated sludge is pumped to four primary anaerobic digesters along with the primary sludge. The digested sludge is then stored in three secondary anaerobic digesters. Polymer is added to the sludge prior to dewatering using centrifuges. The centrate is sent to a centrate storage tank, combined with the filtrate from the rotary drum thickeners, and mixed with ferrous chloride for control of hydrogen sulfide odors prior to being pumped back to headworks. Dewatered biosolids are stored on site in sludge drying beds prior to landfill disposal. Collected screenings and grit are also landfilled. This process is summarized in Figure 7.

10.2.5 Nonvolatile Dissolved Solids (Total Dissolved Solids)

Total dissolved solids concentrations in the recycled water will be around 700 mg/L. When mixed with water in the canal, which is approximately 135 mg/L on average, the concentration is expected to decrease to 211 mg/L. Guidance for TDS in irrigation water typically places the lower threshold for impacts to crops between 450 mg/l and 750 mg/l (Ayers, 1977; Ayers and Westcott, 1994; U.S. BOR, 2003). Therefore, TDS in the recycled water should have no impact on crops, once mixed with the water in the canal, as described in Section 7.5.

10.2.6 Runoff Management

The cities of Nampa and Caldwell both have irrigation utilities that provide water for irrigation to their utility customers. These utilities regularly provide information to their customers regarding water conservation and efficient water usage practices including avoiding overwatering that may result in excess runoff from the urban area. Excess irrigation water that does flow off properties may likely enter the cities' Municipal Separate Storm Sewer Systems (MS4s). Each MS4 conveys stormwater runoff and other surface runoff through a system of storm drain pipes that discharge to natural waterways such as Indian Creek and Mason Creek, as well as to irrigation conveyances, the majority of which are owned and operated by PID. Irrigation runoff is considered an allowable non-stormwater discharge in both cities' NPDES MS4 permits. Public education and outreach programs required by the MS4 permits include information about avoiding overwatering and overspray, as well as proper application and storage of chemicals such as fertilizers and pesticides.

Outside of the MS4 areas, PID actively manages water deliveries to run the irrigation system efficiently, maintaining only as much flow as is needed to deliver water up to the last customers on each ditch or lateral. This practice acts to mitigate excess spills and tailwater runoff from fields. However, tailwater runoff is often collected in drains or ditches for further use in deliveries downstream. As an example, approximately 10,000 acres of the Black Canyon Irrigation District is served by the Notus Canal, which begins within the PID service area and is made up entirely of diverted flow from the Wilson Drain. As described in Section 8.6, PID will balance diversions upstream of the recycled water discharge point to avoid excess water in the system below the discharge point.

Section 11

Quality Assurance Project Plan

Following permit issuance, and prior to discharging recycled water to the Phyllis Canal, the City will develop a Quality Assurance Project Plan to assist in planning for collection, analysis, and reporting of monitoring data in support of the permit. The Quality Assurance Project Plan will include the following information:

- Number of measurements, number of samples, type of sample containers, preservation of samples, holding times, analytical methods, analytical detection, and quantitation limits for each target compound, type and number of quality assurance field samples, precision and accuracy requirements, sample preparation requirements, sample shipping methods, and laboratory data delivery requirements
- Maps indicating the location of each monitoring and sampling point
- Personnel qualification and training
- Names, addresses, and telephone numbers of the laboratories the City will use
- Example formats and tables that the City will use to summarize and present all data in the annual report

Section 12

Monitoring Activities

Recycled water monitoring will occur at the discharge point to Phyllis Canal. Monitoring is anticipated to include continuous automated flow monitoring and water quality monitoring for target constituents identified in the permit.

Groundwater, soil, crop tissue, and other monitoring is not believed to be applicable for this permit, due to the discharge of recycled water directly to the Phyllis Canal for use as irrigation water supply augmentation.

Section 13

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Recycled Water Reuse Permit Application
Plan of Operations

Prepared for
City of Nampa, Idaho
March 19, 2019

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March 19, 2019

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Table of Contents

List of Tables

List of Abbreviations

µg/l	micrograms per liter
BOD	biochemical oxygen demand
cfs	cubic feet per second
City	City of Nampa
Facility Plan	City of Nampa Wastewater Treatment Plant Facility Plan
FAZ	flexible aerated zone
I/I	infiltration and inflow
IDAPA	Idaho Administrative Procedures Act
IDEQ	Idaho Department of Environmental Quality
MCC	motor control center
mgd	million gallons per day
mg/l	milligrams per liter
NPDES	National Pollutant Discharge Elimination System
O&M	operations and maintenance
PID	Pioneer Irrigation District
PLC	programmable logic controller
SSORP	Sanitary Sewer Overflow Response Plan
TP	total phosphorus
TSS	total suspended solids
UPS	uninterruptable power supply
WWTP	wastewater treatment plant

Executive Summary

The City of Nampa (City) is authorized to discharge treated wastewater effluent from the Nampa Wastewater Treatment Plant to Indian Creek under U.S. Environmental Protection Agency National Pollutant Discharge Elimination System Permit No. ID0022063. The permit was issued September 20, 2016, effective November 1, 2016, through October 31, 2021. The permit is included at the end of the application as Attachment A.

The City is seeking a recycled water reuse permit from the Idaho Department of Environmental Quality and has developed this application to provide information to support development and issuance of a permit. This document serves as an outline for the Plan of Operations the City will develop to maintain the recycled water discharge requirements and other requirements of the recycled water reuse permit, once issued. The Plan of Operations is an iterative document that will be used and maintained to reflect the most up-to-date information regarding operation of the treatment system delivering Class A Recycled Water to the Phyllis Canal for the purpose of agricultural and municipal irrigation supply augmentation. The Plan of Operations will describe the normal operations of the treatment system, specific operating instructions and troubleshooting guidance, system monitoring for process control and compliance reporting, and a discussion of recordkeeping and emergency reporting procedures.

Section 1

Introduction and Background

The City of Nampa (City) is authorized to discharge treated wastewater effluent from the Nampa Wastewater Treatment Plant (WWTP) to Indian Creek under U.S. Environmental Protection Agency National Pollutant Discharge Elimination System (NPDES) Permit No. ID0022063. The permit was issued September 20, 2016, effective November 1, 2016, through October 31, 2021. The permit is included at the end of the application as Attachment A.

The City is seeking a recycled water reuse permit from the Idaho Department of Environmental Quality (IDEQ) and has developed this application to provide information to support development and issuance of a permit. This document serves as an outline for the Plan of Operations the City will develop to maintain the recycled water discharge requirements and other requirements of the recycled water reuse permit, once issued.

The intent of the permit application is to secure authorization for Class A recycled water treated at the Nampa WWTP to be discharged as agricultural and municipal irrigation supply augmentation water to the Phyllis Canal annually between approximately May 1 and September 30. The design flow planned for this discharge is 31 cubic feet per second (cfs) (20.1 million gallons per day [mgd]). The Phyllis Canal typically conveys irrigation water at a rate of approximately 200 cfs along the reach of the proposed recycled water discharge location.

In early 2018 the City completed the *City of Nampa Wastewater Treatment Plant Facility Plan* (Facility Plan) (BC, 2018) that was accepted by the IDEQ in spring 2018. The Facility Plan discusses irrigation supply augmentation as the preferred alternative for wastewater management between May 1 and September 30. The Facility Plan provides the basis for much of the information included in this document. The Plan of Operations describes the basis of the treatment system and operations required to consistently produce Class A recycled water for this purpose. This Plan of Operations will be updated following permit issuance and as the project design and construction moves forward.

Table 1-1 below shows where key sections of the Recycled Water Rules are addressed in the Preliminary Technical Report and Plan of Operations.

Table 1-1. Recycled Water Rules Requirement Discussion Location in Application

Section of Recycled Water Rules	Description of Recycled Water Rule	Preliminary Technical Report Section	Plan of Operations Section
601	Municipal Recycled Water: Classification, Treatment, Use	Section 5	Section 5
602	Municipal Recycled Water: Classification and Uses Tables	Section 3	Section 3
603	Municipal Recycled Water: Access, Exposure and Signage	Section 7, Section 10	Section 8
604	Reuse Facilities: Buffer Distances	Section 10	Section 8
605	Municipal Recycled Water: Preliminary Engineering Reports	Section 5	Section 5, Section 6
606	Reuse Facility: Plan and Specification Review	Section 5	Section 5
607	Municipal Recycled Water: Distribution Pipelines	Section 4	Section 4
608	Municipal Recycled Water: Pumping Stations	Section 5, Section 7	NA

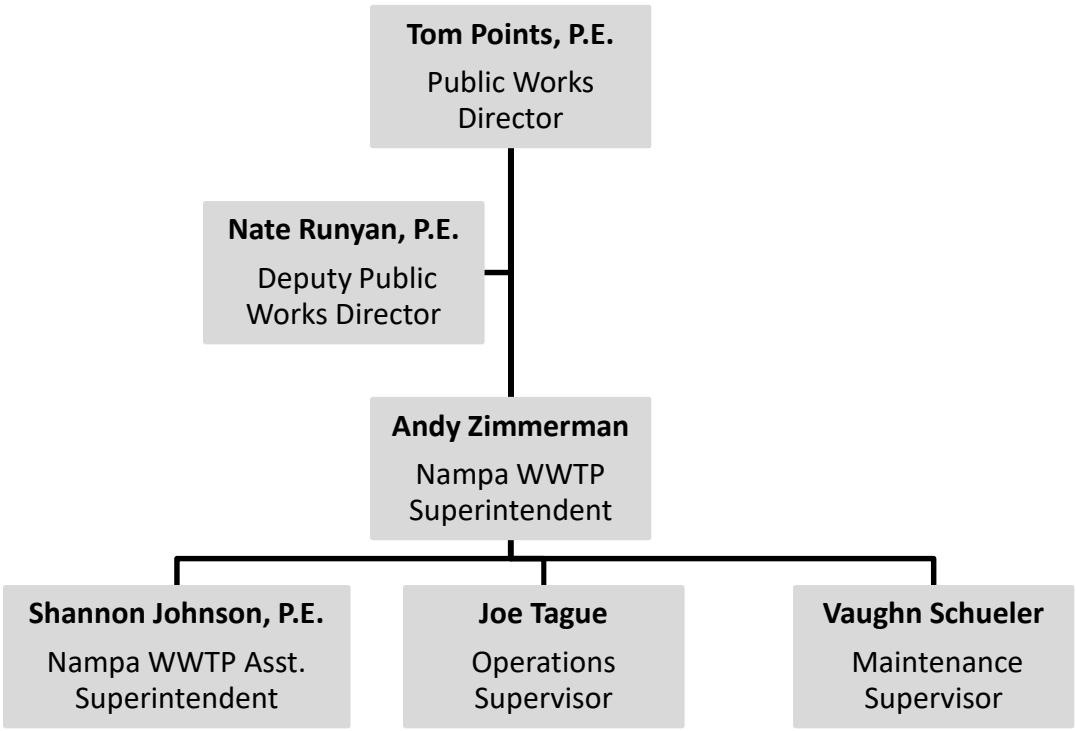
Table 1-1. Recycled Water Rules Requirement Discussion Location in Application			
Section of Recycled Water Rules	Description of Recycled Water Rule	Preliminary Technical Report Section	Plan of Operations Section
609	Municipal Recycled Water: Lagoons	Section 6	Section 7
610	Municipal Recycled Water: Class A Recycled Water Filtration	Section 5, Section 8	Section 5, Section 6
611	Municipal Recycled Water: Reliability and Redundancy	Section 6	NA
612	Demonstration of Technical, Financial, and Managerial Capacity of Municipal Reuse Facility	Section 2	Section 2
613	Reuse Facility: Rapid Infiltration System	Section 7	NA
614	Ground Water Recharge: Class A Recycled Water	Section 5, Section 7	Section 3
615	Subsurface Distribution of Recycled Water	Section 4	Section 4

Section 2

Operation and Management Responsibility

2.1 Organizational Chart

The personnel and positions identified in the organizational chart below are responsible for operating and maintaining the wastewater and reuse water systems for the Nampa WWTP.



In accordance with Idaho Administrative Procedures Act (IDAPA) 24.05.01 all wastewater treatment operators, collections operators, and laboratory analysts have a wastewater treatment operator license, ranging from level I through level IV. Andy Zimmerman and Shannon Johnson are certified Class IV operators.

2.2 Operator and Manager Responsibilities

Operators at the Nampa WWTP are responsible for the day-to-day activities and make adjustments as necessary to maintain efficient treatment process operation. Managers are responsible for maintaining and implementing requirements of the NPDES permit and the recycled water reuse permit. Managers are also responsible for scheduling, reporting, and assigning personnel.

2.3 Process for Updating the Plan of Operation

The Nampa WWTP superintendent and supervisors will be responsible for understanding the requirements of the recycled water reuse permit including what constitutes document updates and/or minor or major permit modifications. Updates will be assigned to appropriate staff and documented and reported following the guidance in the reuse permit issued by the IDEQ.

Section 3

Permits and Other Regulatory Requirements

3.1 Permits and Regulatory Documents

The City has authorization to treat wastewater and discharge to Indian Creek through its NPDES permit ID-0022063. This permit became effective November 1, 2016. The permit contains new requirements for total phosphorus (TP) and temperature treatment, which were not regulated in the previous NPDES permit. Compliance schedules are in place to meet these new limits. Stated effluent limits for final TP, mercury, and copper must be achieved by August 31, 2026. State effluent limits for temperature must be achieved by August 31, 2031. The key NPDES permit requirements are provided in Table 3-1. For other permit requirements refer to the Nampa WWTP NPDES permit provided in Attachment A.

Table 3-1. Nampa WWTP NPDES Permit Requirements

Parameter	Timing	Design Criteria	Compliance Year Deadline, if applicable
Discharge location	–	Indian Creek (surface water)	–
Effluent temperature [1]	Summer only	July: 19°C (maximum daily) August: 19°C (maximum daily); 22.8°C (instantaneous maximum) September: 19.7°C (maximum daily)	2031
Effluent 5-day biochemical oxygen demand (BOD_5)	Year-round	Monthly average: 30 mg/l Weekly average: 45 mg/l	–
Total suspended solids (TSS)	Year-round	Monthly average: 30 mg/l Weekly average: 45 mg/l 4-month rolling average: 17.5 mg/l (2,629 lbs/day)	–
Total nitrogen	–	–	–
Total phosphorus [1]	May 1–September 30	Monthly average: 15 lbs/day	2026
	October 1–April 30	Monthly average: 52.6 lbs/day	2026
Copper [1]	April–October	Monthly average: 10.7 µg/l Maximum daily: 23.1 µg/l	2026
	November–March	Monthly average: 17.8 µg/l Maximum daily: 38.5 µg/l	2026
Cyanide	March–November	Monthly average: 4.75 µg/l Maximum daily: 9.53 µg/l	–
	December–February	Monthly average: 4.96 µg/l Maximum daily: 9.96 µg/l	–

Table 3-1. Nampa WWTP NPDES Permit Requirements			
Parameter	Timing	Design Criteria	Compliance Year Deadline, if applicable
Mercury [1]	March–November	Average monthly limit: 0.011 µg/l Maximum daily: 0.022 µg/L	2026
	December–February	Average monthly limit: 0.011 µg/l Maximum daily: 0.023 µg/L	2026
Ammonia	March–November	Monthly average: 1.31 mg/l Daily maximum: 4.92 mg/l	–
	December–February	Monthly average: 1.41 mg/l Daily maximum: 5.31 mg/l	–

[1] *Effluent limit must be met in the future, as required by permit compliance schedule.*

lbs/day = pounds per day.

mg/l = milligrams per liter.

µg/l = micrograms per liter.

The City has not previously possessed a recycled water permit; therefore, no requirements that would apply are listed at this time.

In addition to the NPDES permit, the Lower Boise River total phosphorus total maximum daily load drives the regulatory requirements at the Nampa WWTP.

3.2 Ordinances, Rules, Statutes, and Standards

The IDAPA contains multiple rules that govern Nampa WWTP operations and discharge, including Idaho Wastewater Rules (IDAPA 58.01.16) and Ground Water Quality Rules (IDAPA 58.01.11). The Recycled Water Rules (IDAPA 58.01.17) will also be applicable to the City once the reuse permit is secured. In developing the Facility Plan, the City used Class A recycled water standards to develop a preliminary concept of the preferred alternative.

Table 3-2 provides a summary of the key ordinances, rules, statutes, and standards applicable for the Nampa WWTP.

Table 3-2. Ordinances, Rules, Statutes and Standards		
Category	Title	Description
Resolution	Resolution No. 32-2018	A resolution of the City Council of the City of Nampa, Canyon County, Idaho, Implementing Increases in Service Fees Charged by the City of Nampa for Wastewater Rates and User Fees
Resolution	Resolution No. 33-2018	A resolution of the City Council of the City of Nampa, Canyon County, Idaho, Implementing Increases in Service Fees Charged by the City of Nampa for Wastewater Hookup Fees
Nampa City Code	Chapter 8 – Sewer Regulations Chapter 9 – Wastewater Pretreatment	• Includes basis for charges, sewer fund, inspection, permit, connections limited, etc. • This chapter sets forth uniform requirements for dischargers into the city wastewater collection and treatment system and enables the city to protect public health in conformity with all applicable local, state, and federal laws including the Clean Water Act (33 USC 1251 et seq.) and the general pretreatment regulations (40 CFR part 403).

Section 4

Land Application Site

4.1 Topographic Maps

Figure 1 is a topographic map identifying the Nampa WWTP in relation to the Phyllis Canal. Figure 2 provides a view of the potential routes a recycled water pipeline may take from the Nampa WWTP to the Phyllis Canal.

Figure 3 presents the Pioneer Irrigation District (PID) service area downstream from the proposed recycled water discharge point. The area within the red polygon includes an approximately 1/4-mile buffer of the area. The customers served by PID in this area include the cities of Nampa and Caldwell. Both cities have several pump stations and diversions installed along the Phyllis Canal and associated drains and laterals to supply irrigation water to each city's irrigation utility customers. Other major PID customers in this area include unincorporated subdivisions, private residences, and farms. Additional information on the major crop types in this area is included in Section 9 of the Preliminary Technical Report. Downstream (north and west) irrigation districts including Riverside Irrigation District and the Black Canyon Irrigation District also rely heavily on irrigation water and return flows (both surface water and shallow groundwater) managed by PID.

4.2 Regional Map and Description

A broader regional map surrounding the PID area is included as Figure 4. Figure 5 further identifies various irrigation companies and cooperatives in the region.

4.3 Scaled Map (Hydraulic Management Units)

Hydraulic management units are not applicable for this permit considering the discharge of recycled water directly to the Phyllis Canal, as opposed to applying to a specific hydraulic management unit.

4.4 Scaled Map (Recycled Water and Supplemental Water)

The scaled map presented in Figure 2 identifies multiple proposed pipeline routes and associated discharge points. All pipeline routes begin near the Nampa WWTP outfall to Indian Creek and discharge at points along a 1-mile section of the Phyllis Canal. Pipeline routes will be further evaluated in the predesign phase of Nampa WWTP upgrades, and the selected route will be reported to the IDEQ.

Section 5

General Plant Description

5.1 Wastewater Treatment Design

The Nampa WWTP receives wastewater from domestic (residential/commercial) dischargers, industrial dischargers, infiltration and inflow (I/I) from seasonal irrigation sources, and I/I from sources other than irrigation users. The current design total rated hydraulic (maximum month) capacity is 18 mgd. The recent Facility Plan provides flow and loading projections through 2040. The future expected influent flow to the Nampa WWTP is 20.1 mgd. For additional discussion on current and future flow rates, refer to Section 5.4.

In addition to future growth the City considered applicable regulatory requirements for both NPDES and Recycled Water discharge. These combined factors are summarized in Table 5-1, below.

Table 5-1. Nampa WWTP Recycled Water Program Design Conditions

Parameter	Summer Design Condition	Winter Design Condition [1]
Maximum month flow	20.1 mgd	20.1 mgd
Effluent total suspended solids	Monthly average: 30 mg/l Weekly average: 45 mg/l 4-month average: 17.5 mg/l	Monthly average: 30 mg/l Weekly average: 45 mg/l 4-month average: 17.5 mg/l
Effluent BOD_5	Monthly average: 10 mg/l	Monthly average: 30 mg/l Weekly average: 45 mg/l
Effluent total phosphorus	0.35 mg/l [2]	Monthly average: 52.4 lbs/day (0.35 mg/l) [1,2]
Effluent total nitrogen	30 mg/l [3]	30 mg/l
Effluent ammonia	Monthly average: 1.31 mg/l (March–November) Daily maximum: 4.92 mg/l (March–November)	Monthly average: 1.41 mg/l (December–February) Daily maximum: 5.31 mg/l (December–February)
Other	Class A Recycled Water (IDAPA 58.01.17) requirements	Class A Recycled Water (IDAPA 58.01.17) requirements for industrial reuse stream (1–2 mgd)

[1] The values listed assume discharge to an irrigation canal during the summer season. During the winter season NPDES permit limits apply.

[2] Effluent TP limits are on a pounds per day basis. Concentration is provided for reference only.

[3] Effluent TN limits are estimated to be lower for summer discharge as a conservative assumption based on the requirements of the Recycled Water Rules (IDAPA 58.01.17, Section 607.02.d). The requirements for this discharge will be further refined through additional permit negotiations.

BOD = biochemical oxygen demand.

lbs/day = pounds per day.

mgd = million gallons per day.

mg/l = milligrams per liter.

5.2 Wastewater Treatment Process

The Nampa WWTP operates as a secondary treatment facility that uses conventional aerated activated sludge units for biological oxidation of the wastewater. The Nampa WWTP will be upgraded

to provide full-scale recycled water. The goal is to provide Class A recycled water (as defined in IDAPA 58.01.17.601) to local industries and irrigation users for reuse. The processes that will be installed to achieve this include tertiary filtration, ultraviolet disinfection, industrial pump station and pipeline, and irrigation reuse pump station and pipeline. IDAPA 58.01.17 provides the disinfection requirements for achieving Class A municipal recycled water quality, which must be a disinfection process that, when combined with filtration, can achieve 5-log inactivation of virus (IDAPA 58.01.17 Section 601.01.a.i.2).

The new or modified unit processes that will be necessary and the associated design capacity of these systems are provided in Table 5-2. These systems will need to be installed at the Nampa WWTP in order to provide Class A recycled water to irrigation and industrial users. These design criteria will be further defined through preliminary and final design stages of the project.

Table 5-2. Recycled Water Program Unit Processes Required and Preliminary Design Criteria

Unit Process	Unit Process Assumptions
Aeration basin modifications	• Construction of Aeration Basin #4 • Sized identical to existing aeration basins: 134 ft x 160 ft x 21 ft • 3,304,000-gallon capacity
Blower building	• 6, 700-hp blowers (5 duty, 1 standby), 9,750 cfm sizing • 12,000-ft^2 building • 500-kW generator
RAS piping and WAS pumping	• 2 WAS pumps (10 hp each) • WAS pump TDH: 50 ft • 60 LF of 18-inch RAS piping and fittings • 275 LF 30-inch piping
MLR pumps	• 4 pumps, 17,000 gpm (24 mgd) each • 10 feet TDH • 125 hp mixed flow pumps, 1 per treatment train
Final clarifier No. 4	• Circular clarifier, 120-ft diameter with mechanism
Solids facility expansion	• 1,650-ft^2 building expansion • 2 rotary drum thickeners, 440 gpm capacity each • 1 centrifuge, 200 gpm capacity
Struvite reactor	• 3,888-ft^2 building • Struvite reactor equipment and piping • 1,185 LF of 10-inch piping
Filter lift pump station	• Building enclosure • 3 vertical turbine pumps • 20-inch vertical turbine solids handling • Flow: 9,450 gpm • TDH: 30 feet • Power: 100 hp • 500-kW generator • 530 LF of 42-inch piping

Table 5-2. Recycled Water Program Unit Processes Required and Preliminary Design Criteria

Unit Process	Unit Process Assumptions
Sand or Membrane filtration [1]	Sand Filtration • 1,900-ft² building • 9 filter cells, 108 modules, 40-inch filter bed • Three rotary screw compressors (two duty, one standby) • Coagulant feed system Membrane Filtration • 12,000-ft² building (200 ft x 60 ft x 36 ft) • 105-ft long, 40-ft wide, 16-ft deep membrane tanks • 36 membrane cassettes and 2,808 modules installed • 6 permeate pumps • 2 positive displacement blowers (1 duty, 1 standby)
Ultraviolet disinfection: Class A	• 5,460-ft² building • 4 channels, 9 banks per channel • Disinfection dose: 100 mJ/cm²
Effluent forcemain for irrigation reuse	• 6,000 LF of 42-inch high density polyethylene pipe
Effluent pump station for irrigation reuse	• Vertical turbine pumps (3) • References Project Group A Primary Effluent Pump Station • 20-inch vertical turbine solids handling • Flow: 9,450 gpm • TDH: 30 feet • Power: 100 hp • Building enclosure: 14 ft x 54 ft
Effluent pump station & forcemain for industry	• 2 submersible pumps, duplex-type arrangement • TDH: 40–80 ft • 10,000 LF of 12-inch polyvinyl chloride forcemain • 840 LF of 42-inch piping industrial flow (1–2 mgd) disinfected to Class-A standards using in-pipe ultraviolet treatment • Disinfection dose: 100 mJ/cm²
Digester #5	• 1 mixing pump, 125 hp motor • Flare relocation
Primary thickening	• Thickening feed pumps, 2 duty/1 standby, 30 hp motors • Rotary drum thickeners, 2 duty/1 standby • Thickened primary sludge pumps, 2 duty/1 standby, 15 hp motors • Polymer make-up and feed systems • Centrate pumps: 2 duty/1 standby, 20 hp motors

[1] *Title 22 approved technology per IDAPA 58.01.17 Section 610.01. Filtration technology is still being evaluated as part of the project pre-design phase.*

Any potable water used as seal water for recycled water pump seals shall be protected from backflow with an approved backflow prevention device or air gap per IDAPA 58.01.17 Section 608.02a.

cfm = cubic feet per minute.

ft = feet.

gpm = gallons per minute.

hp = horsepower.

kW = kilo-Watt.

LF = linear feet.

mJ/cm^2 = millijoule per square centimeter.
RAS = return activated sludge.
TDH = total design head.
WAS = waste activated sludge.

Process flow diagrams for the liquid and the solid streams are provided in Figures 6 and 7, respectively.

5.3 Hydraulic Profile

The City updated the Nampa WWTP hydraulic profile as part of the Facility Plan development. This preliminary hydraulic profile, including key inverts and elevations, is provided in Figure 13. It is anticipated that this preliminary hydraulic profile will be further refined as the remaining design stages of the project are completed.

5.4 Characterize Wastewater and Recycled Water Streams

The Nampa WWTP receives and treats wastewater flow and loadings from four sources: domestic (residential/commercial) dischargers, industrial dischargers, I/I from seasonal irrigation, and I/I from sources other than seasonal irrigation influences. The wastewater collected from the service area contains both organic and inorganic loadings.

Domestic flow is independent of seasonal and climate conditions and tends to follow a diurnal flow pattern that reflects timing of water usage in the community. Industrial discharges come from a range of industries in the service area, including food processing plants, sanitation, and technology services. Industrial discharges are less consistent than domestic discharges and tend to be higher strength in terms of BOD, TSS, total Kjeldahl nitrogen, and TP and other loadings. I/I resulting from seasonal irrigation increases throughout the summer and peaks in the early fall. The non-seasonal irrigation I/I is driven by precipitation and groundwater variations (these are independent of irrigation influences).

The City's wastewater flow varies seasonally. Flow volumes are highest from June to January during irrigation season and followed by influences from industrial food processors' peak discharge occurring during the late fall and winter. The annual average flow to the Nampa WWTP is gradually decreasing over recent years, caused by a reduction in local industry and subsequent industrial discharges to the municipal sewage system. The load has also decreased over the past 2 years due to the reduction in industrial discharges. The average monthly flow has not decreased at the same rate as the influent load, most likely because the industrial flows have not decreased at the same rate as loads, and there has been growth in domestic discharge, which constitutes flow with lower concentrations of BOD and TSS, yielding less load for the same flow.

A wastewater characterization study was performed as part of the Facility Plan development. The results of the study were documented in *TM T-49 Nampa WWTP Capacity Assessment*. For more information on wastewater characteristics, refer to Appendix C of the Facility Plan.

The Facility Plan included the development of *TM T-46 Flow and Loads* which evaluated current conditions and developed future projections based on population growth. The current condition was based on available Nampa WWTP data from 2012 through 2015. Table 5-3 is the resulting current flow and load condition for the Nampa WWTP.

Table 5-3. Nampa Wastewater Current Flows and Loads

Influent Category	Flow (mgd)			BOD (lbs/day)			TSS (lbs/day)			TKN (lbs/day)			TP (lbs/day)		
	Annual Average	Maximum Month	Peak Day	Annual Average	Maximum Month	Peak Day	Annual Average	Maximum Month	Peak Day	Annual Average	Maximum Month	Peak Day	Annual Average	Maximum Month	Peak Day
Domestic	7.67	7.67	7.67	16,132	19,578	40,564	17,807	19,898	37,414	2,524	2,880	4,175	373	414	700
Industrial [1, 2]	2.82	2.82	4.23	20,389	20,389	30,583	10,632	10,632	15,948	1,988	1,988	2,983	345	345	517
Irrigation-related I/I [3]	0.95	2.28	2.38	–	–	–	–	–	–	–	–	–	–	–	–
Non-irrigation I/I	0.14	0.34	2.30	–	–	–	–	–	–	–	–	–	–	–	–
Total Influent [4]	11.6	13.1	16.6	36,521	39,967	71,147	28,439	30,530	53,362	4,512	4,868	7,158	718	759	1,217

[1] *For industrial customers, the Average Annual flow capacity represents the allowable daily discharge. Values are rounded to the nearest hundredth mgd and whole value pounds per day (lbs/day) for flow and load, respectively.*

[2] *Peak Day = 1.5 * monthly average for industrial flows and loads.*

[3] *Seasonal irrigation is calculated to increase during irrigation season (April–September) by approximately 1.9 mgd. This period represents approximately half the year; therefore, the monthly average is 1.9 divided by 2 = 0.95 mgd. Estimates were developed based on Nampa WWTP influent data from 2008 through 2016. Seasonal irrigation average, maximum month, and peak day flows are assumed to not change over time.*

[4] *Total flows = total industrial permitted flow + total domestic flow + seasonal irrigation + other I/I; Total loads = total industrial permitted load + total domestic load; values are rounded to the nearest tenth mgd for flow and nearest lbs/day for loads.*

The Facility Plan evaluated future flow and loading conditions through 2040, which will inform the design of the Preferred Alternative. During the summer season, the full 20.1 mgd maximum month flow would be treated to Class A recycled water quality and then discharged to an irrigation canal. The City plans to produce 1–2 mgd of treated Class A water that would be available year-round for industrial reuse (the permitting for this will occur in the future). During the winter, the City would operate under its existing NPDES permit and discharge the treated effluent to Indian Creek. Table 5-4 summarizes these future flow and loading conditions.

Table 5-4. Nampa Wastewater 2040 Flow and Loading Projections

Influent Category	Flow (mgd)			BOD (lbs/day)			TSS (lbs/day)			TKN (lbs/day)			TP (lbs/day)		
	Annual Average	Maximum Month	Peak Day [1]	Annual Average	Maximum Month	Peak Day [1]	Annual Average	Maximum Month	Peak Day [1]	Annual Average	Maximum Month	Peak Day [1]	Annual Average	Maximum Month	Peak Day [1]
Domestic	13.69	13.69	13.69	30,652	38,136	83,029	35,330	41,892	90,700	4,693	5,483	9,079	708	848	1,347
Industrial [2]	3.8	3.8	5.7	32,907	32,907	49,360	23,150	23,150	34,725	2,906	2,906	4,360	762	762	1,143
Irrigation-related I/I [3]	0.95	2.28	2.38	–	–	–	–	–	–	–	–	–	–	–	–
Non-irrigation I/I	0.14	0.34	2.30	–	–	–	–	–	–	–	–	–	–	–	–
Total influent flow and loads [4]	18.6	20.1	24.1	63,560	71,040	132,390	58,480	65,040	125,430	7,600	8,390	13,440	1,470	1,610	2,490

[1] *Peak Day = 1.5 * monthly average for industrial flows and loads.*

[2] *For industrial customers, the Average Annual flow capacity represents the allowable daily discharge. Values are rounded to the nearest hundredth mgd and whole value lbs/day for flow and load, respectively.*

[3] *Seasonal irrigation is calculated to increase during irrigation season (April–September) by approximately 1.9 mgd. This period represents approximately half the year; therefore, the monthly average is 1.9 divided by 2 = 0.95 mgd. Estimates were developed based on Nampa WWTP influent data from 2008 through 2015. Seasonal irrigation average, maximum month, and peak day flows are assumed to not change over time.*

[4] *Total flows = total industrial permitted flow + total domestic flow (2040) + seasonal irrigation + other I/I; total loads = total industrial permitted load + total domestic load (2040); values are rounded to the nearest tenth mgd for flow and 10 lbs/day for loads.*

5.5 Wastewater Treatment and Reuse System

The Nampa WWTP will be designed to treat for constituents as designated in the future reuse permit. The influent concentrations for the Class A constituents and phosphorus is compared with the target removal efficiencies in Table 5-5.

Table 5-5. Nampa WWTP Influent Concentrations & Removal Efficiencies

Parameter	Influent Concentration [1]	Effluent Limit [2]	Removal Efficiency
TSS	220 mg/l	30 mg/l	86%
Turbidity	NA	0.5 NTU	
BOD_5 [3]	263 mg/l	10 mg/l	96%
TN [4]	36.2 mg/l	30 mg/l	17%
TP		0.35 mg/l	
Ammonia, total as N	22.5 mg/l	1.41 mg/l (December–February) and 1.31 mg/l (March–November)	94%
Total coliform (organisms/100 mL)	– [5]	2.2 (7-day median)	–
Viruses	– [5]	Disinfection to 5-log inactivation of virus	–
pH	7.9 SU	6.0–9.0 S.U.	–

[1] Influent concentrations represent 2017 annual averages.

[2] Effluent limits are shown as monthly averages unless otherwise indicated.

[3] BOD_5 removal is based on IDAPA 58.01.17 Class A requirements for non-recharge and residential irrigation uses.

[4] The TN limit of 30 mg/l proposed for discharge to Phyllis Canal (non-recharge use).

[5] Data not measured.

Section 6

Description, Operation, and Control of Unit Operations and Processes

6.1 Unit Operations/Process

The Nampa WWTP is a secondary treatment facility that uses conventional aerated activated sludge units for biological oxidation of the wastewater. The current design total rated hydraulic (maximum month) is 18 mgd. This rating will be increased to 20.1 mgd with the completion of the Phase II Upgrades to the Nampa WWTP.

Figures 6 and 7 show the overall process flow schematic for the Nampa WWTP after the completion of the Phase II and Phase III upgrades which include the proposed recycled water program and tertiary filtration components. As shown in the figures, raw wastewater enters the influent pump station and is pumped up to the influent screens. The primary influent then flows by gravity through the grit chambers and to the primary influent splitter box. The screened and degritted wastewater flow is then split between the three primary clarifiers for primary treatment. This headworks building is enclosed thereby reducing nuisance odors from affecting the surrounding community.

Currently, anywhere from 0 to 40 percent of the primary effluent is directed to the trickling filter recirculation pump station where it is split between two trickling filters for BOD removal. The trickling filter mixed liquor flows from the trickling filter recirculation pump to a secondary clarifier for settling. The trickling filter secondary effluent is then mixed with the remaining primary effluent and directed to one of the three aeration basins via the primary effluent pump station for biological treatment. Following the completion of the Phase II Upgrades the primary effluent will flow directly to the primary effluent pump station as the trickling filters will be demolished which will additionally result in the removal of a large nuisance odor producing element at the plant

The aeration basins are configured with an anaerobic zone, a flexible aerated zone (FAZ), and an aerobic zone for biological nutrient removal. Mixing in the anaerobic and FAZ cells is provided by submerged medium-speed mixers, while aeration and mixing in the aerobic zones and FAZ is provided by centrifugal blowers and membrane and ceramic diffusers. After exiting the aeration basins, the mixed liquor flows by gravity to the final clarifier flow splitter box and is divided between one of three final clarifiers. The secondary effluent flow is injected with sodium hypochlorite for disinfection then flows through one of two chlorine contact chambers. The disinfected effluent is dosed with sodium bisulfite for dechlorination before a portion of the water is pumped for use as No. 4 water throughout the plant. The remainder is sent to the post aeration basin to increase the dissolved oxygen concentration before being discharged to Indian Creek.

The Phase II/III Upgrades will modify the operation of the Nampa WWTP to make it capable of producing recycled water. The most notable changes will be the addition of tertiary filtration and additional disinfection steps. These processes are in the design process but will be configured to meet the requirements for Class A Recycled Water including incorporation of a recycled water pump station to convey the recycled water to Phyllis Canal.

Waste activated sludge is pumped through thickening feed pumps to rotary drum thickeners after the addition polymer for more efficient thickening. The thickened waste activated sludge is pumped

to primary anaerobic digesters along with the primary sludge. Polymer is added to the sludge prior to dewatering using centrifuges. The centrate is sent to a centrate storage tank, combined with the filtrate from the rotary drum thickeners, and mixed with ferrous chloride for control of hydrogen sulfide odors prior to being pumped back to headworks. Dewatered biosolids are stored on site in sludge drying beds prior to landfill disposal. Due to high volatile solids reduction these biosolids have low associated nuisance odors. Collected screenings and grit are also landfilled.

6.2 Normal Operations

The Class A recycled water system may discharge up to 31 cfs at full design flow rates. Typical flow patterns and flow rates will be developed following design and construction of the Nampa WWTP upgrades.

6.3 Process Monitoring and Control Systems

The City's overall control system was described within the preliminary design documents developed under Phase I Upgrades. The project team (Brown and Caldwell and Nampa WWTP staff) developed the Instrumentation and Control Philosophy, which was described as "a defined thought process regarding system controls in support of a set operational philosophy through standards and procedures." The final programmable logic controller (PLC) manufacturer and model, Rockwell Automation ControlLogix platform, were selected through this effort.

The existing control system architecture is a distributed system placing automatic logic within the uninterruptable power supply (UPS) backed, non-redundant, PLCs located within main process areas and dedicated controls for complex equipment. Manual controls are separated between the motor control centers (MCCs) and the local equipment. As part of the "hands-on" control philosophy, the existing equipment preference is to have the operator visit the MCC prior to moving to the local equipment. At the MCC, the operator places the equipment in the Hand position, which allows the Start/Stop selection to become active local to the equipment. This movement confirms the operator's intentions of removing the equipment control from the PLC.

Remote operations for the entire plant can be accessed both at the MCC located PLC cabinets, where panel mounted workstations reside, and within the administrative building where the Supervisory Control and Data Acquisition (SCADA) desktop workstations and servers reside. These controls include supervisory actions such as set point manipulation and lead equipment selection and remote manual start/stop action and manual speed manipulations for variable speed equipment.

Remote and off-site access is not provided to operations staff due to the City's requirement to maintain a highly secured control system by limiting remote network access, but remote alarming is extended offsite through the use of both a hardware alarm autodialer for critical alarms and a SCADA based software autodialer for all alarms.

Through Phase I, the existing control system was expanded to include support for new facilities and equipment with the plant network system being rerouted to designated utility corridors, providing distinct utility paths through the facility. The new corridors will provide designated locations for all in-plant utilities to be routed, including communications. The existing fiber optic communication cable was retained and new fiber optic cable was routed through the new corridors, providing a redundant network path to each of the existing facilities modified under the Phase I construction. Because the Phase I upgrades will not touch every part of the existing facility, the network topology during this time frame comprises both a modified star configuration and a new redundant ring. UPS-supported

SCADA workstations are located at each MCC located PLC cabinet providing access to the plant SCADA system.

Complex equipment added through Phase I Upgrades also includes a UPS-supplied PLC control system with local human machine interfaces. These equipment types provide full automatic control with access to the plant-wide SCADA system for remote status, indications, and alarming. In a case-by-case evaluation, remote supervisory control will be provided, allowing operations to update local control set points and alarm points, with limited start/stop capability and process adjustment.

Throughout Phase II/III Upgrades, portions of the facility will be modified to include the utility corridors and new process buildings, the older fiber optic cable will be abandoned or used to pull in additional fiber, which will be routed through the corridors forming two complete smaller redundant rings, with some outlying buildings maintaining the original conduit route until the facility's new Headworks, Operations building, and Administrative building are constructed. At this time, the final corridors will be completed allowing the final three fully redundant network rings to be completed.

The three separate but redundant rings allow the network attachments at buildings to be close to the corridor, minimizing single routes, which could allow breakage at two points within the network during a single excavation. To minimize this possibility, the network routings into building should be placed at a minimum of 4 feet of depth difference, where multiple entries into the building are not feasible.

The inclusion of redundant paths minimizes the City's dependency on the SCADA software to mitigate network outages. Overall, they provide for a greater support mechanism for data transfers from the local PLCs to the SCADA Historian located in the Administration building. This new configuration is designed to accommodate relocation of the Administration building at some time in future planning.

6.4 Operating Instructions

The City maintains an existing operations and maintenance (O&M) manual in hardcopy form, retained on-site at the Nampa WWTP. The City will be converting this O&M manual to electronic format and incorporating new facilities, such as Phase I Upgrades – Project Group A, into the manual.

In the future, as Phase II Upgrades are constructed and commissioned, the O&M manual will also be updated with the new unit processes and equipment. Because the recycled water program is still in the preliminary design stage at this time, there are no O&M manuals available because the major processes and equipment are still being developed. When these are selected and constructed in the future, the City will actively be modifying the existing O&M manual as required.

6.5 Common Operating Problems

The existing Nampa WWTP experiences few operational issues. Most processes are set up with redundancy to mitigate the risks of equipment failure. Troubleshooting and common operating problems will be documented once the reuse system becomes operational.

6.6 Laboratory Tests (Process Control)

The laboratory tests list for process control will be developed following permit issuance and project design. Current tests performed at the Nampa WWTP include, but are not limited to, chlorine, carbonaceous oxygen demand, suspended solids, settleometer, pH, microscope examination,

settleable solids, centrifuge, sludge volume index, F/M ratio, dissolved oxygen uptake, volatile solids, volatile suspended solids, total volatile solids, acidity, alkalinity, and percent carbon dioxide.

6.7 Laboratory Tests (Compliance Determination)

The laboratory tests list for compliance determination will be developed following permit issuance and project design. Current tests performed at the Nampa WWTP include, but are not limited to, flow, pH, BOD, *E. coli*, TSS, TP, orthophosphate, conductivity, turbidity, NH3, total Kjeldahl nitrogen, nitrate, nitrite, hardness, temperature, and chlorine.

6.8 Start-up Procedures

Startup procedures will be documented once the reuse system becomes operational.

6.9 Emergency Operating Plans

The City maintains the *Sanitary Sewer Overflow Response Plan (SSORP)*, pursuant to the terms and conditions of the U.S. Environmental Protection Agency's 2000 Consent Decree. The *SSORP* is designed to ensure every report of a confirmed sewage spill is immediately dispatched to the appropriate collections personnel so that the effects of the overflow can be minimized with respect to its adverse impacts on beneficial use, water quality of surface waters, and customer service. The SSORP includes provisions to ensure safety, pursuant to the directions provided by the City, and make sure notification and reporting procedures are executed to the necessary collections personnel, state, and federal authorities. The SSORP comprises overflow response procedures, public advisory procedures, regulatory agency notification plan, media notification procedure, and distribution and maintenance of the SSORP.

This emergency response plan and procedures will be reevaluated and revised to document any changes that may result from the implementation of the recycled water program.

Section 7

Wastewater and Recycled Water Treatment and Storage Lagoons

Treatment ponds and storage lagoons are not included as part of this project. All treatment is conducted at the Nampa WWTP as described in Sections 5 and 6.

Section 8

Reuse Site Features and Characteristics

8.1 Fencing and Posting

Per the Guidance Manual, buffer zones and fencing are not required for Class A recycled wastewater. However, the discharge pipe will be located on PID property. PID prohibits access to canal roads by unauthorized personnel. Additionally, access to the discharge point will be secured for access by authorized personnel only via security fencing or other measures, similar to City irrigation pump stations located along the Phyllis Canal.

Signage with a message indicating that the discharge is recycled wastewater and a “do not drink” warning will be posted at the discharge pipe.

All piping, valves, and other appurtenances from the Nampa WWTP to the discharge point to Phyllis Canal will be purple in color (Pantone 512, 522, or equivalent).

This section of the Plan of Operations will be updated to meet requirements of the reuse permit, once issued.

8.2 Backflow Prevention Equipment

There will be no connections to other water sources utilized for the operation of the recycled water system.

Section 9

Reuse Site Loading Rates

Considerations for reuse site loading rates are discussed in Preliminary Technical Report Section 8. This section of the Plan of Operations will be updated to meet requirements of the reuse permit once issued.

Section 10

Reuse Site Vegetation

Vegetation within the area of analysis is described in Preliminary Technical Report Section 9. This section of the Plan of Operations will be updated to meet requirements of the reuse permit once issued.

Section 11

Reuse Site Management

Considerations for reuse site management planning are discussed in the Preliminary Technical Report Section 10. This section of the Plan of Operations will be updated to meet requirements of the reuse permit once issued.

Section 12

Monitoring Activities

Recycled water monitoring will occur at the discharge point to Phyllis Canal. A monitoring plan guiding the collection of compliance determination data will be developed following issuance of the reuse permit and before discharging recycled water authorized under the permit.

Groundwater, soil, crop tissue, and other monitoring is not believed to be applicable for this permit due to the discharge of recycled water directly to the Phyllis Canal for use as irrigation water supply augmentation.

Section 13

Maintenance

The City's recycled water system will have detailed maintenance information and guidance to facilitate proper care and troubleshooting. Future maintenance information, including preventative maintenance schedules, troubleshooting charts and guides, maintenance record system, location of manufacturer's manuals, management of spare parts inventory, vendors, and outside contractors and suppliers will be developed and made available to the IDEQ following permit issuance and prior to discharging recycled water authorized by the permit.

During the Facility Plan development for the Nampa WWTP, the City evaluated high level operations and maintenance costs for the preliminary equipment. These planning-level estimates will be further refined through the preliminary and final design stages of the project.

Section 14

Records and Reports

This section of the plan of operations will be updated following issuance of the reuse permit and before the discharge of recycled water authorized under the permit. For current operations, daily operating logs are completed by operators at the Nampa WWTP and filed for NPDES permit compliance. Storage of laboratory data, records, and report generation is currently in the process of being migrated to the HACH WIMS program. This program and associated records will be stored on secure City servers. Reporting procedures for permit violations will be written and adopted following issuance of the reuse permit.

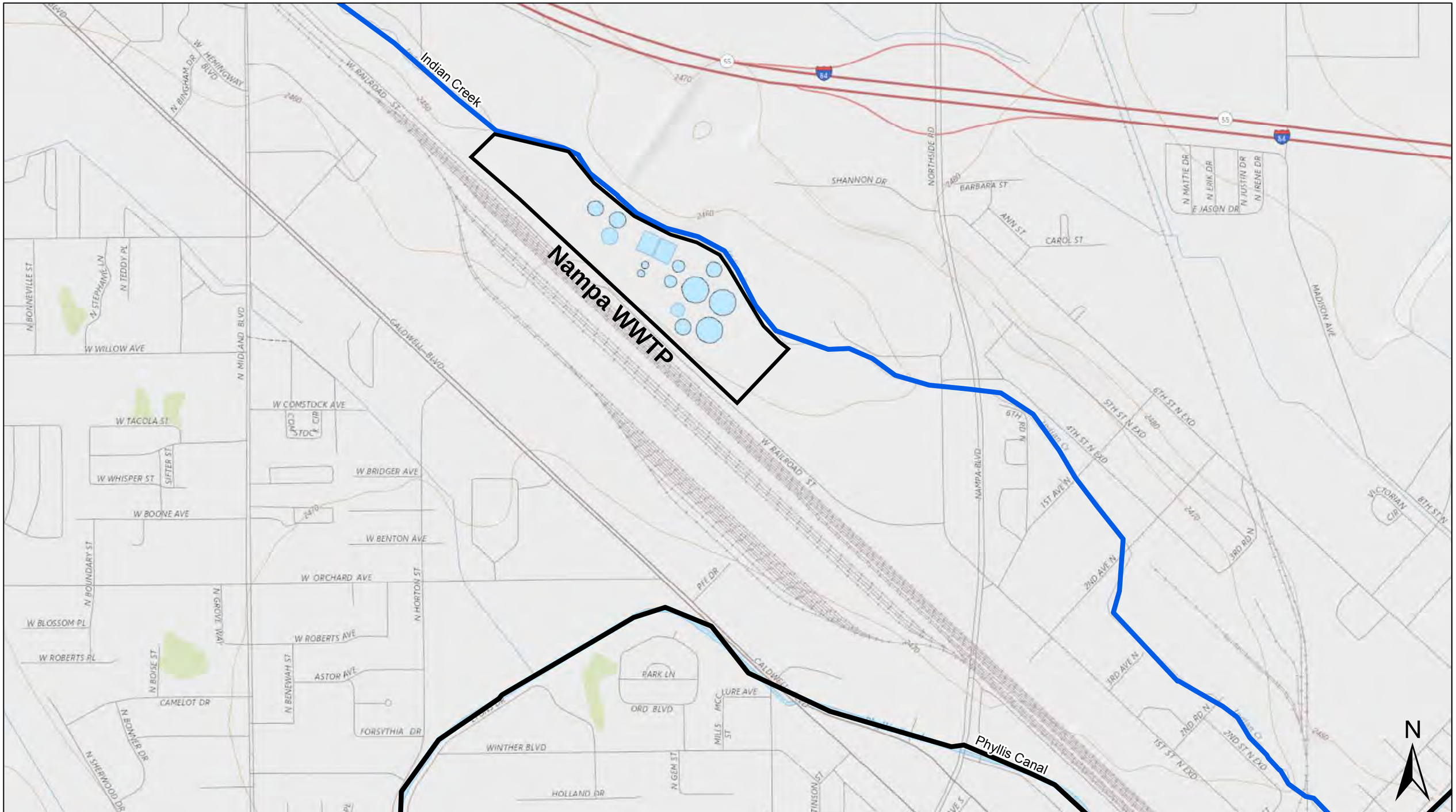
Section 15

References

Brown and Caldwell. 2018. City of Nampa Wastewater Treatment Plant Facility Plan.

Idaho Department of Environmental Quality. 2018. IDAPA 58 Administrative Rules.

Figures



Brown AND Caldwell

Figure 1. Topographic Map: WWTP and Phyllis Canal

Client: City of Nampa
Date: 2-25-2019

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Locations are approximate and require further investigation.

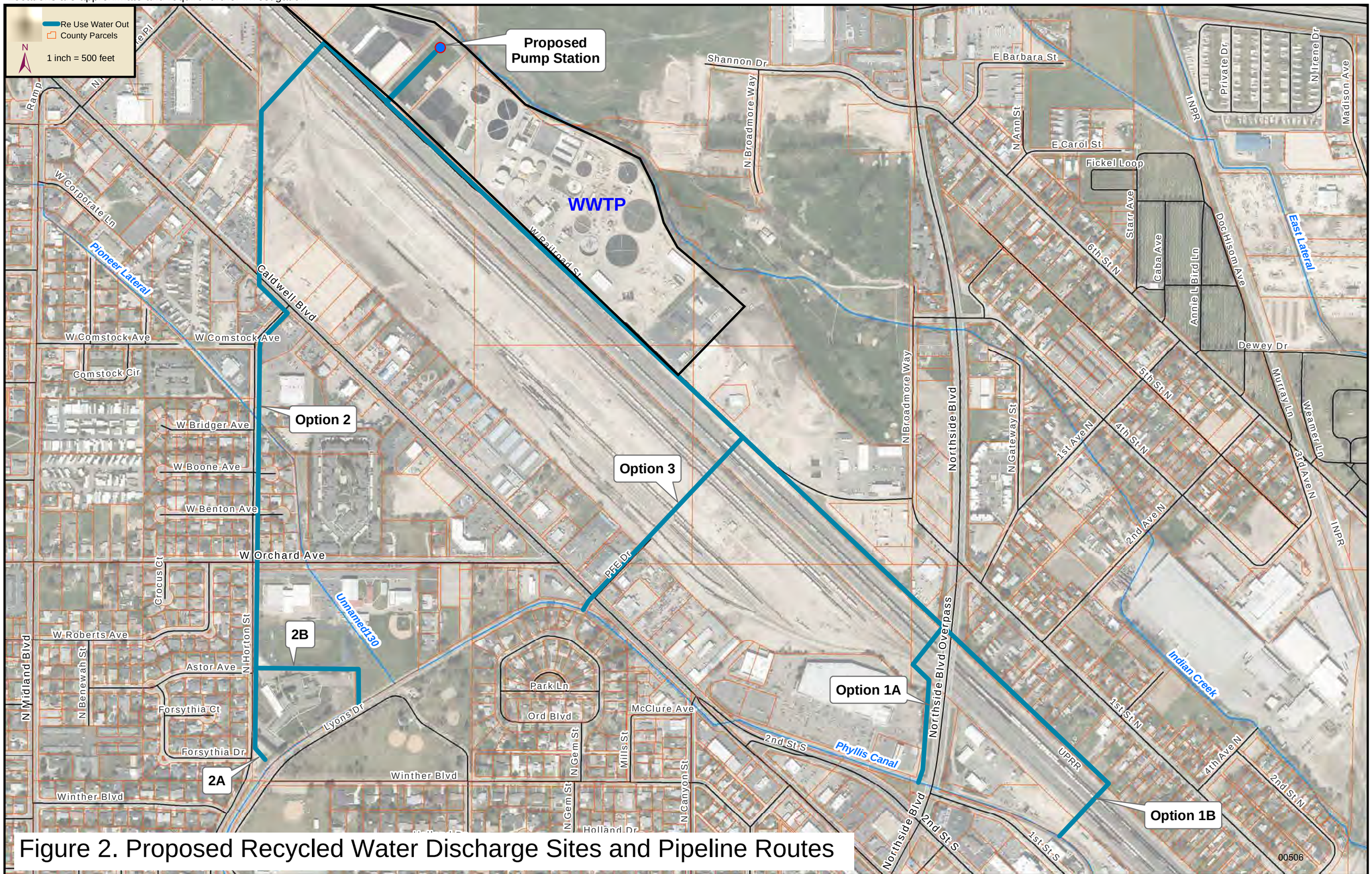

Figure 2. Proposed Recycled Water Discharge Sites and Pipeline Routes

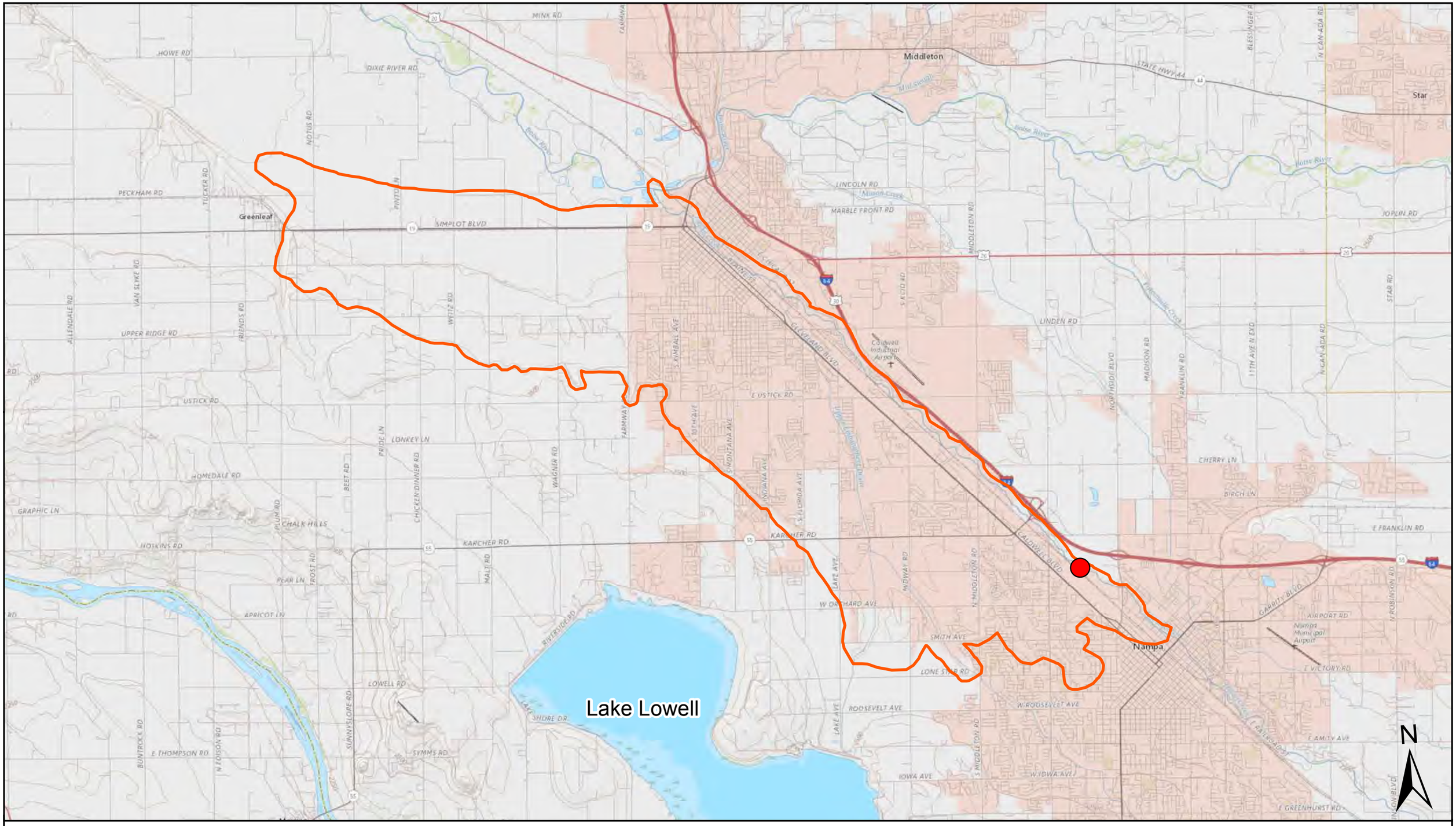

Figure 3. Topographic map: Area of Analysis

Client: City of Nampa
Date: 2-25-2019

Nampa WWTP

Area of Analysis

0 0.5 1 2 3 4 Miles

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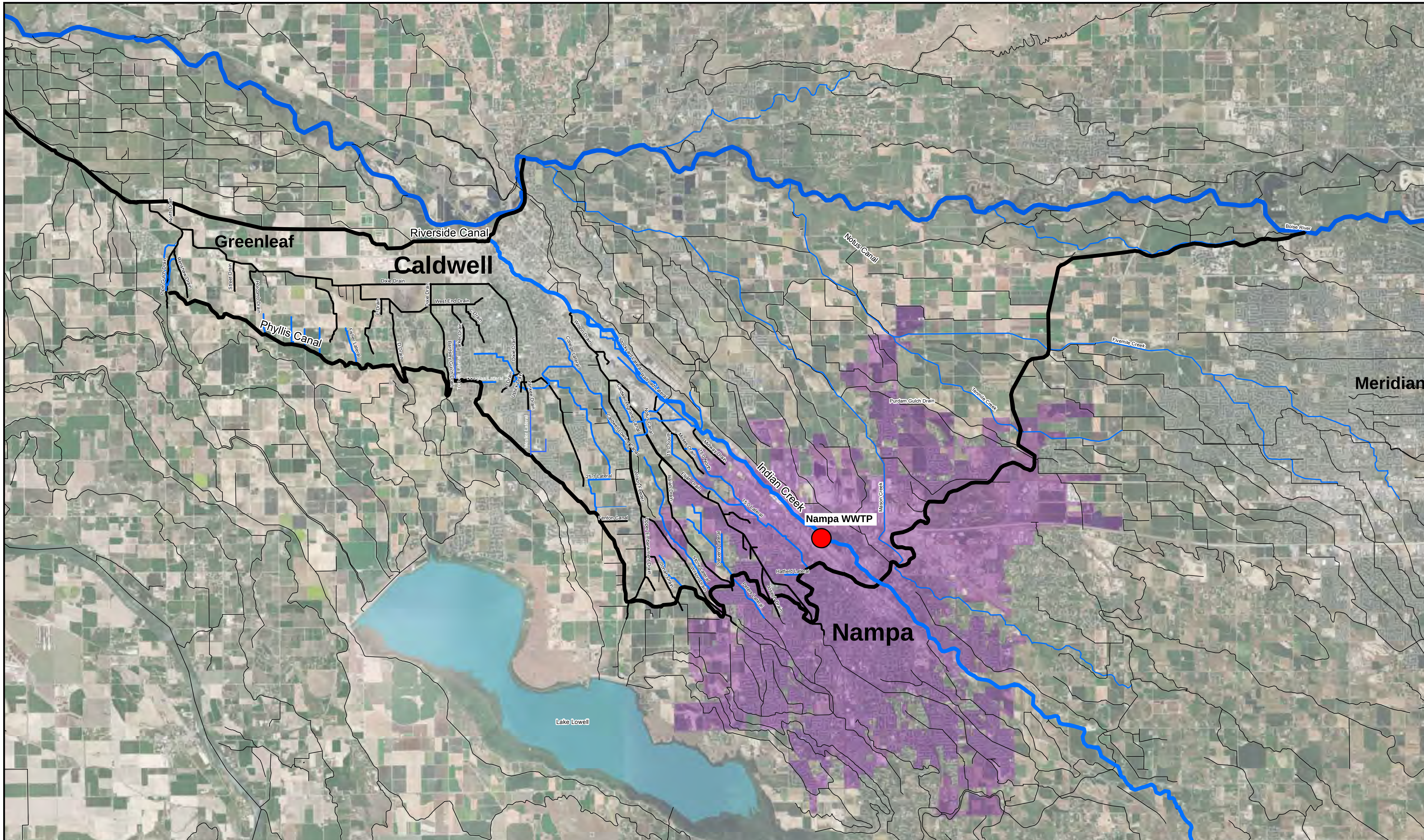


Brown AND Caldwell

Figure 4. Overview Map

Client: City of Nampa
Date: 2-25-2019

Incorporated City of Nampa

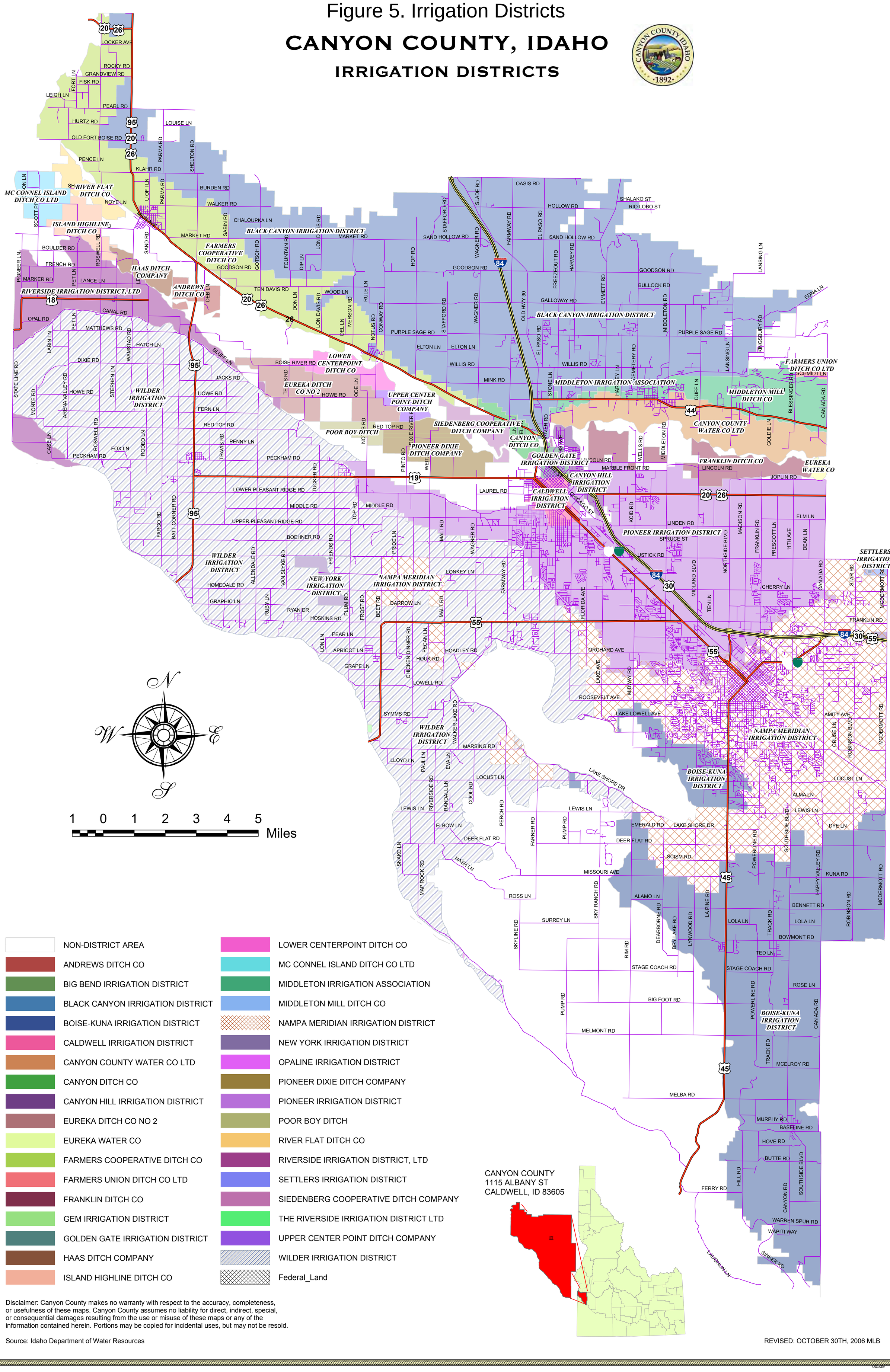
00508

Path: Bcboi02\\\bcboifp01\projects_Nampa, City of_Nampa WW Program\230 DEQ Negotiations\620 Reuse Permit Application\Permit Application\Application Figures\Maps.mxd

Figure 5. Irrigation Districts

CANYON COUNTY, IDAHO

IRRIGATION DISTRICTS



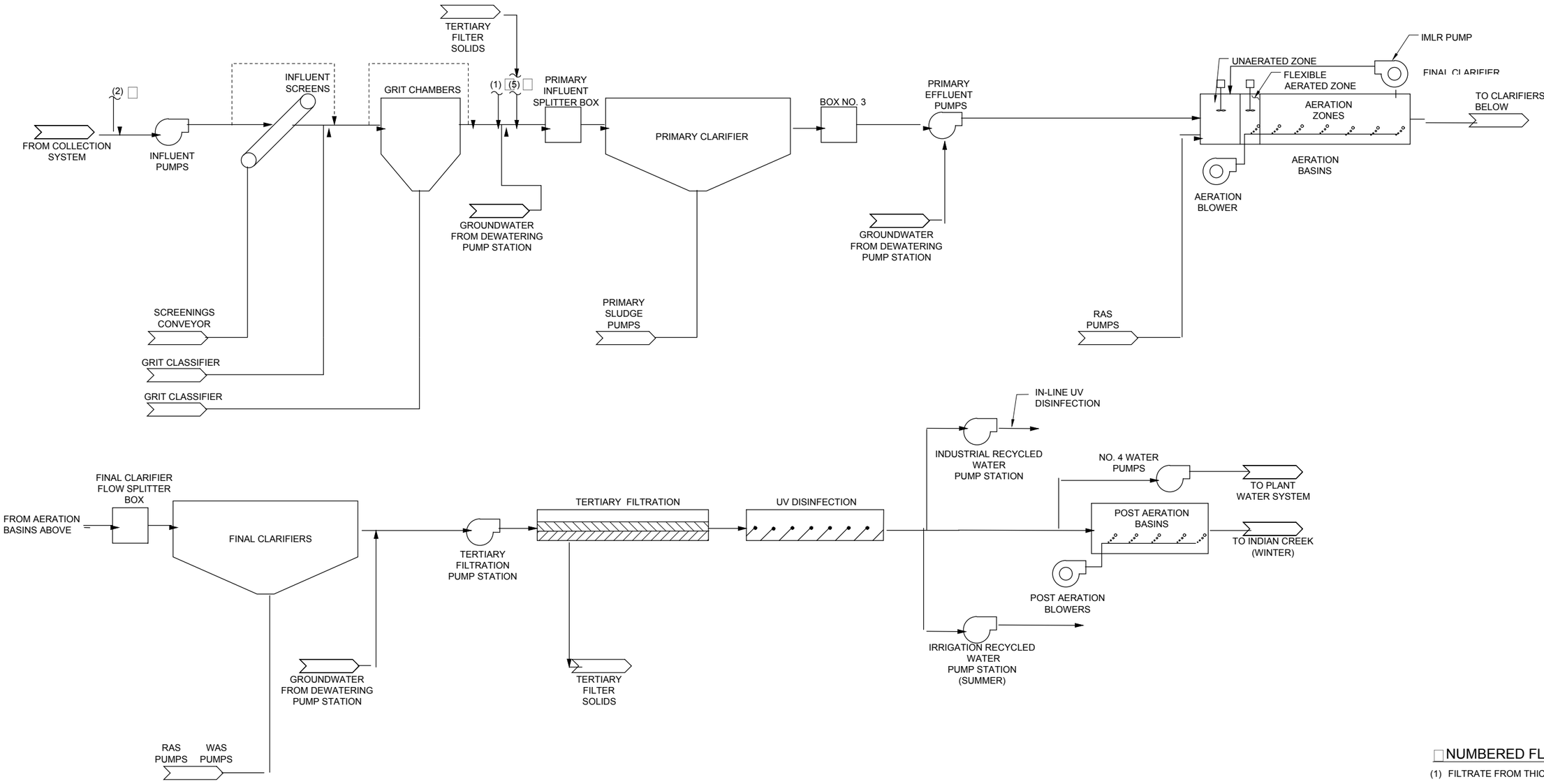
- NON-DISTRICT AREA
- ANDREWS DITCH CO
- BIG BEND IRRIGATION DISTRICT
- BLACK CANYON IRRIGATION DISTRICT
- BOISE-KUNA IRRIGATION DISTRICT
- CALDWELL IRRIGATION DISTRICT
- CANYON COUNTY WATER CO LTD
- CANYON DITCH CO
- CANYON HILL IRRIGATION DISTRICT
- EUREKA DITCH CO NO 2
- EUREKA WATER CO
- FARMERS COOPERATIVE DITCH CO
- FARMERS UNION DITCH CO LTD
- FRANKLIN DITCH CO
- GEM IRRIGATION DISTRICT
- GOLDEN GATE IRRIGATION DISTRICT
- HAAS DITCH COMPANY
- ISLAND HIGHLINE DITCH CO
- LOWER CENTERPOINT DITCH CO
- MC CONNEL ISLAND DITCH CO LTD
- MIDDLETON IRRIGATION ASSOCIATION
- MIDDLETON MILL DITCH CO
- NAMPA MERIDIAN IRRIGATION DISTRICT
- NEW YORK IRRIGATION DISTRICT
- OPALINE IRRIGATION DISTRICT
- PIONEER DIXIE DITCH COMPANY
- PIONEER IRRIGATION DISTRICT
- POOR BOY DITCH
- RIVER FLAT DITCH CO
- RIVERSIDE IRRIGATION DISTRICT, LTD
- SETTLERS IRRIGATION DISTRICT
- SIEDENBERG COOPERATIVE DITCH COMPANY
- THE RIVERSIDE IRRIGATION DISTRICT LTD
- UPPER CENTER POINT DITCH COMPANY
- WILDER IRRIGATION DISTRICT
- Federal_Land

CANYON COUNTY
1115 ALBANY ST
CALDWELL, ID 83605

Disclaimer: Canyon County makes no warranty with respect to the accuracy, completeness, or usefulness of these maps. Canyon County assumes no liability for direct, indirect, special, or consequential damages resulting from the use or misuse of these maps or any of the information contained herein. Portions may be copied for incidental uses, but may not be resold.

Source: Idaho Department of Water Resources

REVISED: OCTOBER 30TH, 2006 MLB



□NUMBERED FLOW STREAMS

(1) FILTRATE FROM THICKENING PROCESS.

(2) OVERFLOW FROM PRIMARY ANAEROBIC DIGESTERS.

(3) CENTRATE FROM DEWATERING PROCESS.

(4) DECANT FROM SLUDGE DRYING BEDS.

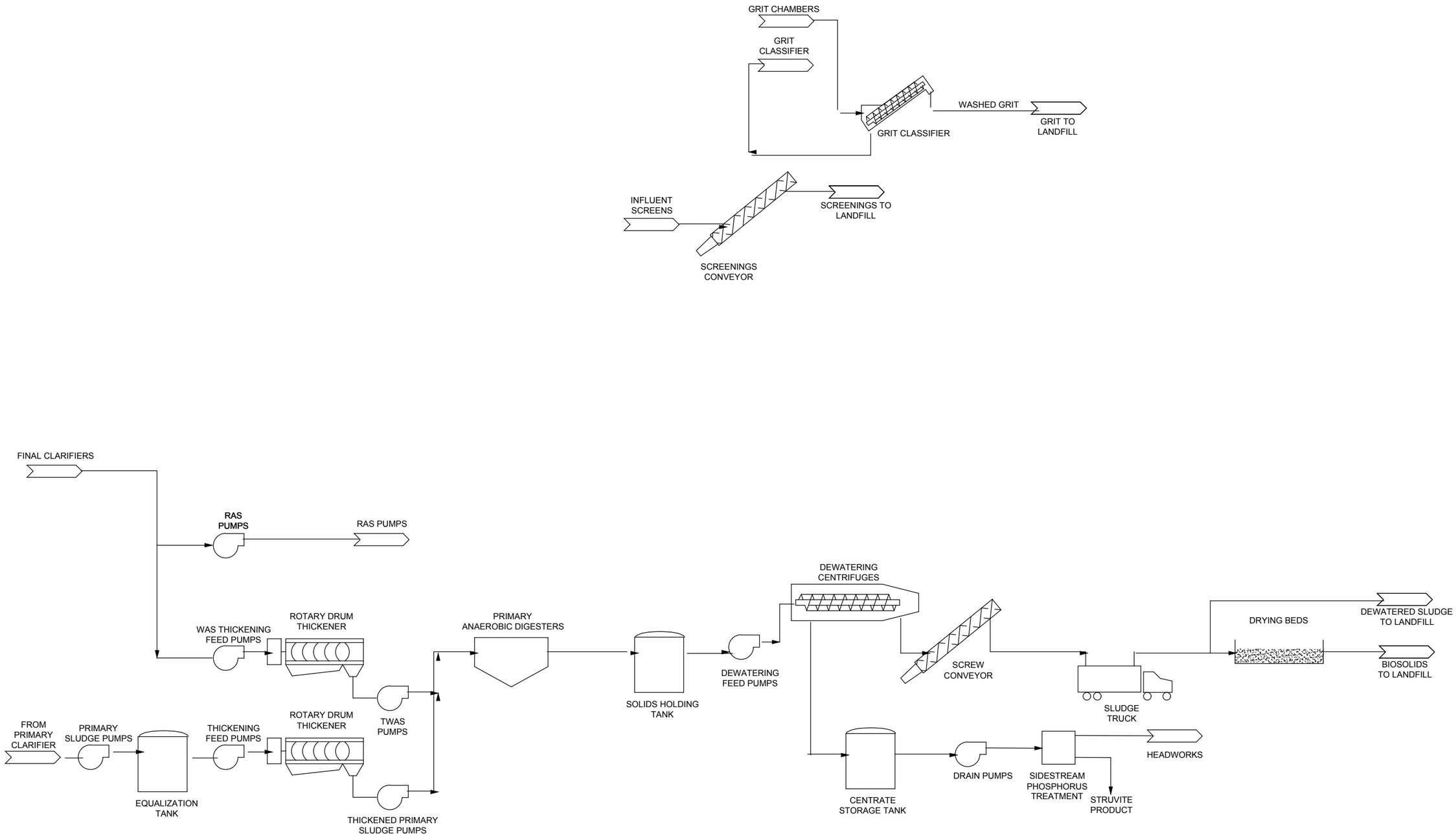
(5) FROM SIDE STREAM PHOSPHOROUS TREATMENT

Brown AND Caldwell

Figure 6. Nampa WWTP Liquid Stream process flow diagram

Client: City of Nampa
Date: 2-25-2019

00510



Brown AND Caldwell

Figure 7. Nampa WWTP Solid Stream process flow diagram

Client: City of Nampa
Date: 2-25-2019

00511

Figure 9 Attributes	
Number	Feature
1	Phyllis Canal crosses over Indian Creek [4]
2	Location of proposed recycled water discharge
3	PFE Pump (PID)
4	Delivery to 15.0 Lateral
5	Eagleroost PI pump station (Nampa)
6	Moss Point PI pump station (Nampa)
7	Crestwood PI pump station (Nampa)
8	Ashley Park PI pump station (Nampa)
9	PI pump station (Caldwell)
10	North Branch 15.0 Lateral current connections to Moses Drain [5]
11	South Branch 15.0 Lateral current connections to Moses Drain [5]
12	Horton Pump Station and delivery to Hatfield Lateral
13	Phyllis Canal crosses over the Elijah Drain [4]
14	Phyllis Canal crosses over the Joseph Drain [4]
15	Phyllis Canal crosses over the Isaiah Drain [4]
16	Orchard Heights PI pump station (Nampa)
17	Delivery to Stevens Lateral
18	Elijah Feeder
19	Elijah Feeder delivery to Notus Canal
20	Phyllis crosses over the Wilson Drain [4]
21	Delivery to Stone Lateral
22	Delivery to McCarthy Lateral
23	Phyllis Canal crosses over the Jonah Drain [4]
24	Phyllis Canal crosses over the Upper Embankment Drain [5]
25	Caldwell Canal Feeder
26	Caldwell Canal Feeder to Notus Canal and Caldwell Lowline Canal
27	Wilson Drain into Indian Creek
28	Phyllis Canal into Pipe Gulch Drain
29	Phyllis Canal delivery to 25.1 Lateral
30	Phyllis Canal route to Barnsley Gulch Drain [4]
31	Deer Flat Canal into Phyllis Canal
32	West End Drain into Riverside Canal

Notes

This table is a figure reference only. See Preliminary Technical Report Section 7.5.1 for full discussion.

[4] Pump and flood control location

[5] Connection to be removed as part of reuse project

[6] No plumbing connection

[7] Flood control location

Brown AND Caldwell

Figure 8. Conceptual Map of Flow through Pioneer Irrigation District Downstream of Recycled Water Discharge

Client: City of Nampa

Date: 2/25/2019

Path: Bcboi02\\bcboifp01\projects_Nampa, City of_Nampa WW Program\230 DEQ Negotiations\620 Reuse Permit Application\Permit Application\Application Figures\Maps.mxd

- City of Nampa Pressurized Irrigation pump station
- City of Caldwell Pressurized Irrigation pump station
- City of Nampa Drinking water well
- Flood Control Gate
- PID boundary

N

0 0.75 1.5 2.25 3 Miles

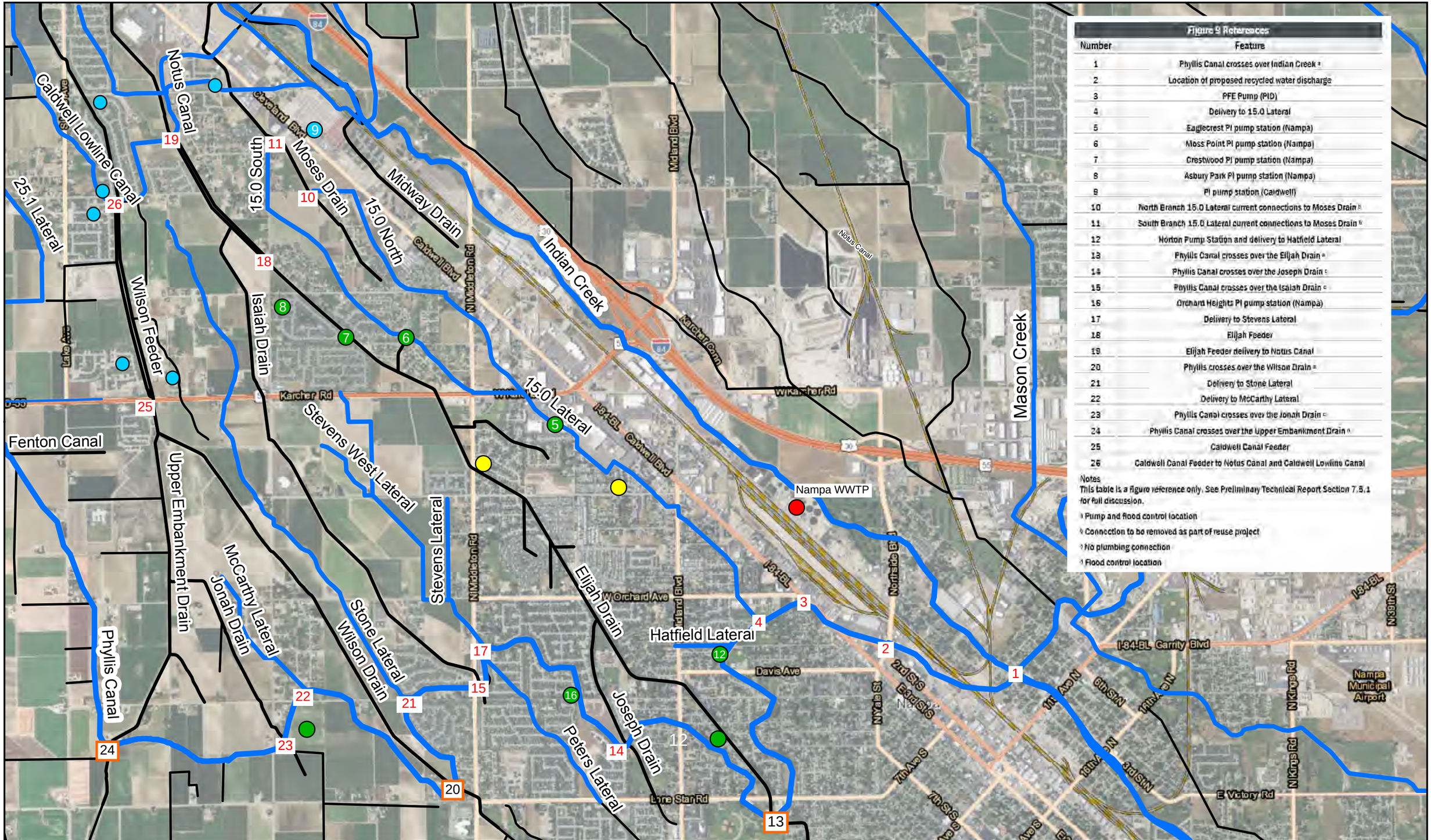


Figure 9 References	
Number	Feature
1	Phyllis Canal crosses over Indian Creek [a]
2	Location of proposed recycled water discharge
3	PFE Pump (PID)
4	Delivery to 15.0 Lateral
5	Eaglecrest PI pump station (Nampa)
6	Moss Point PI pump station (Nampa)
7	Crestwood PI pump station (Nampa)
8	Asbury Park PI pump station (Nampa)
9	PI pump station (Caldwell)
10	North Branch 15.0 Lateral current connections to Moses Drain [b]
11	South Branch 15.0 Lateral current connections to Moses Drain [b]
12	Norton Pump Station and delivery to Hatfield Lateral
13	Phyllis Canal crosses over the Elijah Drain [a]
14	Phyllis Canal crosses over the Joseph Drain [c]
15	Phyllis Canal crosses over the Isaiah Drain [c]
16	Orchard Heights PI pump station (Nampa)
17	Delivery to Stevens Lateral
18	Elijah Feeder
19	Elijah Feeder delivery to Notus Canal
20	Phyllis crosses over the Wilson Drain [a]
21	Delivery to Stone Lateral
22	Delivery to McCarthy Lateral
23	Phyllis Canal crosses over the Jonah Drain [c]
24	Phyllis Canal crosses over the Upper Embankment Drain [a]
25	Caldwell Canal Feeder
26	Caldwell Canal Feeder to Notus Canal and Caldwell Lowline Canal

Notes
This table is a figure reference only. See Preliminary Technical Report Section 7.5.1 for full discussion.

[a] Pump and flood control location

[b] Connection to be removed as part of reuse project

[c] No plumbing connection

[d] Flood control location

Brown AND Caldwell

Figure 9. Conceptual Map of Flow through Pioneer Irrigation District Downstream of Recycled Water Discharge: Focus on upper portion of Area of Analysis

Client: City of Nampa Date: 2/25/2019

Path: Bcboi02\\bcboifp01\projects_Nampa, City of_Nampa WW Program\230 DEQ Negotiations\620 Reuse Permit Application\Permit Application\Application Figures\Maps.mxd

City of Nampa Pressurized Irrigation pump station

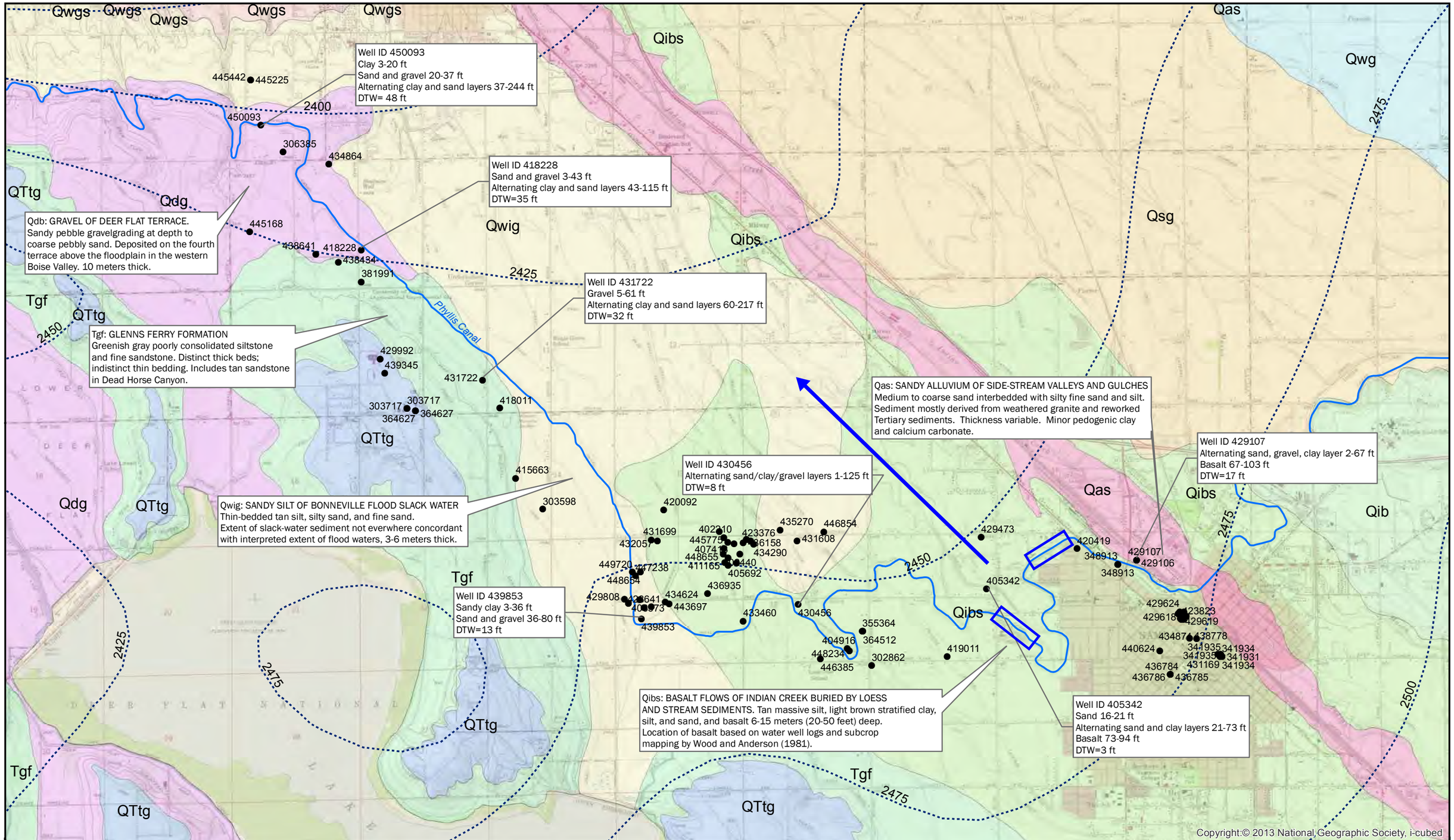
City of Caldwell Pressurized Irrigation pump station

City of Nampa Drinking water well

20 Flood Control Gate

N

0 0.35 0.7 1.05 1.4 Miles



Brown AND Caldwell

Figure 10. Local Geology and Groundwater Wells

Client: City of Nampa
Date: 2-25-2019

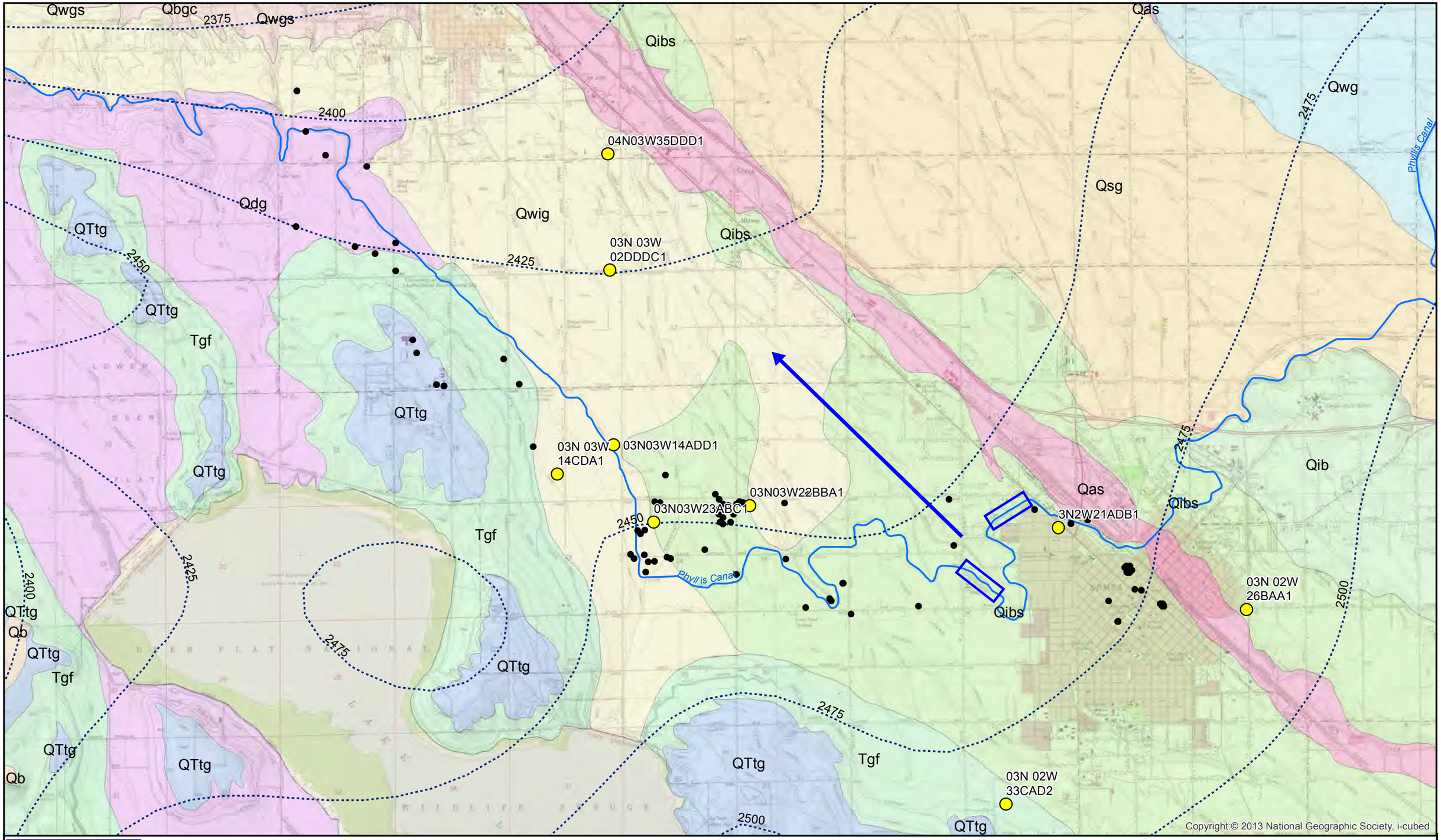
Path: Bcboi02\G:\PROJECTS\City_of_Nampa\FY19 Program Management 152745\Geology and Wells_11x17L_v105.mxd

- Wells (IDWR)
- Groundwater model domain
- Groundwater flow direction
- Phyllis Canal
- Groundwater contours

0 0.25 0.5 1 1.5 2 Miles

N

00514



Brown AND Caldwell

Figure 11. EDMS Wells

Client: City of Nampa

Date: 2-25-2019

EDMS Wells

Wells (IDWR)

Phyllis Canal

Groundwater contours

Groundwater model domain

Groundwater flow direction

0 0.275 0.55 1.1 1.65 2.2 Miles

N

00515

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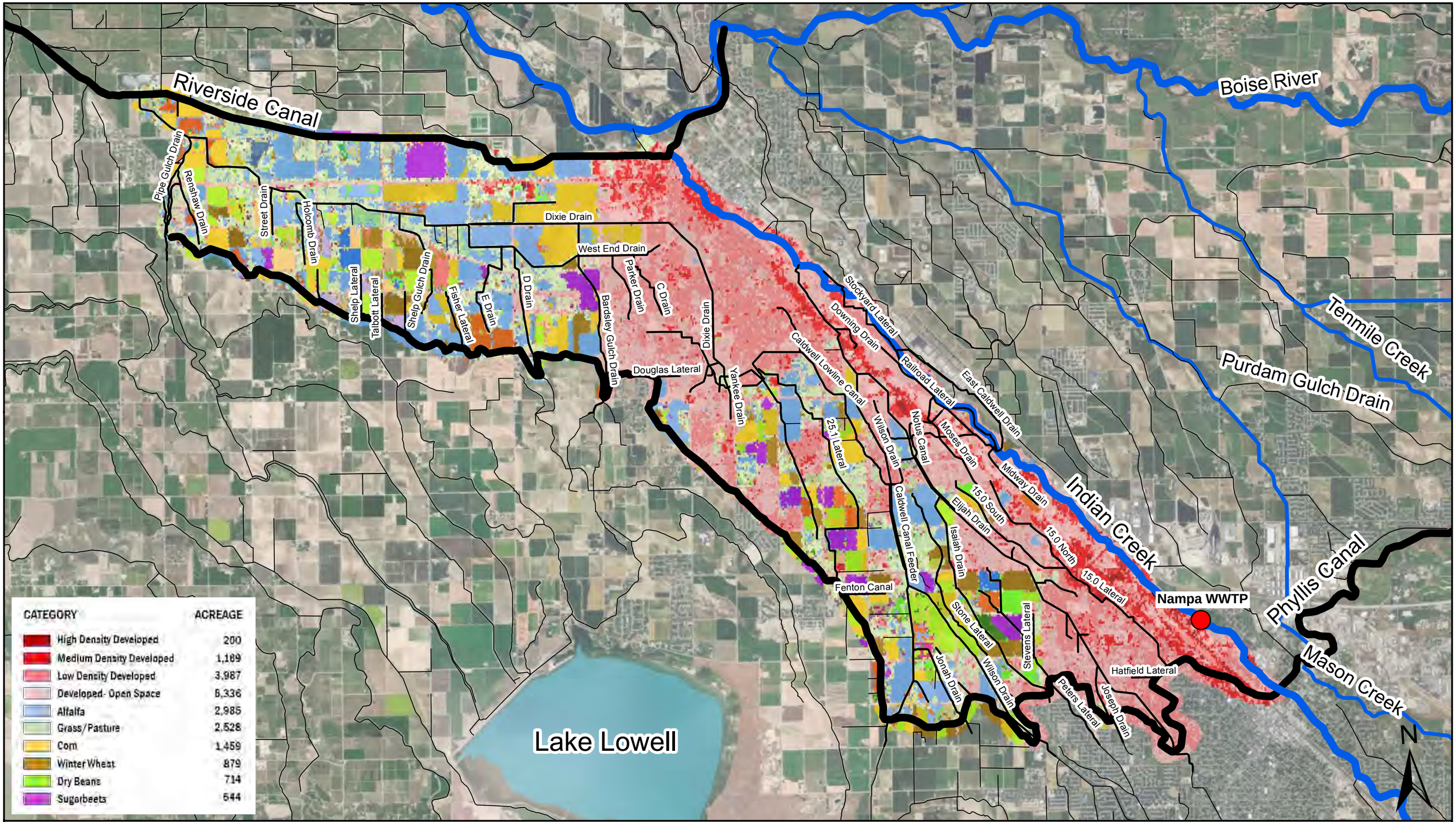


Brown AND Caldwell

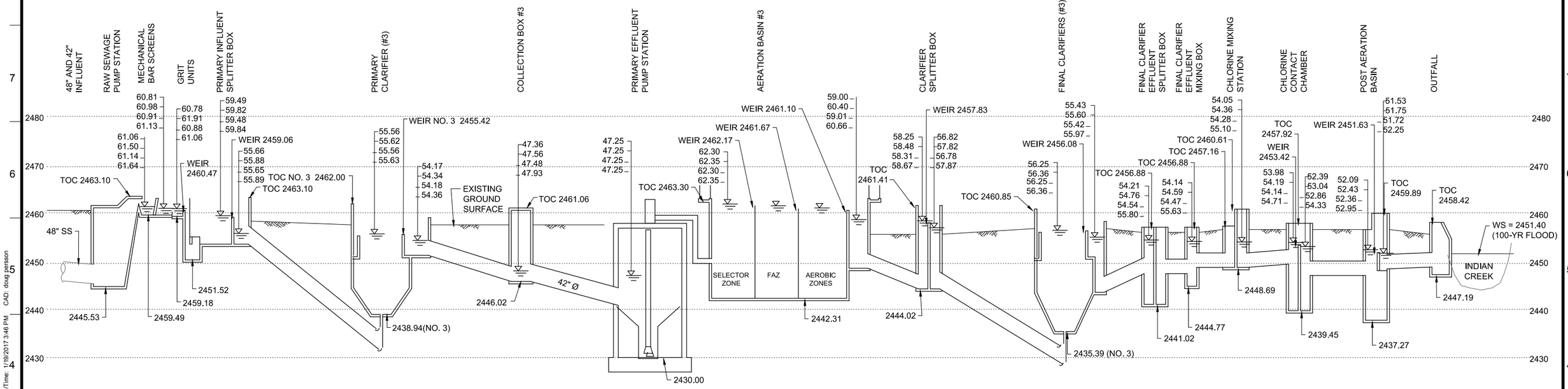
Figure 12. Crop Coverage and Land Use map: Area of Analysis

Client: City of Nampa
Date: 2-25-2019

Path: Bcboi02\\bcboifp01\projects_Nampa, City of_Nampa WW Program\230 DEQ Negotiations\620 Reuse Permit Application\Permit Application\Application Figures\Maps.mxd

GENERAL NOTES:

1. ELEVATIONS ARE BASED ON THE INDIAN CREEK 100-YR FLOOD LEVEL.
2. ALL ELEVATIONS REFERENCED TO NAVD88 VERTICAL DATUM.



HYDRAULIC PROFILE
SCALE: HORIZ NO SCALE, VERT 1" = 10'

HYDRAULIC PROFILE SCENARIOS:

PLANT INFLUENT FLOWS

- XX.XX 12 MGD - FIRM CAPACITY
- XX.XX 20 MGD - FIRM CAPACITY
- XX.XX 18 MGD - TOTAL CAPACITY
- XX.XX 31 MGD - TOTAL CAPACITY

	UNITS ONLINE/TOTAL UNITS								
PLANT OPERATION	SCREENS	GRIT CHAMBERS	PCs	TFs	SCs	ABs	FCs	CCTs	PAB
FIRM CAPACITY	2/3	2/2	2/3	1/2	1/1	2/3	2/3	2/2	2/2
TOTAL CAPACITY	3/3	2/2	3/3	1/2	1/1	3/3	3/3	2/2	2/2

Figure 13. WWTP Treatment Process Hydraulic Profile

Client: City of Nampa
Date: 2-19-2019

00517

Appendix A: NPDES Permit

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
WATER AND
WATERSHEDS

SEP 2 0 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Michael Fuss
Public Works Director
City of Nampa
411 3rd Street South
Nampa, ID 83651

Re: City of Nampa Wastewater Treatment Plant
NPDES Permit No.: ID0022063

Dear Mr. Fuss:

We are reissuing a National Pollutant Discharge Elimination System (NPDES) permit for City of Nampa Wastewater Treatment Plant. The enclosed document authorizes the facility to discharge to Indian Creek. Also enclosed is the U.S. Environmental Protection Agency's response to the comments received on the draft permit during the public notice period.

This letter serves as service of notice under 40 CFR §124.19(a). The service of notice date for this permit, in accordance with 40 CFR §124.19(a) and 40 CFR 124.20, is September 29, 2016. The permit will become effective on the date indicated in the permit unless a timely appeal meeting the requirements of 40 CFR §124.19 is received by the EAB. Information about the administrative appeal process may be obtained on-line at http://www.epa.gov/eab or by contacting the Clerk of the EAB at (202) 233-0122.

Sincerely,

Daniel D. Opalski, Director
Office of Water and Watersheds

Enclosures

cc: Mr. Aaron Scheff, Regional Administrator, Idaho Department of Environmental Quality, Boise Regional Office
Ms. Kati Carberry, Idaho Department of Environmental Quality, Boise Regional Office
Mr. Justin Hayes, Idaho Conservation League
Ms. Liz Paul, Idaho Rivers United
Mr. Steve Burgos, City of Boise

RECEIVED
SEP 26 2016
BY: dm

00519

United States Environmental Protection Agency
Region 10
1200 Sixth Avenue Suite 900
Seattle, Washington 98101-3140

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 *et seq.*, as amended by the Water Quality Act of 1987, P.L. 100-4, the "Act",

City of Nampa
Wastewater Treatment Facility
340 West Railroad Street
Nampa, ID 83687

is authorized to discharge from the wastewater treatment plant located in Nampa, Idaho, at the following location(s):

Outfall	Receiving Water	Latitude	Longitude
001	Indian Creek	43° 35' 50" N	116° 34' 52" W

in accordance with discharge point(s), effluent limitations, monitoring requirements and other conditions set forth herein.

This permit shall become effective November 1, 2016.

This permit and the authorization to discharge shall expire at midnight, October 31, 2021.

The permittee shall reapply for a permit reissuance on or before May 4, 2021 if the permittee intends to continue operations and discharges at the facility beyond the term of this permit.

Signed this 20th day of September, 2016.

Daniel D. Opalski, Director
Office of Water and Watersheds

00521

Schedule of Submissions

The following is a summary of some of the items the permittee must complete and/or submit to EPA during the term of this permit:

Item	Due Date
1. Discharge Monitoring Reports (DMR)	DMRs are due monthly and must be submitted on or before the 20th day of the month following the monitoring month (see III.B).
2. Quality Assurance Plan (QAP)	The permittee must provide EPA and IDEQ with written notification that the Plan has been developed and implemented by January 31, 2017 (see II.C). The Plan must be kept on site and made available to EPA and IDEQ upon request.
3. Operation and Maintenance (O&M) Plan	The permittee must provide EPA and IDEQ with written notification that the Plan has been developed and implemented by January 31, 2017 (see II.B). The Plan must be kept on site and made available to EPA and IDEQ upon request.
4. NPDES Application Renewal	The application must be submitted by May 4, 2021 (see V.B).
5. Compliance Schedule	Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date (see III.K).
6. Twenty-Four Hour Notice of Noncompliance Reporting	The permittee must report certain occurrences of noncompliance by telephone within 24 hours from the time the permittee becomes aware of the circumstances. (See III.G and I.B.2).
7. Local Limits Evaluation	By October 31, 2017, the permittee must submit to EPA a complete local limits evaluation pursuant to 40 CFR 403.5(c)(1) (See II.A.5).
8. Annual Pretreatment Report	The Report must be submitted to the pretreatment coordinator no later than November 1st of each calendar year (See II.A.9).
9. Emergency Response and Public Notification Plan	The permittee must develop and implement an overflow emergency response and public notification plan. The permittee must submit written notice to EPA and IDEQ that the plan has been developed and implemented by April 30, 2017 (See II.D).
10. Mercury Minimization Plan	Written notice must be submitted to the EPA and the IDEQ that the plan has been developed and implemented by April 30, 2017 (See I.F).

Table of Contents

I. Limitations and Monitoring Requirements

A. Discharge Authorization

During the effective period of this permit, the permittee is authorized to discharge pollutants from the outfalls specified herein to Indian Creek, within the limits and subject to the conditions set forth herein. This permit authorizes the discharge of only those pollutants resulting from facility processes, waste streams, and operations that have been clearly identified in the permit application process.

B. Effluent Limitations and Monitoring

1. The permittee must limit and monitor discharges from outfall 001 as specified in Table 1, below. All figures represent maximum effluent limits unless otherwise indicated. The permittee must comply with the effluent limits in the tables at all times unless otherwise indicated, regardless of the frequency of monitoring or reporting required by other provisions of this permit.

Table 1: Effluent Limitations and Monitoring Requirements

Parameter	Units	Effluent Limitations			Monitoring Requirements		
		Average Monthly Limit	Average Weekly Limit	Maximum Daily Limit	Sample Location	Sample Frequency	Sample Type
Flow	mgd	Report	—	Report	Effluent	continuous	recording
Temperature Until 1 October 31, 2017.	°C	—	Report	Report	Effluent	5/week[11]	grab[11]
Temperature[4,7,8] After November 1, 2017. (July – September)	°C	See Table 2 and Notes 7 and 8.			Effluent	continuous	recording
Temperature[7,8] After November 1, 2017. (October – June)	°C	See Notes 7 and 8.			Effluent	continuous	recording
Biochemical Oxygen Demand (BOD_5)	mg/L	30	45	—	Influent and Effluent	1/week	24-hr. comp.
	lb/day	4504	6755	—	Effluent		calculation
	% removal	85% (minimum)	—	—	% removal	1/month	calculation
Total Suspended Solids (TSS)	mg/L	30	45	—	Influent and Effluent	2/week	24-hr. comp.
	mg/L	4-month rolling average: 17.5					
	lb/day	4503	6755	—	Effluent		calculation
	lb/day	4-month rolling average: 2,629 lb/day					
	% removal	85% (minimum)	—	—	% removal	1/month	calculation
pH[10]	s.u.	6.5 – 9.0 at all times			Effluent	5/week	grab
E. Coli Bacteria[1,2]	#/100 ml	126 (geometric mean)	—	576 (instantaneous max.)	Effluent	10/month	grab
Phosphorus, Total as P[4] (May – September)	µg/L	Report	Report	—	Effluent	2/week	24-hr. comp.
	lb/day	15	Report	—			calculation
Phosphorus, Total as P[4] (October – April)	µg/L	Report	Report	—	Effluent	2/week	24-hr. comp.
	lb/day	52.6	Report	—			calculation
Phosphorus, Soluble Reactive (Year-Round)	mg/L	Report	Report	—	Effluent	1/month	24-hr. comp.

Table 1: Effluent Limitations and Monitoring Requirements							
		Effluent Limitations			Monitoring Requirements		
Parameter	Units	Average Monthly Limit	Average Weekly Limit	Maximum Daily Limit	Sample Location	Sample Frequency	Sample Type
Phosphorus, Total as P (Year-Round)	mg/L	Report	Report	—	Influent	1/month	24-hr. comp.
Ammonia, Total as N[2] (March – November)	mg/L	1.31	—	4.92	Effluent	2/week	24-hr. comp.
	lb/day	197	—	739			calculation
Ammonia, Total as N[2] (December – February)	mg/L	1.41	—	5.31	Effluent	2/week	24-hr. comp.
	lb/day	212	—	797			calculation
Chlorine, Total Residual[6] (March – November)	µg/L	9.2	—	18	Effluent	5/week	grab
	lb/day	1.4	—	2.7			calculation
Chlorine, Total Residual[6] (December – February)	µg/L	9.6	—	19	Effluent	5/week	grab
	lb/day	1.4	—	2.9			calculation
Copper, Total Recoverable[2,4] (April – October)	µg/L	10.7	—	23.1	Effluent	1/month	24-hr. comp.
	lb/day	1.61	—	3.47			calculation
Copper, Total Recoverable[2,4] (November – March)	µg/L	17.8	—	38.5	Effluent	1/month	24-hr. comp.
	lb/day	2.67	—	5.78			calculation
Copper, Total Recoverable (Year-Round)	µg/L	Report	—	Report	Influent	2/year[3]	24-hr. comp.
Cyanide, Weak Acid Dissociable[2,9] (March – November)	µg/L	4.75	—	9.53	Effluent	1/month	See I.B.8.
	lb/day	0.713	—	1.43			calculation
Cyanide, Weak Acid Dissociable[2,9] (December – February)	µg/L	4.96	—	9.96	Effluent	1/month	See I.B.8.
	lb/day	0.745	—	1.50			calculation
Cyanide, Weak Acid Dissociable (Year-Round)	µg/L	Report	—	Report	Influent	2/year[3]	See I.B.8.
Dissolved Oxygen	mg/L	6.0 minimum			Effluent	5/week	grab
	% sat.	90% minimum	80% min.	—		5/week	calculation
Mercury, Total Recoverable[2,4] (March – November)	µg/L	0.011	—	0.022	Effluent	1/month	24-hr. comp.
	lb/day	0.0017	—	0.0033			calculation
Mercury, Total Recoverable[2,4] (December – February)	µg/L	0.011	—	0.023	Effluent	1/month	24-hr. comp.
	lb/day	0.0017	—	0.0035			calculation
Floating, suspended or submerged matter	—	See Part I.B.3.				1/month	Visual observation
Mercury, Total (Year-Round)	µg/L	Report	—	Report	Influent	1/month	24-hr. comp.
Nitrate + Nitrite	mg/L	Report	—	Report	Effluent	1/month	24-hr. comp.
Total Kjeldahl Nitrogen	mg/L	Report	—	Report	Effluent	1/month	24-hr. comp.
Arsenic, Total Recoverable	µg/L	Report	—	Report	Influent & Effluent	2/year[3,12]	24-hr. comp.
Cadmium, Total Recoverable	µg/L	Report	—	Report	Influent & Effluent	2/year[3]	24-hr. comp.
Chromium, Total Recoverable	µg/L	Report	—	Report	Influent & Effluent	2/year[3]	24-hr. comp.
Chromium VI, Dissolved	µg/L	Report	—	Report	Influent, & Effluent	2/year[3,12]	24-hr. comp.
Conductivity[10]	µmhos/cm	Report	—	Report	Effluent	1/month	24-hr. comp.
Dissolved Organic Carbon (DOC)[10]	mg/L	Report	—	Report	Effluent	1/month	24-hr. comp.

Table 1: Effluent Limitations and Monitoring Requirements

Parameter	Units	Effluent Limitations			Monitoring Requirements		
		Average Monthly Limit	Average Weekly Limit	Maximum Daily Limit	Sample Location	Sample Frequency	Sample Type
Hardness, Total[10]	mg/L as $CaCO_3$	Report	—	Report	Effluent	1/month	24-hr. comp.
Lead, Total Recoverable	µg/L	Report	—	Report	Influent & Effluent	2/year[3]	24-hr. comp.
Molybdenum, Total Recoverable	µg/L	Report	—	Report	Influent & Effluent	2/year[3,12]	24-hr. comp.
Nickel, Total Recoverable	µg/L	Report	—	Report	Influent & Effluent	2/year[3]	24-hr. comp.
Selenium, Total Recoverable	µg/L	Report	—	Report	Influent & Effluent	2/year[3]	24-hr. comp.
Silver, Total Recoverable	µg/L	Report	—	Report	Influent & Effluent	2/year[3]	24-hr. comp.
Whole Effluent Toxicity	TU_c	Report	—	Report	Effluent	2/year[5]	24-hr. comp.
Zinc, Total Recoverable	µg/L	Report	—	Report	Influent & Effluent	2/year[3]	24-hr. comp.
NPDES Application Form 2A Expanded Effluent Testing	—	See I.B.9.			Effluent	3x/5 years	—

1. The average monthly E. Coli bacteria counts must not exceed a geometric mean of 126/100 ml based on samples taken every 3-7 days within a calendar month. See Part V for a definition of geometric mean.
2. Reporting is required within 24 hours from the time the permittee becomes aware of a maximum daily limit or instantaneous maximum limit violation. See Parts I.B.2 and III.G.
3. Sampling must be conducted twice per year, once during the period from April 1 through October 31, and once during the period from November 1 through March 31 each year. For each twice-per-year sampling event, the permittee must collect three 24-hour composite samples within a calendar week. The permittee must report the results of sampling for these parameters on the March and October DMRs and in the pretreatment annual report required by Part II.A.9 of this permit.
4. These effluent limits are subject to a compliance schedule. See I.C.
5. Sampling must take place at least once during each of the following seasons: December – February and March – November. See I.D.
6. See I.B.10.
7. Temperature data must be recorded using micro-recording temperature devices known as thermistors. Set the recording device to record at one-hour intervals. Report the following temperature monitoring data on the DMR: monthly instantaneous maximum, maximum daily average, seven-day running average of the daily instantaneous maximum.
8. Use the temperature device manufacturer's software to generate (export) a spreadsheet or text file. The file must be submitted monthly to the EPA as an electronic attachment to the City's DMRs (see Part III.B.1.b.). The files for the previous monitoring year must also be submitted annually to IDEQ by January 31. The placement logs must be submitted annually to the EPA and IDEQ by January 31 for the previous monitoring year. The placement logs should include the following information for both thermistor deployment and retrieval: date, time, temperature device manufacturer ID, location, depth, whether it measured air or water temperature, and any other details that may explain data anomalies.
9. See I.B.11.
10. Samples for dissolved organic carbon, pH, hardness, conductivity and copper must be collected on the same day.
11. Grab samples for temperature must be taken between 4:00 PM and 6:00 PM.
12. Sampling must begin by September 30, 2017.

Table 2: Effluent Limits for Temperature			
Season	**Units**	**Maximum Daily Limit[1]**	**Instantaneous Maximum Limit**
July[2]	°C	19.0	—
August[2]	°C	19.0	22.8
September[2]	°C	19.7	—
1. The maximum daily limit is the highest allowable average temperature measured over a calendar day or any 24-hour period that reasonably represents the calendar day for the purposes of sampling. 2. These effluent limits are subject to a compliance schedule. See I.C.			

2. The permittee must report within 24 hours from the time the permittee becomes aware of any violation of the maximum daily or instantaneous maximum limits for the following pollutants: Total ammonia as N, total recoverable copper, weak acid dissociable cyanide, total recoverable mercury, and E. coli. Violations of all other effluent limits are to be reported at the time that discharge monitoring reports are submitted (See III.B. and III.H.).
3. Narrative limitations for floating, suspended or submerged matter:
   a) The permittee must not discharge floating, suspended, or submerged matter of any kind in amounts causing nuisance or objectionable conditions or that may impair designated beneficial uses of the receiving water.
   b) The permittee must observe the surface of the receiving water in the vicinity of where the effluent enters the surface water. The permittee must maintain a written log of the observation which includes the date, time, observer, and whether there is presence of floating, suspended or submerged matter. The log must be retained and made available to EPA or IDEQ upon request. The log must note, as a binary, yes/no response, whether there is presence of floating, suspended or submerged matter and include a photograph taken at the time of observation.
4. Removal Requirements for BOD_5 and TSS: The monthly average effluent concentration must not exceed 15 percent of the monthly average influent concentration. Percent removal of BOD_5 and TSS must be reported on the Discharge Monitoring Reports (DMRs). For each parameter, the monthly average percent removal must be calculated from the arithmetic mean of the influent values and the arithmetic mean of the effluent values for that month. Influent and effluent samples must be taken over approximately the same time period.
5. The permittee must collect effluent samples from the effluent stream after the last treatment unit prior to discharge into the receiving waters.
6. For all effluent monitoring, the permittee must use sufficiently sensitive analytical methods which meet the following:
   a) Parameters with an effluent limit: The method must achieve a minimum level (ML) less than the effluent limitation unless otherwise specified in Table 1 Effluent Limitations and Monitoring Requirements.
   b) Parameters that do not have an effluent limit.

(i) The permittee must use a method that detects and quantifies the level of the pollutant, or

(ii) The permittee must use a method that can achieve a maximum ML less than or equal to those specified in *Appendix A. Minimum Levels*.

c) For parameters that do not have an effluent limit, the permittee may request different MLs. The request must be in writing and must be approved by EPA.

d) See also Part III.C *Monitoring Procedures*.

7. For purposes of calculating monthly averages, except for E. coli, zero may be assigned for values less than the MDL, and the {numeric value of the MDL} may be assigned for values between the MDL and the ML. If the average value is less than the MDL, the permittee must report "less than {numeric value of the MDL}" and if the average value is less than the ML, the permittee must report "less than {numeric value of the ML}." If a value is equal to or greater than the ML, the permittee must report and use the actual value. The resulting average value must be compared to the compliance level, the ML, in assessing compliance.

8. Influent and effluent sampling for cyanide must be conducted as follows. Eight discrete grab samples must be collected over a 24-hour day. Each grab sample must be at least 100 ml. Prior to compositing, any interferences must be removed or suppressed and the individual grab samples must be preserved as specified in Table II of 40 CFR 136.3. The grab samples can then be composited into a larger container to allow for one analysis for the day. The composited sample must also be preserved as specified in Table II of 40 CFR 136.3.

9. The permittee must perform the effluent testing required by Part D of NPDES application Form 2A (EPA Form 3510-2A, revised 1-99). The permittee must submit the results of this testing with its application for renewal of this NPDES permit. To the extent that effluent monitoring required by other conditions of this permit satisfies this requirement, these samples may be used to satisfy the requirements of this paragraph.

10. The effluent limits for total residual chlorine are not quantifiable using EPA approved analytical methods. EPA will use the Minimum Level (ML) as the compliance evaluation level for total residual chlorine. The permittee will be compliant with the total residual chlorine limitations if the average monthly and maximum daily chlorine concentrations and mass loadings are less than specified below:

a) Until 1 year after the effective date of the final permit: The permittee will be compliant with the total residual chlorine limitations if the average monthly and maximum daily chlorine concentrations are less than 100 µg/L and the average monthly and maximum daily mass discharges of chlorine are less than 15 lb/day

b) After 1 year after the effective date of the final permit: The permittee will be compliant with the total residual chlorine limitations if the average monthly and maximum daily chlorine concentrations are less than 50 µg/L and the

average monthly and maximum daily mass discharges of chlorine are less than 7.5 lb/day.

11. The effluent limits for weak acid dissociable cyanide are not quantifiable using EPA approved analytical methods. EPA will use 10 µg/L (the Minimum Level) as the compliance evaluation level for weak acid dissociable cyanide. The permittee will be compliant with the weak acid dissociable cyanide limitations if the average monthly and maximum daily weak acid dissociable cyanide concentrations are less than 10 µg/L and the average monthly and maximum daily mass discharges of weak acid dissociable cyanide are less than 1.5 lb/day.

C. Schedules of Compliance

1. The permittee must comply with all effluent limitations and monitoring requirements in Part I.B beginning on the effective date of this permit, except those for which a compliance schedule is specified in Part I.C.2.
2. A schedule of compliance is authorized only for the following effluent limits:
   a) Total recoverable mercury
   b) Total phosphorus
   c) Total recoverable copper
   d) Temperature
3. While the schedules of compliance are in effect, the City of Nampa must comply with the following interim requirements:
   a) Monitoring requirements in Part I.B.
   b) Until compliance with the final effluent limitations is achieved, the permittee must complete the tasks listed in Table 3.
   c) For TP and mercury, the permittee must comply with the interim effluent limitations in Table 4.
   d) The Permittee must submit an annual progress report outlining overall progress made toward reaching the final compliance dates for TP, temperature, mercury, and copper. The annual report of progress must be submitted to DEQ and EPA by December 31st of each year. The first report is due December 31, 2016, and annually thereafter until compliance with the final effluent limits is achieved. At a minimum, the annual progress report must include:
      (i) An assessment of the previous year's TP, temperature, mercury and copper data and comparison to the final effluent limitations in the Permit.
      (ii) A description of progress made towards meeting the final effluent limitations, including the applicable deliverables required under the tasks in Table 3 and parts I.C.3.d and I.C.3.e, below. Include any exceedances of interim Permit limits or anticipated challenges for

compliance within the next year. This may include a technological explanation and/or a request to modify the Permit.

(iii) Further actions and milestones targeted for the upcoming year.

Table 3: Tasks Required Under the Schedules of Compliance for TP, Temperature, Mercury and Copper

Task No.	Deadline	Task Activity and Deliverable
1	December 31, 2016 and annually thereafter	Report of Progress: The Permittee must submit an annual progress report outlining the overall progress made toward reaching the final compliance dates for TP, temperature, mercury, and copper. Deliverable: The annual report of progress must be submitted to DEQ and EPA by December 31st of each year. The first report is due December 31, 2016, and annually thereafter until compliance with the final effluent limits is achieved.
2	December 31, 2019	Wastewater Facility Upgrades: Phase I Upgrades include the following: • Modifications and additions to the existing secondary treatment system such that it is capable of biological phosphorus removal. • Installation of a new Primary Effluent Pump Station. • New Primary Anaerobic Digester. • New Solids Handling Facility with rotary drum thickeners and dewatering • centrifuges Deliverable: The permittee must submit by December 31, 2019 a written notice to DEQ and EPA stating that the applicable modifications are constructed and operational.
3	May 1, 2020	Achieve May-September TP interim limit not to exceed 0.5 mg/L (monthly average).
4	October 1, 2020	Achieve October-April TP interim limit not to exceed 1.5 mg/L (seasonal average).
5	See Below	Evaluate options available to achieve final effluent limitations including, but not limited to, treatment plant upgrades, effluent trading projects, seasonal re-use, and infiltration.
5A	December 31, 2020	Deliverable: No later than December 31, 2020, the permittee must submit to EPA and DEQ written notice of its decision on the final option that will be used to achieve the final effluent limits for TP, mercury and copper.
5B:	December 31, 2022	Deliverable: No later than December 31, 2022, the permittee must provide, in writing, to DEQ and EPA, a preliminary schedule of design upgrades and a preliminary construction schedule that will be used to achieve compliance with the final limits.

Table 3: Tasks Required Under the Schedules of Compliance for TP, Temperature, Mercury and Copper

Task No.	Deadline	Task Activity and Deliverable
6	September 30, 2026	Implement selected option(s) to achieve final effluent limitations for TP, mercury and copper. Dependent on the option(s) selected, tasks will include: • Securing funds for treatment facility upgrades. • Submission of a final schedule of design upgrades. • Submission to IDEQ and approval by IDEQ of final engineering plan. • Completion of construction. • Commissioning of facility upgrades. • Submission and approval of an alternative mitigation plan. • Implementation of alternative mitigation plan.
7	September 30, 2026	No later than August 31, 2026, the permittee must be in compliance with the final TP, mercury and copper effluent limits. The permittee must notify DEQ and EPA in writing when the final effluent limit is achieved.
8	September 30, 2031	No later than August 31, 2031, the permittee must be in compliance with the final temperature effluent limits. The permittee must notify DEQ and EPA in writing when the final effluent limit is achieved.

Table 4: Interim Effluent Limitations and Schedule for TP and Mercury

Parameter	Unit	Average Monthly Limit	Maximum Daily Limit	Season	Period
Phosphorus, Total as P	mg/L	Seasonal Average Limit[1,2]: 6.4		May 1 – September 30	Until September 30, 2019
	lb/day	Seasonal Average Limit[1,2]: 961			
	mg/L	0.50	—	May 1 – September 30	May 1, 2020 until final limit is achieved.
	lb/day	75	—		
	mg/L	Seasonal Average Limit[1,2]: 1.5		October 1 – April 30	October 1, 2020 until final limit is achieved.
	lb/day	Seasonal Average Limit[1,2]: 225			
Mercury, Total	µg/L	0.024	—	Year-round	Until September 30, 2026.
	lb/day	0.0036	—		

Notes:
1. The seasonal average total phosphorus concentration and load must be calculated as the sum of all daily discharges measured for total phosphorus during the listed season, divided by the number of daily discharges measured for total phosphorus during that season.
2. The seasonal average total phosphorus concentrations and loads must be reported on the DMRs for the last months of the corresponding seasons.

e) Additional Compliance Schedule Tasks for Temperature: The permittee must comply with the following Compliance Schedule requirements for temperature and complete the tasks and reports described below:

(i) No later than December 31, 2017 submit written notice to EPA and DEQ that it has permanently taken out of service one of the existing trickling filters at the Nampa WWTP.

(ii) Within fifteen months of the completion of the Phase I Upgrades, complete collection of one year of continuous temperature monitoring data and submit a report to DEQ and EPA including an evaluation of the effect of removal of one trickling filter and Phase 1 upgrades on effluent temperature.

(iii) No later than December 31, 2023, complete and submit to EPA and DEQ an evaluation of alternatives that the City may use to achieve the final temperature effluent limits. The evaluation should at a minimum consider: facility improvements, removal of trickling filters, alternative discharge locations, re-use of effluent and possible trading mechanisms such as offsite mitigation, including wetland and habitat restoration.

(iv) Starting in 2024, and continuing until final effluent limits are achieved, the permittee must submit a Report of Progress to EPA and DEQ detailing the evaluation of each available option, progress made toward achieving the final effluent limitation, and the series of actions that will be taken in the coming year. The Reports must be submitted by December 31st of each year.

(v) No later than June 30, 2025, the City must provide DEQ and EPA with a preliminary schedule of design upgrades and preliminary construction schedules for any additional treatment that will be used to achieve compliance with the final temperature effluent limits.

(vi) No later than June 30, 2026 the City must complete the preliminary design of any planned facility upgrades and/or a preliminary plan and schedule for an alternative temperature mitigation approach, which will address the City's effluent temperature limit. The preliminary design and/or plan will select the specific technology/technologies/activities to be used to meet the effluent temperature limits based on the previously completed alternatives evaluation.

(vii) No later than December 31, 2027, the City must complete and receive DEQ approval of the final design of any facility upgrades and/or alternative temperature mitigation plan to address the effluent temperature limits.

(viii) No later than December 31, 2029, the City must submit written notification to EPA and DEQ that it has completed construction of the facility upgrades at the Nampa WWTP and/or implement an alternative temperature mitigation plan.

(ix) No later than September 30, 2031, the permittee must be compliance with the final effluent limits for temperature. The permittee must

notify DEQ and EPA in writing when the final effluent limit is achieved.

f) Additional Compliance Schedule Tasks for Copper: The permittee must comply with the following compliance schedule requirements for copper and complete the tasks and reports described below:

(i) No later than December 31, 2019 submit to EPA and DEQ written notice that it has completed a wastewater characterization to determine sources of copper within the City's service area. This wastewater characterization will be completed in annual phases focused on different contributors within the City's wastewater system. The phases will continue until a likely source of copper has been determined in the system. The planned annual focus areas are noted below.

(a) Significant industrial users.

(b) Significant (categorical) industrial users.

(c) Minor industrial users, insignificant wet (ISW) and insignificant dry (ISD).

(d) Other commercial and residential customers.

(ii) No later than June 30, 2020, the City must submit a letter to DEQ if the City determines that no facility improvements or operational changes are necessary to meet the final effluent limits based on the results of the wastewater characterization.

(iii) No later than December 31, 2021 submit to EPA and DEQ written notice that it has completed an evaluation of alternative methods the City may use to achieve the final copper effluent limits, if necessary. The evaluation should consider facility improvements and pretreatment controls. The evaluation will be integrated in the City's TP alternatives evaluation as several of the proposed discharge options may impact the effluent copper concentrations.

(iv) No later than December 31, 2022, the City must provide to EPA and DEQ a preliminary schedule of design upgrades and preliminary construction schedules for the approach that will be used to achieve compliance with the final limits if facility improvements are necessary.

(v) If design upgrades are necessary to meet final copper effluent limitations, then by December 31, 2023 and of each year thereafter the permittee must provide a Report of Progress to DEQ and EPA which details the progress made toward achieving the final effluent limitation, and the series of actions that will be taken in the coming year.

(vi) No later than September 30, 2026, the permittee must be in compliance with the final effluent limits for copper. The permittee must notify DEQ and EPA in writing when the final effluent limit is achieved.

D. Whole Effluent Toxicity Testing Requirements

The permittee must conduct chronic toxicity tests on effluent samples from outfall 001. Testing must be conducted in accordance with subsections 1 through 10, below.

1. Toxicity testing must be conducted on 24-hour composite samples of effluent. In addition, a split of each sample collected must be analyzed for the chemical and physical parameters required in Part I.B, above, with a required effluent sampling frequency of once per month or more frequently, using the sample type required in Part I.B. For parameters for which grab samples are required in Part I.B, grab samples must be taken during the same 24-hour period as the 24-hour composite sample used for the toxicity tests. When the timing of sample collection coincides with that of the sampling required in Part I.B, analysis of the split sample will fulfill the requirements of Part I.B as well.

2. Chronic Test Species and Methods

   a) Chronic tests must be conducted twice per year. Sampling must take place at least once during each of the following seasons: December – February and March – November.

   b) The permittee must conduct short-term tests with the water flea, *Ceriodaphnia dubia* (survival and reproduction test), the fathead minnow, *Pimephales promelas* (larval survival and growth test), and a green alga, *Selenastrum capricornutum* (growth test) for the first three suites of tests. After this screening period, monitoring must be conducted using the most sensitive species, which is defined below.

      (i) The most sensitive species is the species which, during the screening period, produces the greatest maximum toxicity result in chronic toxic units (TU_c), which is defined in Part I.D.2.d, below.

      (ii) If all three species produce the identical maximum toxicity result (including no toxicity in 100% effluent) the permittee must use *Ceriodaphnia dubia* for subsequent tests.

      (iii) If two species produce the identical maximum toxicity result, which is greater than 1.0 TU_c and also greater than the maximum toxicity result of the third species, the permittee may use either of the two species producing the greater maximum toxicity result for subsequent tests.

   c) The presence of chronic toxicity must be determined as specified in *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms*, Fourth Edition, EPA/821-R-02-013, October 2002.

   d) Results must be reported in TU_c (chronic toxic units), which is defined as follows:

      (i) For survival endpoints, $TU_c = 100/NOEC$.

      (ii) For all other test endpoints, $TU_c = 100/IC_{25}$.

(iii) IC_{25} means "25% inhibition concentration." The IC_{25} is a point estimate of the toxicant concentration, expressed in percent effluent, that causes a 25% reduction in a non-quantal biological measurement (e.g., reproduction or growth) calculated from a continuous model (e.g., Interpolation Method).

(iv) NOEC means "no observed effect concentration." The NOEC is the highest concentration of toxicant, expressed in percent effluent, to which organisms are exposed in a chronic toxicity test [full life-cycle or partial life-cycle (short term) test], that causes no observable adverse effects on the test organisms (i.e., the highest concentration of effluent in which the values for the observed responses are not statistically significantly different from the controls).

3. Quality Assurance

a) The toxicity testing on each organism must include a series of six test dilutions and a control. The dilution series must include 100%, 50%, 25%, 12.5%, and 6.25% effluent and the receiving water concentration (RWC). The RWCs are:

(i) 90% effluent for March – November.

(ii) 86% effluent for December – February.

b) All quality assurance criteria and statistical analyses used for chronic tests and reference toxicant tests must be in accordance with *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms*, Fourth Edition, EPA/821-R-02-013, October 2002, and individual test protocols.

c) In addition to those quality assurance measures specified in the methodology, the following quality assurance procedures must be followed:

(i) If organisms are not cultured in-house, concurrent testing with reference toxicants must be conducted. If organisms are cultured in-house, monthly reference toxicant testing is sufficient. Reference toxicant tests must be conducted using the same test conditions as the effluent toxicity tests.

(ii) If either of the reference toxicant tests or the effluent tests do not meet all test acceptability criteria as specified in the test methods manual, the permittee must re-sample and re-test within 14 days of receipt of the test results.

(iii) Control and dilution water must be receiving water or lab water, as appropriate, as described in the manual. If the dilution water used is different from the culture water, a second control, using culture water must also be used. Receiving water may be used as control and dilution water upon notification of EPA and IDEQ. In no case shall water that has not met test acceptability criteria be used for either dilution or control.

4. Reporting

   a) The permittee must submit the results of the toxicity tests with the discharge monitoring reports (DMRs). Results must be reported on the DMRs for the last month of the season in which the samples were taken.

   b) The report of toxicity test results must include all relevant information outlined in Section 10, Report Preparation, of *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms*, Fourth Edition, EPA/821-R-02-013, October 2002. In addition to toxicity test results, the permittee must report: dates of sample collection and initiation of each test; effluent flow rate at the time of sample collection; and the results of the monitoring required in Part I.B of this permit, for parameters with a required monitoring frequency of once per month or more frequently.

5. Preparation of initial investigation toxicity reduction evaluation (TRE) workplan: Within 90 days of the effective date of this permit, the permittee must submit to EPA a copy of the permittee's initial investigation TRE workplan. This plan shall describe the steps the permittee intends to follow in the event that chronic toxicity is detected at levels greater than the triggers in Part I.D.6 of this permit, and must include at a minimum:

   a) A description of the investigation and evaluation techniques that would be used to identify potential causes/sources of toxicity, effluent variability, treatment system efficiency;

   b) A description of the facility's method of maximizing in-house treatment efficiency, good housekeeping practices, and a list of all chemicals used in operation of the facility; and

   c) If a toxicity identification evaluation (TIE) is necessary, who will conduct it (i.e., in-house or other).

   d) The initial investigation TRE workplan must be sent to the following address:

      US EPA Region 10
      Attn: NPDES WET Coordinator
      1200 Sixth Avenue
      Suite 900 OWW-191
      Seattle, WA 98101-3140

6. Accelerated testing

   a) The chronic toxicity triggers are:

      (i) 1.12 TU_c for March – November.

      (ii) 1.17 TU_c for December – February.

7. If chronic toxicity is detected above the chronic toxicity triggers in Part I.D.6.a:

   a) The permittee must conduct six more bi-weekly (every two weeks) chronic toxicity tests, over a 12-week period. This accelerated testing shall be

initiated within 10 calendar days of receipt of the test results indicating the initial exceedance.

b) The permittee must notify EPA of the exceedance in writing at the address in Part I.D.5.d, above, within 5 calendar days of receipt of the test results indicating the exceedance. The notification must include the following information:

(i) A status report on any actions required by the permit, with a schedule for actions not yet completed.

(ii) A description of any additional actions the permittee has taken or will take to investigate and correct the cause(s) of the toxicity.

(iii) Where no actions have been taken, a discussion of the reasons for not taking action.

c) If none of the six accelerated chronic toxicity tests required under Part I.D.7.a exceed the applicable chronic toxicity trigger in Part I.D.6 of this permit, the permittee may return to the regular chronic toxicity testing cycle specified in Part I.D.2.a.

d) If any of the six accelerated chronic toxicity tests required under Part I.D.7.a exceed the applicable chronic toxicity trigger in Part I.D.6 of this permit, then the permittee must implement the initial investigation TRE workplan as described in Part I.D.8.

8. Implementation of Initial Investigation TRE Workplan

a) The permittee must implement the initial investigation TRE workplan within 48 hours of the permittee's receipt of the accelerated toxicity test result demonstrating an exceedance of the applicable chronic toxicity trigger in Part I.D.6 of this permit.

(i) If implementation of the initial investigation workplan clearly identifies the source of toxicity to the satisfaction of EPA (e.g., a temporary plant upset), the permittee may return to the regular chronic toxicity testing cycle specified in Part I.D.2.a.

(ii) If implementation of the initial investigation workplan does not clearly identify the source of toxicity to the satisfaction of EPA, then the permittee must begin implementation of further toxicity reduction evaluation (TRE) requirements in part I.D.9 below.

9. Detailed TRE/TIE

a) If implementation of the initial investigation workplan does not clearly identify the source of toxicity to the satisfaction of EPA, then, in accordance with the permittee's initial investigation workplan and EPA manual EPA 833-B-99-002 (*Toxicity Reduction Evaluation Guidance for Municipal Wastewater Treatment Plants*), the permittee must develop as expeditiously as possible a more detailed TRE workplan, which includes:

(i) Further actions to investigate and identify the cause of toxicity;

(ii) Actions the permittee will take to mitigate the impact of the discharge and to prevent the recurrence of toxicity; and

(iii) A schedule for these actions.

b) The permittee may initiate a TIE as part of the overall TRE process described in the EPA acute and chronic TIE manuals EPA/600/6-91/005F (Phase I), EPA/600/R-92/080 (Phase II), and EPA-600/R-92/081 (Phase III).

c) If the detailed TRE/TIE clearly identifies the source of toxicity to the satisfaction of EPA, the permittee may return to the regular chronic toxicity testing cycle specified in Part I.D.2.a.

10. Inconclusive TRE/TIE

a) If the detailed TRE described in Part I.D.9 is inconclusive, the permittee must conduct six bi-weekly (every two weeks) chronic toxicity tests, over a 12-week period. This accelerated testing shall be initiated within 10 calendar days of completing the detailed TRE/TIE.

b) If none of the six accelerated chronic toxicity tests required under Part I.D.10.a exceed the applicable chronic toxicity trigger in Part I.D.6 of this permit, the permittee may return to the regular chronic toxicity testing cycle specified in Part I.D.2.a.

c) If any of the six accelerated chronic toxicity tests required under Part I.D.10.a exceed the applicable chronic toxicity trigger in Part I.D.6 of this permit, then the permittee must repeat the TRE/TIE process described in Part I.D.9.

E. Surface Water Monitoring

The permittee must conduct surface water monitoring. Surface water monitoring must start by January 31, 2017 and continue for as long as this permit remains in effect. The program must meet the following requirements:

1. Monitoring stations must be established in Indian Creek at the following locations:

a) Above the influence of the facility's discharge.

b) Below the facility's discharge, at a point where the effluent and Indian Creek are completely mixed.

2. To the extent practicable, surface water sample collection must occur on the same day as effluent sample collection.

3. All ambient samples must be grab samples, except the following:

a) Temperature, which must be monitored using weekly grab samples until 1 year after the effective date of the final permit, with continuous monitoring thereafter.

b) pH, and dissolved oxygen, which must be monitored continuously.

4. For all receiving water monitoring, the permittee must use sufficiently sensitive analytical methods which meet the following:

a) The method must detect and quantify the level of the pollutant, or

b) The permittee must use a method that can achieve MLs less than or equal to those specified in Appendix A. The permittee may request different MLs. The request must be in writing and must be approved by EPA.

5. Quality assurance/quality control plans for all the monitoring must be documented in the Quality Assurance Plan required under Part II.B., "Quality Assurance Plan".

6. Submission of SW Monitoring

a) Surface water monitoring results must be reported on the monthly DMR.

The permittee must submit all surface water monitoring results for the previous calendar year for all parameters in an annual report to EPA and IDEQ by January 31st of the following year and with the application (see Part V.B of this permit, *Duty to Reapply*). The file must be in the format of one analytical result per row and include the following information: name and contact information of laboratory, sample identification number, sample location in latitude and longitude (decimal degrees format), or other real-world coordinate system (e.g., State Plane), method of location determination (i.e., GPS, survey etc.), date and time of sample collection, water quality parameter (or characteristic being measured), analysis result, result units, detection limit and definition (i.e., MDL etc.), analytical method, date completed, and any applicable notes.

Table 5: Surface Water Monitoring Requirements

Parameter and Units	Upstream Sampling Frequency	Downstream Sampling Frequency
Flow, CFS	1/week	—
BOD_5, mg/L	1/month	—
Dissolved Oxygen, mg/L	Continuous[1]	Continuous[1]
Total Phosphorus, µg/L	1/month	1/month
Total Nitrogen, mg/L	1/month	1/month
Chlorophyll a, µg/L	1/month	1/month
Temperature, °C Until 1 year after the effective date of the final permit.	1/week[3]	1/week[3]
Temperature, °C After 1 year after the effective date of the final permit.	Continuous	Continuous
pH, standard units	Continuous[1]	Continuous[1]
Turbidity, NTU	1/week	1/week
Hardness as $CaCO_3$, mg/L	—	1/month
Arsenic, total recoverable, µg/L	1/quarter[2]	—
Cadmium, dissolved, µg/L	1/quarter[2]	—
Chromium, all oxidation states, dissolved	1/quarter[2]	—
Chromium VI, dissolved	1/quarter[2]	—
Conductivity, µmhos/cm	—	1/quarter[2]
Copper, dissolved, µg/L	1/quarter[2]	—
Dissolved organic carbon, mg/L	—	1/quarter[2]
Lead, dissolved, µg/L	1/quarter[2]	—
Mercury, total recoverable, ng/L	1/quarter[2]	—

Table 5: Surface Water Monitoring Requirements		
Parameter and Units	**Upstream Sampling Frequency**	**Downstream Sampling Frequency**
Nickel, dissolved, µg/L	1/quarter[2]	—
Silver, dissolved, µg/L	1/quarter[2]	—
Zinc, dissolved, µg/L	1/quarter[2]	—
Notes: 1. Continuous monitoring for dissolved oxygen and pH is required during November 1, 2020 – October 31, 2021. 2. Quarters are defined as January – March, April through June, July – September, and October – December. Monitoring results for pollutants with a sample frequency of quarterly must be reported on the March, June, September and December DMRs. 3. Grab samples for temperature must be taken between 4:00 PM and 6:00 PM, and within 1 hour of an effluent sample.		

F. Methylmercury Requirements – Mercury Minimization Plan

The permittee must develop and implement a mercury minimization plan that identifies potential sources of mercury and the measures to reduce or eliminate mercury loading. Written notice must be submitted to the EPA and the IDEQ that the plan has been developed and implemented by April 30, 2017. Any existing mercury minimization plan may be modified for compliance with this section. The mercury minimization plan must include the following:

1. A Program Plan which includes the City's commitments for:
   a) Identification of potential sources of mercury that contribute to discharge concentrations;
   b) Reasonable, cost-effective activities to reduce or eliminate mercury loadings from identified sources;
   c) Tracking mercury source reduction implementation and mercury source monitoring;
   d) Monthly monitoring of POTW effluent;
   e) Twice per year monitoring of POTW influent;
   f) Resources and staffing.
2. Implementation of cost-effective control measures for direct and indirect contributors, and
3. An annual status report submitted to the US EPA, which includes:
   a) A list of potential mercury sources;
   b) A summary of actions taken to reduce or eliminate mercury discharges, with a goal of meeting water quality standards for methylmercury in fish tissue;
   c) Mercury source reduction implementation, mercury source monitoring results, and influent and effluent mercury monitoring results for the previous year;

d) Proposed adjustments to the Program Plan based on findings from the previous year.

G. Methylmercury Requirements – Fish Tissue Sampling

1. Applicability: The Permittee may satisfy the requirements of the Methylmercury Fish Tissue Monitoring program by arranging to participate in a cooperative effort with other NPDES permitted facilities or by developing and submitting an individual Methylmercury Monitoring Plan to the EPA and IDEQ

   a) Cooperative Fish Tissue Monitoring: The objective of the cooperative fish tissue monitoring is to collect reliable and more strategically located methylmercury fish tissue data, within a specific geographic area, to determine if fish tissue concentrations of methylmercury are compliant with Idaho's methylmercury fish tissue criterion of 0.3 mg/kg. The monitoring program may also be used to advise the public on safe levels of fish consumption. The requirements for participation are as follows:

      (i) Participation: Arrange to participate in a cooperative effort with other NPDES permitted facilities discharging to the Lower Boise River or to tributaries of the Lower Boise River. For more information, contact the City of Boise Public Works Department.

      (ii) Express interest in participating in the cooperative effort, in writing, to the City of Boise Public Works Department by October 31, 2017. The City of Boise is required to identify all participants (e.g., NPDES permitted facilities) funding the fish tissue monitoring program to the EPA. The USGS Monitoring Plan for Mercury in Fish Tissue (Monitoring Plan) must be updated each time a municipality or industrial facility joins the cooperative monitoring program, and the City of Boise must provide notice to the EPA and IDEQ each time each time a new NPDES permitted facility becomes part of the cooperative monitoring program.

      (iii) Follow the USGS Monitoring Plan, developed for the City of Boise and previously approved by the EPA and IDEQ, for the location and number of monitoring stations. Additional NPDES permitted facilities joining this effort can merge with the existing approved sampling schedule. One sample taken at each of the stations on the schedule in the Monitoring Plan will satisfy the monitoring requirements of any individual NPDES permitted facility involved in the cooperative effort.

      (iv) All participating NPDES permitted facilities must be named on the required report submitted to the EPA, the IDEQ and the Idaho Fish Consumption Advisory Board, as outlined in the City of Boise NPDES Permit, ID0023981.

   b) Individual Methylmercury Monitoring Plan: The objective of an individual facility's Methylmercury Monitoring Plan is to measure the NPDES discharger's compliance with Idaho's methylmercury fish tissue criterion. A

permitted facility may develop and submit an individual Methylmercury Monitoring Plan in lieu of joining the cooperative effort described in 1.a. above. The requirements for the individual Methylmercury Monitoring Plan are as follows:

(i) Participation: Develop and submit a Methylmercury Fish Tissue Monitoring Plan to the Director of the EPA Region 10 Office of Water and Watersheds and to IDEQ for review and approval by October 31, 2017. A failure to obtain approval of the Methylmercury Fish Tissue Monitoring Plan from the IDEQ or the Director of the Office of Water and Watersheds does not relieve the Permittee of the fish tissue monitoring requirements of this Permit.

(ii) Plan Requirements: At a minimum the plan must include the following elements:

(a) Monitoring stations where fish tissue samples will be collected: At least one monitoring station must be located in Indian Creek upstream from the discharge and at least one monitoring station must be located in Indian Creek downstream from the discharge;

(b) Name, address of organization collecting and analyzing fish tissue samples. The organization must have experience in the collection and analysis of methylmercury fish tissue samples.

(c) Develop a sampling plan that specifies sample target species, sample number and size, timing of sample collection, and all essential fish collection, handling, and shipping information for field sampling teams collecting fish. The plan must include a project description, detailed standard operating procedures (SOPs) for fish collection, and instructions for completing field forms and labels and for shipping fish samples. Protocols must be consistent with Chapter 4 of *Implementation Guidance for the Idaho Mercury Water Quality Criteria* (Idaho Department of Environmental Quality, 2005).

(d) Identify all protocols related to sample preparation methods and analytical methods to be used on samples.

(e) Identify data quality goals for all sample collection and handling activities and describe the Quality Assurance/Quality Control (QA/QC) techniques employed by field teams to support those goals.

(iii) Sample Frequency: Initial sampling must occur by October 31, 2018. Following the initial sampling event, monitoring must occur at least once every 2 years. After three (3) sampling cycles, locations should be sampled once every 5 years. Sample sites will be determined in consultation with IDEQ.

(iv) Water Column Mercury Sampling: At each sample location where fish are collected a surface water sample must be collected and analyzed

for total recoverable mercury using an analytical method which achieves a ML of 0.5 ng/L (0.0005 µg/L) or lower. EPA Guidance recommends Methods 1631E or 245.7 for analyzing mercury in water. This water column mercury sampling is required in addition to the receiving water mercury monitoring required in Part I.E of this Permit.

(v) Reporting Requirements: The Permittee must submit a report which lists the name, address and phone number of the entity collecting and analyzing samples; sample locations; target species used; sample size; time samples were collected; analytical methods used; results, and any other information relevant to the monitoring program. The Permittee must submit the report to the EPA, the IDEQ and the Idaho Fish Consumption Advisory Board by March 31st of the year following sampling.

(vi) Revisions to the Methylmercury Monitoring Plan: Any revisions to the Methylmercury Monitoring Plan must be approved by the IDEQ and the Director of the Office of Water and Watersheds.

II. Special Conditions

A. Pretreatment Requirements

1. Implementation

The permittee must implement its pretreatment program in accordance with the legal authorities, policies, procedures, staffing levels and financial provisions described in its original approved pretreatment program submission entitled *Pretreatment Program for the City of Nampa, Idaho*, dated February 1982, any program amendments submitted thereafter and approved by EPA, and the general pretreatment regulations (40 CFR 403) and any amendments thereof. At a minimum, the permittee must carry out the following activities:

a) Enforce prohibitive discharge standards as set forth in 40 CFR 403.5(a) and (b), categorical pretreatment standards promulgated pursuant to Section 307(b) and (c) of the Act (where applicable), and local limitations and BMPs developed by the permittee in accordance with 40 CFR 403.5(c), whichever are more stringent and are applicable to non-domestic users discharging wastewater into the permittee's collection system. Locally derived limitations must be defined as pretreatment standards under Section 307(d) of the Act.

b) Implement and enforce the requirements of the most recent and EPA-approved portions of local law and regulations (e.g. municipal code, sewer use ordinance) addressing the regulation of non-domestic users.

c) Update its inventory of non-domestic users at a frequency and diligence adequate to ensure proper identification of non-domestic users subject to pretreatment standards, but no less than once per year. The permittee must notify these users of applicable pretreatment standards in accordance with 40 CFR 403.8(f)(2)(iii).

d) Issue, reissue, and modify, in a timely manner, industrial wastewater discharge permits to at least all Significant Industrial Users (SIUs) and categorical industrial users. These documents must contain, at a minimum, conditions identified in 40 CFR 403.8(f)(1)(iii), including Best Management Practices, if applicable. The permittee must follow the methods described in its implementation procedures for issuance of individual permits.

e) Develop and maintain a data management system designed to track the status of the permittee's non-domestic user inventory, non-domestic user discharge characteristics, and their compliance with applicable pretreatment standards and requirements. The permittee must retain all records relating to its pretreatment program activities for a minimum of three years, as required by 40 CFR 403.12(o), and must make such records available to EPA upon request. The permittee must also provide public access to information considered effluent data under 40 CFR 2.

f) Establish, where necessary, legally binding agreements with contributing jurisdictions to ensure compliance with applicable pretreatment requirements in 40 CFR Part 403 by industrial users within these jurisdictions. These legally binding agreements must identify the agency responsible for the various pretreatment implementation and enforcement activities in the contributing jurisdiction and outline the specific roles, responsibilities and pretreatment activities of each jurisdiction.

g) Carry out inspections, surveillance, and monitoring of non-domestic users to determine compliance with applicable pretreatment standards and requirements. A complete inspection of all SIUs and sampling of all SIUs' effluent must be conducted at least annually.

h) Require SIUs to conduct wastewater sampling as specified in 40 CFR 403.12(e) or (h). Frequency of wastewater sampling by the SIUs must be appropriate for the character and volume of the wastewater but no less than twice per year. Sample collection and analysis must be performed in accordance with 40 CFR 403.12(b)(5)(ii) through (v) and 40 CFR 136. In cases where the Pretreatment Standard requires compliance with a Best Management Practice or pollution prevention alternative, the permittee must require the User to submit documentation to determine compliance with the Standard. If the permittee elects to conduct all non-domestic user monitoring for any SIU instead of requiring self-monitoring, the permittee must conduct sampling in accordance with the requirements of this paragraph, and the requirements of 40 CFR 403.12(g)(2).

i) Enforce and obtain remedies for any industrial user noncompliance with applicable pretreatment standards and requirements. This must include timely and appropriate reviews of industrial reports to identify all violations of the user's permit, the local ordinance, and federal pretreatment standards and requirements. Once violations have been uncovered, the permittee must take timely and appropriate action to address the noncompliance. The permittee's

enforcement actions must follow its EPA-approved enforcement response procedures.

j) Publish, at least annually, in a newspaper or newspapers of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW, a list of all non-domestic users which, at any time in the previous 12 months, were in significant noncompliance as defined in 40 CFR 403.8 (f)(2)(viii).

k) Maintain adequate staff, funds and equipment to implement its pretreatment program.

l) Conduct an analysis annually to determine whether influent pollutant loadings are approaching the maximum allowable headworks loadings calculated in the permittee's most recent local limits calculations. Any local limits found to be inadequate by this analysis must be revised. The permittee may be required to revise existing local limits or develop new limits if deemed necessary by EPA.

2. Spill Prevention and Slug Discharges

The permittee must implement an accidental spill prevention program to reduce and prevent spills and slug discharges of pollutants from non-domestic users.

a) Control mechanisms for SIUs must contain requirements to control slug discharges if determined by the POTW to be necessary [40 CFR 403.8(f)(1)(iii)(B)(6)].

b) SIUs must be evaluated for the need for a plan or other action to control slug discharges within 1 year of being designated an SIU. [40 CFR 403.8(f)(2)(vi)].

c) SIUs must notify the POTW immediately of any changes at their facilities affecting the potential for a slug discharge [40 CFR 403.8(f)(2(vi)].

3. Enforcement Requirement

Whenever EPA finds, on the basis of any available information, that the owner or operator of any source is introducing a pollutant into the POTW in violation of national pretreatment standards, including prohibited discharges, local limits, or categorical standards, or has caused interference or pass through, EPA may notify the owner or operator of the POTW of such violation. If, within 30 days after such notification has been sent by EPA to the POTW, the POTW fails to commence appropriate enforcement action to correct the violation, EPA may take appropriate enforcement action under the authority provided in section 309(f) of the Clean Water Act.

4. Modification of the Pretreatment Program

If the permittee elects to modify any components of its pretreatment program, it must comply with the requirements of 40 CFR 403.18. No substantial program modification, as defined in 40 CFR 403.18(b), may be implemented prior to receiving written authorization from EPA.

5. Local Limits Evaluation

By October 31, 2017, the permittee must submit to EPA a complete local limits evaluation pursuant to 40 CFR 403.5(c)(1). The study must take into account water quality in the receiving stream, inhibition levels for biological processes in the treatment plant, and sludge quality goals. The study must address at least the following pollutants: total recoverable arsenic, 5-day biochemical oxygen demand, total recoverable cadmium, total recoverable chromium, chromium VI, total recoverable copper, cyanide, total recoverable lead, total recoverable mercury, total recoverable molybdenum, total recoverable nickel, total recoverable selenium, total recoverable silver, total suspended solids, and total recoverable zinc and any other pollutants of concern. The permittee must address total ammonia as N if the POTW accepts indirect discharges of ammonia. Submitted results of the study must include proposed local limits, maximum allowable headworks loadings, all supporting calculations, and all assumptions.

6. Control of Undesirable Pollutants

   The permittee must not allow introduction of the following pollutants into the publicly owned treatment works (POTW):

   a) Pollutants which will create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than 140 °F or 60 °C using the test methods specified in 40 CFR 261.21;

   b) Pollutants which will cause corrosive structural damage to the POTW, but in no case indirect discharges with a pH lower than 5.0, unless the POTW is designed to accommodate such indirect discharges;

   c) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW (including the collection system) resulting in interference;

   d) Any pollutant, including oxygen demanding pollutants (BOD, etc.), released in an indirect discharge at a flow rate and/or pollutant concentration which will cause interference with the POTW;

   e) Heat in amounts which inhibit biological activity in the POTW resulting in interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds 40 °C (104 °F) unless the Regional Administrator, upon request of the POTW, approves alternate temperature limits;

   f) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through;

   g) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems; and

   h) Any trucked or hauled pollutants, except at discharge points designated by the POTW.

7. Requirements for Industrial users

The permittee must require any industrial user of its treatment works to comply with any applicable requirements in 40 CFR 403 through 471.

8. Sludge and Toxic Organics Sampling Requirements

a) The permittee must sample sludge as specified in Table 6.

Table 6: Sludge Sampling Requirements

Parameter	Units	Sampling Frequency
Arsenic	mg/kg dry weight	2/year[1]
Cadmium	mg/kg dry weight	2/year[1]
Chromium	mg/kg dry weight	2/year[1]
Copper	mg/kg dry weight	2/year[1]
Lead	mg/kg dry weight	2/year[1]
Mercury	mg/kg dry weight	2/year[1]
Molybdenum	mg/kg dry weight	2/year[1]
Nickel	mg/kg dry weight	2/year[1]
Percent Solids	%	2/year[1]
Selenium	mg/kg dry weight	2/year[1]
Zinc	mg/kg dry weight	2/year[1]

Notes:
1. Sampling must be conducted twice per year, once during the period from April 1 through October 31, and once during the period from November 1 through March 31 each year. For each twice-per-year sampling event, the permittee must collect three samples within a calendar week. The permittee must report the results of sampling for these parameters on the March and October DMRs and in the pretreatment annual report required by Part II.A.9 of this permit.

b) Sludge samples must be taken as the sludge leaves the dewatering device or digesters.

c) Sludge Reporting: Metals concentrations in sludge must be reported in mg/kg, dry weight.

d) Reporting Results: Analytical results for each day's samples must be reported separately. Sample results must be submitted with the pretreatment annual report required in paragraph 9, below.

e) Toxic organics sampling: The permittee must perform chemical analyses of its influent, effluent, and sludge for all specific toxic organic pollutants listed in Table II of Appendix D of 40 CFR 122.

(i) Sample frequency: Sampling must be conducted twice per year, once during the period from April 1 through October 31, and once during the period from November 1 through March 31 each year. For each twice-per-year sampling event, the permittee must collect three samples within a calendar week. The permittee must report the results of sampling for these parameters on the March and October DMRs and in the pretreatment annual report required by Part II.A.9 of this permit.

(ii) Sample Type: The influent and effluent samples must be 24-hour composites, except when sampling volatiles.

(iii) Volatile Organics Sampling: eight discrete samples must be collected over the 24 hour day using 40 ml VOC vials with Teflon septa. During sampling, the flow from the discharge will be controlled to produce smooth laminar flow to prevent agitation and aeration of the sample. The VOC vials will be filled to the top such that there is a meniscus present. There must be no visible air space or air bubbles in the VOC vials when capped. A single analysis for volatile pollutants may be run for each monitoring day by compositing equal volumes of the individual discrete VOC vials (at the analytical laboratory using extreme care not to introduce air/air bubbles) directly into the GC purge and trap apparatus, with no less than 1 ml of each grab included in the composite. The composite sample must be analyzed immediately.

(iv) GC/MS Analysis: In addition to analyzing for pollutants specified in the previous paragraph, the permittee must make a reasonable attempt using GC/MS analytical techniques to identify and quantify the ten most abundant constituents of each effluent extract (excluding toxic organic pollutants and unsubstituted aliphatic compounds) shown to be present by peaks on the total ion plots (reconstructed gas chromatograms). Identification must be attempted through the use of the USEPA/NIH computerized library of mass spectra, with visual confirmation by an experienced analyst. Quantification may be an order-of-magnitude estimate based upon comparison with an internal standard. The permittee must report the results of the GC/MS analysis in the pretreatment annual report required by Part II.A.9 of this permit.

(v) Sample Handling: All samples must be prepared, preserved, shipped, and analyzed in accordance with the QAP and Part III.C of this permit, Monitoring Procedures.

9. Pretreatment Report

a) The permittee must submit an annual report pursuant to 40 CFR 403.12(i) that describes the permittee's program activities over the October through September report year. This report must be submitted to the following address no later than November 1st of each year:

Pretreatment Coordinator
U.S. Environmental Protection Agency
Region 10, OWW-191
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

b) The pretreatment report must be compiled following the Region 10 Annual Report Guidance. At a minimum, the report must include:

(i) An updated non-domestic user inventory, including those facilities that are no longer discharging (with explanation), and new dischargers, appropriately categorized and characterized. Categorical users should

have the applicable category noted as well as cases where more stringent local limits apply instead of the categorical standard.

(ii) Results of wastewater and sludge sampling at the POTW as specified in Part II.A.8 (above).

(iii) Calculations of removal rates for each pollutant for each day of sampling.

(iv) An analysis and discussion of whether the existing local limitations in the permittee's sewer use ordinance continue to be appropriate to prevent treatment plant interference and pass through of pollutants that could affect water quality or sludge quality. This should include a comparison between influent loadings and the most recent relevant maximum allowable headworks loadings calculated for the treatment plant.

(v) Status of program implementation, including:

(a) Any planned modifications to the pretreatment program that have been approved by EPA, including staffing and funding updates.

(b) A description of any interference, upset, or NPDES permit violations experienced at the POTW which were directly or indirectly attributable to non-domestic users, including:

(i) Date & time of the incident

(ii) Description of the effect on the POTW's operation

(iii) Effects on the POTW's effluent and biosolids quality

(iv) Identification of suspected or known sources of the discharge causing the upset

(v) Steps taken to remedy the situation and to prevent recurrence

(c) Listing of non-domestic users inspected and/or monitored during the report year with dates and an indication compliance status.

(d) Listing of non-domestic users planned for inspection and/or monitoring for the coming year along with associated frequencies.

(e) Listing of non-domestic users whose permits have been issued, reissued, or modified during the report year along with current permit expiration dates.

(f) Listing of non-domestic users notified of promulgated pretreatment standards and/or local standards during the report year as required in 40 CFR 403.8(f)(2)(iii).

(g) Listing of non-domestic users notified of promulgated pretreatment standards or applicable local standards who are on compliance schedules. The listing must include the final date of compliance for each facility.

(vi) Status of enforcement activities including:

(a) Listing of non-domestic users who failed to comply with applicable pretreatment standards and requirements, including:

(i) Summary of the violation(s).

(ii) Enforcement action taken or planned by the permittee.

(iii) Present compliance status as of the date of preparation of the pretreatment report.

(b) Listing of those users in significant noncompliance during the report year as defined in 40 CFR 403.8(f)(2)(viii) and a copy of the newspaper publication of those users' names.

(c) EPA may require more frequent reporting on those users who are determined to be in significant noncompliance.

B. Operation and Maintenance Plan

In addition to the requirements specified in Section IV.E. of this permit (Proper Operation and Maintenance), by January 31, 2017, the permittee must provide written notice to EPA and IDEQ that an operations and maintenance plan for the current wastewater treatment facility has been developed and implemented by January 31, 2017. The plan shall be retained on site and made available on request to EPA and IDEQ. Any changes occurring in the operation of the plant shall be reflected within the Operation and Maintenance plan.

C. Quality Assurance Plan (QAP)

The permittee must develop a quality assurance plan (QAP) for all monitoring required by this permit. The permittee must submit written notice to EPA and IDEQ that the Plan has been developed and implemented by January 31, 2017. Any existing QAPs may be modified for compliance with this section.

1. The QAP must be designed to assist in planning for the collection and analysis of effluent and receiving water samples in support of the permit and in explaining data anomalies when they occur.
2. Throughout all sample collection and analysis activities, the permittee must use the EPA-approved QA/QC and chain-of-custody procedures described in *EPA Requirements for Quality Assurance Project Plans* (EPA/QA/R-5) and *Guidance for Quality Assurance Project Plans* (EPA/QA/G-5). The QAP must be prepared in the format that is specified in these documents.
3. At a minimum, the QAP must include the following:

a) Details on the number of samples, type of sample containers, preservation of samples, holding times, analytical methods, analytical detection and quantitation limits for each target compound, type and number of quality assurance field samples, precision and accuracy requirements, sample preparation requirements, sample shipping methods, and laboratory data delivery requirements.

b) Map(s) indicating the location of each sampling point.

c) Qualification and training of personnel.

d) Name(s), address(es) and telephone number(s) of the laboratories used by or proposed to be used by the permittee.

4. The permittee must amend the QAP whenever there is a modification in sample collection, sample analysis, or other procedure addressed by the QAP.

5. Copies of the QAP must be kept on site and made available to EPA and/or IDEQ upon request.

D. Emergency Response and Public Notification Plan

1. The permittee must develop and implement an overflow emergency response and public notification plan that identifies measures to protect public health from overflows that may endanger health and unanticipated bypasses or upsets that exceed any effluent limitation in the permit. At a minimum the plan must include mechanisms to:

a) Ensure that the permittee is aware (to the greatest extent possible) of all overflows from portions of the collection system over which the permittee has ownership or operational control and unanticipated bypass or upset that exceed any effluent limitation in the permit;

b) Ensure appropriate responses including assurance that reports of an overflow or of an unanticipated bypass or upset that exceed any effluent limitation in the permit are immediately dispatched to appropriate personnel for investigation and response;

c) Ensure immediate notification to the public, health agencies, and other affected public entities (including public water systems). The overflow response plan must identify the public health and other officials who will receive immediate notification;

d) Ensure that appropriate personnel are aware of and follow the plan and are appropriately trained; and

e) Provide emergency operations.

2. The permittee must submit written notice to EPA and IDEQ that the plan has been developed and implemented by April 30, 2017. Any existing emergency response and public notification plan may be modified for compliance with this section.

III. Monitoring, Recording and Reporting Requirements

A. Representative Sampling (Routine and Non-Routine Discharges)

Samples and measurements must be representative of the volume and nature of the monitored discharge.

In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the permittee must collect additional

samples at the appropriate outfall whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample. The permittee must analyze the additional samples for those parameters limited in Part I.B. of this permit that are likely to be affected by the discharge.

The permittee must collect such additional samples as soon as the spill, discharge, or bypassed effluent reaches the outfall. The samples must be analyzed in accordance with paragraph III.C ("Monitoring Procedures"). The permittee must report all additional monitoring in accordance with paragraph III.D ("Additional Monitoring by Permittee").

B. Reporting of Monitoring Results

1. Electronic Copy Submissions

   a) The Permittee must submit all monitoring data and other reports electronically using NetDMR. Monitoring data must be submitted electronically to EPA no later than the 20th of the month following the completed reporting period. All reports required under this Permit must be submitted to EPA as a legible electronic attachment to the DMR. The Permittee must sign and certify all DMRs, and all other reports, in accordance with the requirements of Part V.E. of this Permit ("Signatory Requirements"). Once a Permittee begins submitting reports using NetDMR, it will no longer be required to submit paper copies of DMRs or other reports to EPA and IDEQ. NetDMR is accessed from http://www.epa.gov/netdmr.

   b) The Permittee must submit via NetDMR as electronic attachments to each DMR the results of individual analyses of effluent monitoring for the following parameters: total residual chlorine, temperature, total ammonia as N, total phosphorus as P, E. coli, and dissolved oxygen.

      (i) The data must include one result per row. The data must include the following columns: Parameter, date of sample collection, result value, analytical method, detection or quantification level, and remarks. The "remarks" column must be used to list relevant QA/QC information, if any, for each result.

      (ii) The electronic attachment must be in a format that can be opened by the Microsoft Excel 2013 spreadsheet program.[1]

2. Website Notification

   a) Website notification must begin on or before the DMR for the month of April 2017.

[1] Acceptable file formats include but are not limited to Microsoft Excel (filename extensions xls, xlw, xlsb, xlsm, or xlsx), OpenDocument Spreadsheet (filename extension ods), Extensible Markup Language (filename extension xml), and comma separated value (filename extension csv).

b) Within seven days of the submission of the NetDMR report to EPA, the Permittee shall post all influent, effluent and receiving water data as reported on DMRs and explanatory materials on its publicly-accessible website.

(i) The data must be displayed in tables viewable directly in an internet browser or as Portable Document Format (filename extension pdf) files. If the data are displayed as Portable Document Format files, the website must include a hyperlink to a website where the public may download software to open and view such files free of charge.

(ii) The permittee must clearly identify any and all effluent limit violations in the data displayed on its publicly-accessible website.

(iii) The DMR data shall remain on the website for a period of no less than three years.

c) The Permittee must report on its publicly-accessible website any instance of noncompliance for which 24-hour telephone reporting is required by Part III.G of this permit by posting to its publicly-accessible website the written submission required in Part III.G.2 of this permit within 7 days of submitting such written submission to EPA.

C. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR 136, unless another method is required under 40 CFR subchapters N or O, or other test procedures have been specified in this permit or approved by EPA as an alternate test procedure under 40 CFR 136.5.

D. Additional Monitoring by Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR 136 or as specified in this permit, the permittee must include the results of this monitoring in the calculation and reporting of the data submitted in the DMR.

Upon request by EPA, the permittee must submit results of any other sampling, regardless of the test method used.

E. Records Contents

Records of monitoring information must include:

1. the date, exact place, and time of sampling or measurements;
2. the name(s) of the individual(s) who performed the sampling or measurements;
3. the date(s) analyses were performed;
4. the names of the individual(s) who performed the analyses;
5. the analytical techniques or methods used; and
6. the results of such analyses.

F. Retention of Records

The permittee must retain records of all monitoring information, including, all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, copies of DMRs, a copy of the NPDES permit, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report or application. This period may be extended by request of EPA or IDEQ at any time.

G. Twenty-four Hour Notice of Noncompliance Reporting

1. The permittee must report the following occurrences of noncompliance by telephone within 24 hours from the time the permittee becomes aware of the circumstances:
   a) any noncompliance that may endanger health or the environment;
   b) any unanticipated bypass that exceeds any effluent limitation in the permit (See Part IV.F., "Bypass of Treatment Facilities");
   c) any upset that exceeds any effluent limitation in the permit (See Part IV.G., "Upset Conditions"); or
   d) any violation of a maximum daily discharge limitation for applicable pollutants identified by Part I.B.2.
   e) any overflow prior to the treatment works over which the permittee has ownership or has operational control. An overflow is any spill, release or diversion of municipal sewage including:
      (i) an overflow that results in a discharge to waters of the United States; and
      (ii) an overflow of wastewater, including a wastewater backup into a building (other than a backup caused solely by a blockage or other malfunction in a privately owned sewer or building lateral) that does not reach waters of the United States.
2. The permittee must also provide a written submission within five days of the time that the permittee becomes aware of any event required to be reported under subpart 1 above. The written submission must contain:
   a) a description of the noncompliance and its cause;
   b) the period of noncompliance, including exact dates and times;
   c) the estimated time noncompliance is expected to continue if it has not been corrected; and
   d) steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
   e) if the noncompliance involves an overflow, the written submission must contain:

(i) The location of the overflow;

(ii) The receiving water (if there is one);

(iii) An estimate of the volume of the overflow;

(iv) A description of the sewer system component from which the release occurred (e.g., manhole, constructed overflow pipe, crack in pipe);

(v) The estimated date and time when the overflow began and stopped or will be stopped;

(vi) The cause or suspected cause of the overflow;

(vii) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the overflow and a schedule of major milestones for those steps;

(viii) An estimate of the number of persons who came into contact with wastewater from the overflow; and

(ix) Steps taken or planned to mitigate the impact(s) of the overflow and a schedule of major milestones for those steps.

3. The Director of the Office of Compliance and Enforcement may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the NPDES Compliance Hotline in Seattle, Washington, by telephone, (206) 553-1846.

4. Reports must be submitted to the addresses in Part III.B ("Reporting of Monitoring Results").

H. Other Noncompliance Reporting

The permittee must report all instances of noncompliance, not required to be reported within 24 hours, at the time that monitoring reports for Part III.B ("Reporting of Monitoring Results") are submitted. The reports must contain the information listed in Part III.G.2 of this permit ("Twenty-four Hour Notice of Noncompliance Reporting").

I. Public Notification

The permittee must immediately notify the public, health agencies and other affected entities (e.g., public water systems) of any overflow which the permittee owns or has operational control; or any unanticipated bypass or upset that exceeds any effluent limitation in the permit in accordance with the notification procedures developed in accordance with Part II.D.

J. Notice of New Introduction of Toxic Pollutants

The permittee must notify the Director of the Office of Water and Watersheds and IDEQ in writing of:

1. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to Sections 301 or 306 of the Act if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into the POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.
3. For the purposes of this section, adequate notice must include information on:
   a) The quality and quantity of effluent to be introduced into the POTW, and
   b) Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.
4. The permittee must notify the Director of the Office of Water and Watersheds at the following address:

   US EPA Region 10
   Attn: NPDES Permits Unit Manager
   1200 Sixth Avenue, Suite 900
   OWW-191
   Seattle, WA 98101-3140

K. Compliance Schedules

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date.

IV. Compliance Responsibilities

A. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application.

B. Penalties for Violations of Permit Conditions

1. Civil and Administrative Penalties. Pursuant to 40 CFR Part 19 and the Act, any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $37,500 per day for each violation).
2. Administrative Penalties. Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Pursuant to 40 CFR 19 and the Act, administrative penalties for Class I violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act and the Federal Civil

Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $16,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $37,500). Pursuant to 40 CFR 19 and the Act, penalties for Class II violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. § 2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. § 3701 note) (currently $16,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $187,500).

3. Criminal Penalties:

   a) Negligent Violations. The Act provides that any person who negligently violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of $2,500 to $25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or both.

   b) Knowing Violations. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of $5,000 to $50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than $100,000 per day of violation, or imprisonment of not more than 6 years, or both.

   c) Knowing Endangerment. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than $500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the Act, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than $1,000,000 and can be fined up to $2,000,000 for second or subsequent convictions.

   d) False Statements. The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be

punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both. The Act further provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

C. Need To Halt or Reduce Activity not a Defense

It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this permit.

D. Duty to Mitigate

The permittee must take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

The permittee must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this Part.
2. Notice.
   a) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it must submit prior written notice, if possible at least 10 days before the date of the bypass.
   b) Unanticipated bypass. The permittee must submit notice of an unanticipated bypass as required under Part III.G ("Twenty-four Hour Notice of Noncompliance Reporting").

3. Prohibition of bypass.

   a) Bypass is prohibited, and the Director of the Office of Compliance and Enforcement may take enforcement action against the permittee for a bypass, unless:

      (i) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

      (ii) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

      (iii) The permittee submitted notices as required under paragraph 2 of this Part.

   b) The Director of the Office of Compliance and Enforcement may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph 3.a. of this Part.

G. Upset Conditions

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the permittee meets the requirements of paragraph 2 of this Part. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. Conditions necessary for a demonstration of upset. To establish the affirmative defense of upset, the permittee must demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

   a) An upset occurred and that the permittee can identify the cause(s) of the upset;

   b) The permitted facility was at the time being properly operated;

   c) The permittee submitted notice of the upset as required under Part III.G, "Twenty-four Hour Notice of Noncompliance Reporting;" and

   d) The permittee complied with any remedial measures required under Part IV.D, "Duty to Mitigate."

3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

H. Toxic Pollutants

The permittee must comply with effluent standards or prohibitions established under Section 307(a) of the Act for toxic pollutants and with standards for sewage sludge

use or disposal established under section 405(d) of the Act within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

I. Planned Changes

The permittee must give written notice to the Director of the Office of Water and Watersheds as specified in Part III.J.4 and IDEQ as soon as possible of any planned physical alterations or additions to the permitted facility whenever:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or
2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this permit.
3. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application site.

J. Anticipated Noncompliance

The permittee must give written advance notice to the Director of the Office of Compliance and Enforcement and IDEQ of any planned changes in the permitted facility or activity that may result in noncompliance with this permit.

K. Reopener

This permit may be reopened to include any applicable standard for sewage sludge use or disposal promulgated under section 405(d) of the Act. The Director may modify or revoke and reissue the permit if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

V. General Provisions

A. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause as specified in 40 CFR 122.62, 122.64, or 124.5. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

B. Duty to Reapply

If the permittee intends to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. In accordance with 40 CFR 122.21(d), and unless permission for the application to be

submitted at a later date has been granted by the Regional Administrator, the permittee must submit a new application by May 4, 2021.

C. Duty to Provide Information

The permittee must furnish to EPA and IDEQ, within the time specified in the request, any information that EPA or IDEQ may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee must also furnish to EPA or IDEQ, upon request, copies of records required to be kept by this permit.

D. Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or that it submitted incorrect information in a permit application or any report to EPA or IDEQ, it must promptly submit the omitted facts or corrected information in writing.

E. Signatory Requirements

All applications, reports or information submitted to EPA and IDEQ must be signed and certified as follows.

1. All permit applications must be signed as follows:
   a) For a corporation: by a responsible corporate officer.
   b) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.
   c) For a municipality, state, federal, Indian tribe, or other public agency: by either a principal executive officer or ranking elected official.
2. All reports required by the permit and other information requested by EPA or IDEQ must be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
   a) The authorization is made in writing by a person described above;
   b) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company; and
   c) The written authorization is submitted to the Director of the Office of Compliance and Enforcement and IDEQ.
3. Changes to authorization. If an authorization under Part V.E.2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part V.E.2 must be submitted to the Director of the Office of Compliance and

Enforcement and IDEQ prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this Part must make the following certification:

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

F. Availability of Reports

In accordance with 40 CFR 2, information submitted to EPA pursuant to this permit may be claimed as confidential by the permittee. In accordance with the Act, permit applications, permits and effluent data are not considered confidential. Any confidentiality claim must be asserted at the time of submission by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice to the permittee. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR 2, Subpart B (Public Information) and 41 Fed. Reg. 36902 through 36924 (September 1, 1976), as amended.

G. Inspection and Entry

The permittee must allow the Director of the Office of Compliance and Enforcement, EPA Region 10; IDEQ; or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

H. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, nor any infringement of federal, tribal, state or local laws or regulations.

I. Transfers

This permit is not transferable to any person except after written notice to the Director of the Office of Water and Watersheds as specified in Part III.J.4. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act. (See 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory).

J. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by Section 510 of the Act.

VI. Definitions

1. "Act" means the Clean Water Act.
2. "Administrator" means the Administrator of the EPA, or an authorized representative.
3. "Average monthly discharge limitation" means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.
4. "Average weekly discharge limitation" means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week.
5. "Best Management Practices" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage areas.
6. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
7. "Composite" - see "24-hour composite".
8. "Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for

purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

9. "Director of the Office of Compliance and Enforcement" means the Director of the Office of Compliance and Enforcement, EPA Region 10, or an authorized representative.
10. "Director of the Office of Water and Watersheds" means the Director of the Office of Water and Watersheds, EPA Region 10, or an authorized representative.
11. "DMR" means discharge monitoring report.
12. "EPA" means the United States Environmental Protection Agency.
13. "Geometric Mean" means the n^{th} root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.
14. "Grab" sample is an individual sample collected over a period of time not exceeding 15 minutes.
15. "IDEQ" means the Idaho Department of Environmental Quality.
16. "Indirect Discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c) or (d) of the Act.
17. "Inhibition concentration", IC, is a point estimate of the toxicant concentration that causes a given percent reduction (p) in a non-quantal biological measurement (e.g., reproduction or growth) calculated from a continuous model (e.g., Interpolation Method).
18. "Interference" is defined in 40 CFR 403.3.
19. "Maximum daily discharge limitation" means the highest allowable "daily discharge."
20. "Method Detection Limit (MDL)" means the minimum concentration of a substance (analyte) that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.
21. "Minimum Level (ML)" means either the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL). Minimum levels may be obtained in several ways: They may be published in a method; they may be sample concentrations equivalent to the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a lab, by a factor.

22. "NPDES" means National Pollutant Discharge Elimination System, the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits . . . under sections 307, 402, 318, and 405 of the CWA.
23. "Pass Through" means a Discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).
24. "QA/QC" means quality assurance/quality control.
25. "Regional Administrator" means the Regional Administrator of Region 10 of the EPA, or the authorized representative of the Regional Administrator.
26. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
27. "Significant Industrial User" means all industrial users subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N; and any other industrial user that: discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Control Authority as defined in 40 CFR 403.12(a) on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)). Upon a finding that an industrial user meeting above the criteria has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Control Authority (as defined in 40 CFR 403.12(a)) may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with 40 CFR 403.8(f)(6), determine that such industrial user is not a significant industrial user.
28. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
29. "24-hour composite" sample means a combination of at least 8 sample aliquots of at least 100 milliliters, collected at periodic intervals during the operating hours of a facility over a 24 hour period. The composite must be flow proportional; either the time interval between each aliquot or the volume of each aliquot must be

proportional to either the stream flow at the time of sampling or the total stream flow since the collection of the previous aliquot. Aliquots may be collected manually or automatically. For GC/MS Volatile Organic Analysis (VOA), aliquots must be combined in the laboratory immediately before analysis. Four (4) (rather than eight) aliquots or grab samples should be collected for VOA. Only one analysis is required.

Appendix A
Minimum Levels

The tables below list the maximum Minimum Level (ML) for pollutants not subject to concentration effluent limits in the permit. The permittee may request different MLs. The request must be in writing and must be approved by EPA.

CONVENTIONAL PARAMETERS

Pollutant & CAS No. (if available)	Minimum Level (ML) µg/L unless specified
Biochemical Oxygen Demand	2 mg/L
Soluble Biochemical Oxygen Demand	2 mg/L
Chemical Oxygen Demand	10 mg/L
Total Organic Carbon	1 mg/L
Total Suspended Solids	5 mg/L
Total Ammonia (as N)	50
Dissolved oxygen	0.1 mg/L calibrated accuracy
Temperature	0.2° C calibrated accuracy
pH	N/A

NONCONVENTIONAL PARAMETERS

Pollutant & CAS No. (if available)	Minimum Level (ML) µg/L unless specified
Total Alkalinity	5 mg/L as CaCO3
Chlorine, Total Residual	Until 1 year after the effective date of the final permit: 100 After 1 year after the effective date of the final permit: 50.0
Color	10 color units
Fluoride (16984-48-8)	100
Nitrate + Nitrite Nitrogen (as N)	100
Nitrogen, Total Kjeldahl (as N)	300
Soluble Reactive Phosphorus (as P)	10
Phosphorus, Total (as P)	10
Oil and Grease (HEM) (Hexane Extractable Material)	5,000
Salinity	3 practical salinity units or scale (PSU or PSS)
Settleable Solids	500 (or 0.1 mL/L)
Sulfate (as mg/L SO4)	0.2 mg/L

Pollutant & CAS No. (if available)	Minimum Level (ML) µg/L unless specified
Sulfide (as mg/L S)	0.2 mg/L
Sulfite (as mg/L SO3)	2 mg/L
Total dissolved solids	20 mg/L
Total Hardness	2.0 mg/L as CaCO3
Aluminum, Total (7429-90-5)	10
Barium Total (7440-39-3)	2.0
BTEX (benzene +toluene + ethylbenzene + m, o, p xylenes)	2
Boron Total (7440-42-8)	10.0
Cobalt, Total (7440-48-4)	0.25
Iron, Total (7439-89-6)	50
Magnesium, Total (7439-95-4)	50
Molybdenum, Total (7439-98-7)	0.5
Manganese, Total (7439-96-5)	0.5
Tin, Total (7440-31-5)	1.5
Titanium, Total (7440-32-6)	2.5

PRIORITY POLLUTANTS

Pollutant & CAS No. (if available)	Minimum Level (ML) µg/L unless specified
METALS, CYANIDE & TOTAL PHENOLS	
Antimony, Total (7440-36-0)	1.0
Arsenic, Total (7440-38-2)	0.5
Beryllium, Total (7440-41-7)	0.5
Cadmium, Total (7440-43-9)	0.25
Chromium (hex) dissolved (18540-29-9)	1.2
Chromium, Total (7440-47-3)	1.0
Copper, Total (7440-50-8)	2.0
Lead, Total (7439-92-1)	0.5
Mercury, Total (7439-97-6)	0.0005
Nickel, Total (7440-02-0)	0.5
Selenium, Total (7782-49-2)	1.0
Silver, Total (7440-22-4)	0.2
Thallium, Total (7440-28-0)	0.36
Zinc, Total (7440-66-6)	2.5

Pollutant & CAS No. (if available)	Minimum Level (ML) µg/L unless specified
Cyanide, Total (57-12-5)	10
Cyanide, Weak Acid Dissociable	10
Cyanide, Free Amenable to Chlorination (Available Cyanide)	10
Phenols, Total	50
2-Chlorophenol (95-57-8)	9.9
2,4-Dichlorophenol (120-83-2)	8.1
2,4-Dimethylphenol (105-67-9)	8.1
4,6-dinitro-o-cresol (534-52-1) (2-methyl-4,6,-dinitrophenol)	2.0
2,4 dinitrophenol (51-28-5)	2.0
2-Nitrophenol (88-75-5)	10.8
4-nitrophenol (100-02-7)	7.2
Parachlorometa cresol (59-50-7) (4-chloro-3-methylphenol)	9.0
Pentachlorophenol (87-86-5)	1.0
Phenol (108-95-2)	4.5
2,4,6-Trichlorophenol (88-06-2)	4.0
VOLATILE COMPOUNDS	
Acrolein (107-02-8)	10
Acrylonitrile (107-13-1)	2.0
Benzene (71-43-2)	2.0
Bromoform (75-25-2)	2.0
Carbon tetrachloride (56-23-5)	2.0
Chlorobenzene (108-90-7)	18
Chloroethane (75-00-3)	2.0
2-Chloroethylvinyl Ether (110-75-8)	2.0
Chloroform (67-66-3)	4.8
Dibromochloromethane (124-48-1)	2.0
1,2-Dichlorobenzene (95-50-1)	7.6
1,3-Dichlorobenzene (541-73-1)	7.6
1,4-Dichlorobenzene (106-46-7)	17.6
Dichlorobromomethane (75-27-4)	2.0
1,1-Dichloroethane (75-34-3)	2.0
1,2-Dichloroethane (107-06-2)	2.0

Pollutant & CAS No. (if available)	Minimum Level (ML) µg/L unless specified
1,1-Dichloroethylene (75-35-4)	2.0
1,2-Dichloropropane (78-87-5)	2.0
1,3-dichloropropene (mixed isomers) (1,2-dichloropropylene) (542-75-6) 6	2.0
Ethylbenzene (100-41-4)	21.6
Methyl bromide (74-83-9) (Bromomethane)	10.0
Methyl chloride (74-87-3) (Chloromethane)	2.0
Methylene chloride (75-09-2)	10.0
1,1,2,2-Tetrachloroethane (79-34-5)	2.0
Tetrachloroethylene (127-18-4)	12.3
Toluene (108-88-3)	18
1,2-Trans-Dichloroethylene (156-60-5) (Ethylene dichloride)	4.8
1,1,1-Trichloroethane (71-55-6)	11.4
1,1,2-Trichloroethane (79-00-5)	2.0
Trichloroethylene (79-01-6)	2.0
Vinyl chloride (75-01-4)	2.0
BASE/NEUTRAL COMPOUNDS	
Acenaphthene (83-32-9)	5.7
Acenaphthylene (208-96-8)	10.5
Anthracene (120-12-7)	5.7
Benzidine (92-87-5)	24
Benzyl butyl phthalate (85-68-7)	0.6
Benzo(a)anthracene (56-55-3)	0.6
Benzo(b)fluoranthene (3,4-benzofluoranthene) (205-99-2) 7	1.6
Benzo(j)fluoranthene (205-82-3) 7	1.0
Benzo(k)fluoranthene (11,12-benzofluoranthene) (207-08-9) 7	1.6
Benzo(r,s,t)pentaphene (189-55-9)	1.0
Benzo(a)pyrene (50-32-8)	1.0
Benzo(ghi)Perylene (191-24-2)	12.3
Bis(2-chloroethoxy)methane (111-91-1)	21.2
Bis(2-chloroethyl)ether (111-44-4)	1.0
Bis(2-chloroisopropyl)ether (39638-32-9)	0.6

Pollutant & CAS No. (if available)	Minimum Level (ML) µg/L unless specified
Bis(2-ethylhexyl)phthalate (117-81-7)	0.5
4-Bromophenyl phenyl ether (101-55-3)	5.7
2-Chloronaphthalene (91-58-7)	5.7
4-Chlorophenyl phenyl ether (7005-72-3)	12.6
Chrysene (218-01-9)	0.6
Dibenzo (a,h)acridine (226-36-8)	10.0
Dibenzo (a,j)acridine (224-42-0)	10.0
Dibenzo(a-h)anthracene (53-70-3)(1,2,5,6-dibenzanthracene)	1.6
Dibenzo(a,e)pyrene (192-65-4)	10.0
Dibenzo(a,h)pyrene (189-64-0)	10.0
3,3-Dichlorobenzidine (91-94-1)	1.0
Diethyl phthalate (84-66-2)	7.6
Dimethyl phthalate (131-11-3)	6.4
Di-n-butyl phthalate (84-74-2)	7.5
2,4-dinitrotoluene (121-14-2)	0.4
2,6-dinitrotoluene (606-20-2)	5.7
Di-n-octyl phthalate (117-84-0)	7.5
1,2-Diphenylhydrazine (as Azobenzene) (122-66-7)	20
Fluoranthene (206-44-0)	0.6
Fluorene (86-73-7)	5.7
Hexachlorobenzene (118-74-1)	0.6
Hexachlorobutadiene (87-68-3)	1.0
Hexachlorocyclopentadiene (77-47-4)	1.0
Hexachloroethane (67-72-1)	1.0
Indeno(1,2,3-cd)Pyrene(193-39-5)	1.0
Isophorone (78-59-1)	6.6
3-Methyl cholanthrene (56-49-5)	8.0
Naphthalene (91-20-3)	4.8
Nitrobenzene (98-95-3)	5.7
N-Nitrosodimethylamine (62-75-9)	4.0
N-Nitrosodi-n-propylamine (621-64-7)	1.0
N-Nitrosodiphenylamine (86-30-6)	1.0
Perylene (198-55-0)	7.6
Phenanthrene (85-01-8)	16.2

Pollutant & CAS No. (if available)	Minimum Level (ML) µg/L unless specified
Pyrene (129-00-0)	5.7
1,2,4-Trichlorobenzene (120-82-1)	0.6
DIOXIN	
2,3,7,8-Tetra-Chlorodibenzo-P-Dioxin (176-40-16) (2,3,7,8 TCDD)	5 pg/L
PESTICIDES/PCBs	
Aldrin (309-00-2)	0.05
alpha-BHC (319-84-6)	0.05
beta-BHC (319-85-7)	0.05
gamma-BHC (58-89-9)	0.05
delta-BHC (319-86-8)	0.05
Chlordane (57-74-9)	0.05
4,4'-DDT (50-29-3)	0.05
4,4'-DDE (72-55-9)	0.05
4,4' DDD (72-54-8)	0.05
Dieldrin (60-57-1)	0.05
alpha-Endosulfan (959-98-8)	0.05
beta-Endosulfan (33213-65-9)	0.05
Endosulfan Sulfate (1031-07-8)	0.05
Endrin (72-20-8)	0.05
Endrin Aldehyde (7421-93-4)	0.05
Heptachlor (76-44-8)	0.05
Heptachlor Epoxide (1024-57-3)	0.05
PCB-1242 (53469-21-9)	0.5
PCB-1254 (11097-69-1)	0.5
PCB-1221 (11104-28-2)	0.5
PCB-1232 (11141-16-5)	0.5
PCB-1248 (12672-29-6)	0.5
PCB-1260 (11096-82-5)	0.5
PCB-1016 (12674-11-2)	0.5
Toxaphene (8001-35-2)	0.5

U.S. ENVIRONMENTAL PROTECTION AGENCY

Response to Comments on the Draft NPDES Permit for the City of Nampa

Permit No. ID0022063

September 2016

Overview

The EPA issued a draft National Pollutant Discharge Elimination System (NPDES) permit for the City of Nampa for public review and comment on July 23, 2015. The public comment period was scheduled to close on September 21, 2015, but was extended to October 21, 2015. The EPA received comments from the Idaho Conservation League (ICL), the City of Nampa (Nampa), the City of Boise (Boise), and Idaho Rivers United (IRU) during the public comment period.

Comments Received During the Public Comment Period

Comment #1 (ICL and IRU)

ICL stated there should be no seasonal variation in limits for copper, cyanide or mercury. ICL stated that the seasonal variations in effluent limits for these pollutants appear to be based on the seasonal variations in low flow scenarios in the receiving waters. ICL stated that since reducing the amount of these pollutants in the WWTP discharge is not a function of altered WWTP operations or upgrades – but rather influent reductions – there should be no seasonal variation in facility discharges of these pollutants. And, there should be no seasonal variations in metals and cyanide inflow.

In its comments on the draft NPDES permit for the City of Nampa, IRU stated that there is no acceptable justification for allowing a higher discharge of mercury, cyanide and copper in December, January and February.

Response #1

As stated by ICL in its comments, seasonal differences in water quality-based effluent limits in the draft permits for copper, cyanide and mercury are due, in part, to the fact that the EPA has calculated seasonal values for the critical low flows in the receiving waters.

In addition, water quality criteria for copper are dependent upon hardness, and seasonal changes in hardness were also considered in the calculation of effluent limits for these parameters. As discussed in Section 4.3.3.1 of the draft *Idaho Mixing Zone Implementation Guidance* (IDEQ 2015), establishing effluent limits for metals based on year-round critical conditions for both hardness and stream flow, without regard to seasonal variation, could result in effluent limits that are more stringent than necessary, because minimum hardness and minimum stream flow may not occur simultaneously. For example, as stated on Page B-2 of the fact sheet, there is a significant difference in the hardness in Indian Creek during April – October relative to November - March. Thus, it is reasonable for the EPA to consider seasonal variation in receiving water flow and hardness when calculating such limits.

The EPA does not have the information necessary to determine if there are seasonal variations in the influent concentrations or loads of metals or cyanide, however, such variations are possible. For example, influent loading of these parameters could vary because of inflow and infiltration during wet weather, or because of seasonal changes in loading from industrial users of the treatment plant.

The means of achieving compliance with a water quality-based effluent limit (i.e., influent reductions, improved treatment, or some combination of these) is irrelevant to the calculation of such limits. Water quality-based effluent limits are calculated based on the water quality criteria (which vary seasonally for copper, in response to seasonal changes in hardness) and the dilution afforded by the mixing zones

authorized by the State of Idaho (which varies seasonally in response to changes in stream flow). They are not based on the feasibility of treatment or other means of achieving compliance.

Effluent limits for each season were calculated based on seasonal critical conditions for discharge and receiving water flow, and, where applicable, hardness. The effluent limits will therefore ensure compliance with water quality standards for these pollutants at all times.

Comment #2 (ICL and IRU)

ICL has expressed support for the Lower Boise River TMDL: 2015 Total Phosphorus Addendum's conclusion to develop waste load allocations consistent with effluent concentrations of 0.1 mg/l in the May 1 – September 30 period and 0.35 mg/L in the October 1 – April 30 time period.

ICL stated their understanding that the maximum amount of TP that can be discharged by the WWTPs would be the appropriate seasonal concentration target (i.e., either 0.1 mg/l in the May 1 – September 30 period and 0.35 mg/L in the October 1 – April 30 time period) applied to the facility's design flow. For Nampa, this would result in a maximum discharges as follows, expressed as monthly averages: 15 lb/day TP during May 1 – September 30 and 52.6 lb/day during the October 1 – April 30 period.

ICL stated that the TMDL developed concentration based waste load allocations. Thus, the TP effluent limits in the permits need to be based on a combination of effluent concentration and discharge volume. It is not appropriate to only articulate the limits in terms of lb/day loading. Rather, the limits need to be expressed such that the discharges do not exceed a concentration of either 0.1 mg/l in the May 1 – September 30 period or 0.35 mg/L in the October 1 – April 30 time period and also does not exceed a total load discharge equivalent to those concentrations at the facilities' design flows.

ICL stated that, to be consistent with the TMDL, the concentration limits cannot be exceeded. This is the case even if the total loading is less than the values listed above.

ICL stated that, when the WWTPs discharge at flows less than their design flows, the difference between the design and actual effluent flows results in a diminished capacity for the Boise River to assimilate and/or dilute phosphorus. In order to keep this reduced dilution capacity from impairing TMDL compliance, the final effluent limits for the WWTPs must contain a concentration based limit.

During periods of lesser discharge flow from the facilities (i.e. less than the design flows) total loading has to be kept in check by requirements to not exceed the concentration of either 0.1 mg/l in the May 1 – September 30 period or 0.35 mg/L in the October 1 – April 30 time period.

See the NPDES permit for the City of Boise's West WWTP ID0023981 for an example of permit limits that are expressed as both a concentration and a load.

IRU stated that the Snake River and Boise TMDLs were developed based on concentrations of TP (0.01 mg/L and 0.35 mg/L seasonally) not on average monthly and average weekly limits of pounds per day. These plants are not operating at their design capacities and shouldn't be allowed to discharge the load for the design capacity. EPA should amend the permit to express total phosphorus limits in concentrations and load. To be consistent with the TMDL, the concentration limits cannot be exceeded. This is the case even if the total loading is less than the wasteload allocations. Also, EPA requires that effluent be monitored and reported in concentrations. Citizens must be able to check compliance with the permit monthly reports made to EPA.

Response #2

Federal regulations state that NPDES permits shall include effluent limitations that "are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7." The reference to 40 CFR 130.7 refers to the EPA's approval of TMDLs developed by States.

Federal regulations also state that, in general, "all pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass," although "pollutants limited in terms of mass additionally *may* be limited in terms of other units of measurement..." (40 CFR 122.45(f), emphasis added). Thus, in general, mass limits are mandatory, and limits in terms of other units of measurement are discretionary.

In the case of total phosphorus (TP) for the subject permit, effluent limits in terms of mass are sufficient to ensure consistency with the wasteload allocations (WLAs) for this facility in the EPA-approved *Lower Boise River TMDL: 2015 Total Phosphorus Addendum* (LBR TMDL TP Addendum) (IDEQ 2015).

The LBR TMDL TP Addendum does not establish concentration-based WLAs. The TP WLAs for the City of Nampa are as follows:

- May 1 – September 30 (Table 27, Page 93): 15.0 lb/day
- October 1 – April 30 (Table 34, Page 109): Nampa: 52.6 lb/day

The caption for Table 27 (which lists the May – September WLAs) reads, "Point source wasteload allocations for the lower Boise River, May 1–September 30. Wasteload allocations at TP concentrations of 0.1 mg/L are presented per day as monthly averages. DEQ intends that wasteload allocations are to be expressed as average monthly limits." The column heading for the October 1 – April 30 WLAs in Table 34 reads "Oct–Apr Average TP Allocation (lb/day as a monthly average) at TP Conc. = 0.35 mg/L."

Although the caption in Table 27 and the column heading in Table 34 state concentration values, the allocations themselves are listed in the tables exclusively as mass loading rates, in units of pounds per day. This is clear from the parenthetical in the column headings for the WLAs in Tables 27 and 34, which reads, "lb/day as a monthly average."

The EPA's interpretation of the LBR TMDL TP Addendum is that the concentrations are provided to explain how the mass wasteload allocations were calculated, i.e., the allocations were calculated "at" certain concentrations, and at the design flows of the point sources. Multiplying the concentrations by the design flows and the density of water yields the mass wasteload allocations in units of pounds per day.

These concentrations were also used, in combination with the design flows, to represent the point source discharges in the AQUATOX model (see the LBR TMDL TP Addendum at Section 5.4.3 and Appendix D). Because the design flows were used in the modeling, the entire loading allocated to the point sources by the mass WLAs was simulated in the modeling supporting the TMDL, and the establishment of a mass limit equal to the WLA is therefore consistent with the assumptions and requirements of these WLAs.

ICL stated that "when the WWTPs discharge at flows less than their design flows, the difference between the design and actual effluent flows results in a diminished capacity for the Boise River to

assimilate and/or dilute phosphorus." While the effluent flow rates of the subject POTWs influence the flows (and therefore the loading capacity) in the Boise River and its tributaries, the TMDL used appropriate conservative assumptions to determine the assimilative capacity, including using the 90th percentile low flow in the Boise River. Using a low flow rate for the river takes into account the variation in all of the factors that influence river flows, including variations in effluent flows from the subject POTWs. Thus, the Boise River's loading capacity for total phosphorus, as calculated and allocated in the TMDL, is not dependent upon a certain level of discharge flow from the POTWs.

The City of Boise's NPDES West Boise Wastewater Treatment Facility permit (#ID0023981) referenced by ICL was issued prior to the State of Idaho's development and the EPA's approval of the LBR TMDL TP Addendum. Thus, the TP effluent limits in that permit were not based on the LBR TMDL TP Addendum. Rather, the TP effluent limits in the City of Boise permit were based directly upon the State of Idaho's narrative criterion for nutrients (IDAPA 58.01.02.200.06), consistent with 40 CFR 122.44(d)(1)(vi) (see the Fact Sheet for the West Boise Wastewater Treatment Facility at Pages C-21 – C-26). As such, it is not appropriate to compare the TP effluent limits in the West Boise Wastewater Treatment Facility permit to the TP limits in the Nampa permit.

The fact that the TP effluent limits are expressed in terms of mass does not prevent citizens from checking compliance with the permit monthly per reports made to EPA. The mass TP limits are enforceable and the actual mass of TP discharged must be reported each month. Effluent data reported to the EPA is publicly available through the Discharge Monitoring Report (DMR) Pollutant Loading Tool[1], Envirofacts[2], and Enforcement and Compliance History Online (ECHO)[3].

Comment #3 (IRU)

IRU does not support the proposed schedule of compliance for total phosphorus. EPA should not allow Nampa 9 years and 11 months to comply with the Total Phosphorus limits. That's longer than a full permit cycle. Nampa has had more than a decade to figure out how to decrease phosphorous discharge, something that has been accomplished in less than 10 years by WWTPs across the nation including some in the Treasure Valley. These permit limitations are no surprise to anyone, and there's no reason to give them 6 years to complete final design.

Response #3

The EPA has reviewed the schedule of compliance for new water quality-based effluent limits for phosphorus authorized by the Idaho Department of Environmental quality in its Clean Water Act Section 401 certification and has determined, consistent with 40 CFR 122.47(a)(1), that the schedule requires compliance as soon as possible.

Consistent with 40 CFR 122.47(a)(3), the compliance schedule includes interim requirements and the dates for their achievement. The interim requirements are substantial, including such actions as implementing biological phosphorus removal, upgrades to solids handling, implementing process, obtaining funding, planning, design, and construction. The EPA believes each of these interim steps are necessary to ultimately achieve the final water quality-based effluent limits for TP. The EPA also

[1] http://cfpub.epa.gov/dmr/
[2] http://www.epa.gov/enviro/pcs-icis-overview
[3] https://echo.epa.gov/

believes that the time intervals between these interim requirements, and, in turn, the total amount of time allowed to achieve compliance, are reasonable.

Comment #4 (Nampa)

Nampa requested that the average weekly effluent limits for total phosphorus limits be removed from their permit.

Response #4

Federal regulations require that, for POTWs that discharge continuously, "all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as...average weekly and average monthly discharge limitations" (40 CFR 122.45(d)).

Thus, in order to remove the average weekly effluent limits for total phosphorus from the permits, the EPA would need to make a finding that it is "impracticable" to state the effluent limits as average weekly and average monthly discharge limitations.

The LBR TMDL TP Addendum establishes TP WLAs that are monthly averages. The draft permits also propose average weekly limits that are derived from the average monthly WLAs. As explained in Appendix F to the fact sheet, because attainment of the proposed average monthly effluent limits for TP will require upgrades to the POTW, the historic effluent variability for TP may not be representative of future effluent variability. Instead of using the historic effluent variability for TP to calculate average weekly limits, the EPA made an assumption regarding the future, post-upgrade effluent TP variability (as quantified by the coefficient of variation or CV).

However, the EPA has determined that it is impracticable to state the TP effluent limits as average weekly limitations at this time, since, if the actual effluent variability is significantly different than the EPA's assumptions, then the average weekly limits will not be appropriate.

Because the future, post-upgrade effluent variability is unknown, it is impracticable for the EPA to properly calculate average weekly effluent limits for TP at this time. Thus, the EPA has deleted the proposed average weekly TP limits from the final permit. Since the WLAs are expressed as monthly averages, average monthly limits are adequate to ensure that the effluent limits are consistent with the assumptions and requirements of the TMDL's WLAs.

Comment #5 (Nampa)

Nampa requested in their comments that the EPA not include *Selenastrum capricornutum* in the screening for the most sensitive species in the whole effluent toxicity (WET) testing requirements.

Nampa stated that the whole effluent toxicity (WET) testing requirements list short-term tests using *Selenastrum capricornutum* (growth test). *Selenastrum capricornutum* is a green algae and is sensitive to low-level nutrients (i.e. reductions to permit levels for TP could cause impaired growth). The City's NPDES permit is being driven by a TMDL aimed at reducing algae in the Lower Boise River. Therefore, it seems somewhat counterintuitive that the WET testing could become problematic if other goals in the permit are achieved. The City believes that because two other indicator organisms used for WET testing (*Ceriodaphnia dubia* and *Pimephales promelas*) provide a sufficient assurance that the City's discharge will not impact aquatic species.

Response #5

The TSD states that, "to provide sufficient information for making permitting decisions, EPA recommends a minimum number of three species, representing three different phyla (e.g., a fish, an invertebrate, and a plant) be used to test an effluent for toxicity" (Section 1.3.4, Page 16).

The only plant for which there is a chronic whole effluent toxicity test approved by the EPA for nationwide use is EPA Method 1003.0, which is a growth test for the green alga *Selenastrum capricornutum* (40 CFR 136.3, Table IA). Thus, in order to ensure consistency with the TSD's recommendation to test a minimum of three species representing three different phyla, the EPA has required *Selenastrum capricornutum* to be included in the screening for the most sensitive species.

Regarding the City of Nampa's statement that "reductions to permit levels for TP could cause impaired growth" of algae in a toxicity test, it should be noted that, in the WET test method for *Selenastrum capricornutum*, nutrients including phosphorus are added to the effluent sample, so that all test treatments and controls will contain at a minimum the concentration of nutrients in the stock culture medium (see EPA Method 1003.0 at section 14.10.1.2.7). This will ensure that a false positive for effluent toxicity will not occur due to nutrient limitation.

Comment #6 (Boise, Nampa)

The City of Boise and City of Nampa stated that all of the analytes listed in Appendix A can have a method detection limit (MDL) but the ten (10) analytes listed below cannot have a minimum level (ML) as defined in the NPDES permits due to the required EPA method (e.g., titration) or reporting format (e.g., 7 day average) of the parameter.

- Biochemical Oxygen Demand
- Soluble Biochemical Oxygen
- Total Suspended Solids
- Dissolved Oxygen
- Temperature (max 7 day avg)
- Oil and Grease (HEM)
- Salinity
- Settleable Solids
- Total Dissolved Solids
- Total Hardness

ML values for 10 pollutants listed above should be listed as MDL or sensitivity of the instrument/detector for the parameter (e.g.+/- 0.2 C for temperature).

Response #6

The draft permit includes a definition of the term "minimum level" that is consistent with the definition in the glossary of the *U.S. EPA NPDES Permit Writers' Manual* (EPA 2010). However, in 2014, the EPA promulgated a revised definition of the term "minimum level" in the sufficiently sensitive methods final rule (79 FR 49001). The revised definition reads:

> *The term "minimum level" refers to either the sample concentration equivalent to the lowest calibration point in a method or a multiple of the method detection limit (MDL). Minimum levels*

may be obtained in several ways: They may be published in a method; they may be sample concentrations equivalent to the lowest acceptable calibration point used by a laboratory; or they may be calculated by multiplying the MDL in a method, or the MDL determined by a lab, by a factor.

The EPA also explained in the sufficiently sensitive methods rule that the terms "quantitation limit," "reporting limit," and "level of quantitation" are synonymous with "minimum level" (79 FR 49001).

Since the revised definition allows for the minimum level to be obtained in several ways, including multiplying the MDL (as published in a method or determined by a lab) by a factor, then minimum levels can be determined for any analyte for which an MDL can be determined. Thus, minimum levels can, in fact, be determined for all of the analytes in Appendix A.

As explained in the response to comment #9, below, Appendix A specifies the required level of sensitivity for monitoring, which is independent and distinct from the statistics that are to be reported. The EPA has deleted the parenthetical "(max. 7-day avg.)" from the entry for temperature in Appendix A.

For dissolved oxygen and temperature, the EPA has edited appendix A to require a "calibrated accuracy," instead of a minimum level, consistent with the USGS *National Field Manual for the Collection of Water-Quality Data*, (USGS 2015). The *National Field Manual for the Collection of Water-Quality Data* states that thermistors should have a "calibrated accuracy within 0.1 °C to 0.2 °C" and amperometric and optical dissolved oxygen probes should have a "calibrated accuracy within ±0.1 mg/L DO" (USGS 2015). In the final permit, the EPA has specified that temperature measurements must have a calibrated accuracy within 0.2 °C and that dissolved oxygen probes must have a calibrated accuracy within 0.1 mg/L.

Comment #7 (Boise, Nampa)

The City of Boise and City of Nampa stated that the requirement to run a calibration point at the ML is consistent with the new and updated 600 series organic methods in the Proposed 2015 MUR to 40 CFR 136. However, these methods are not yet approved and it is extremely difficult finding a commercial laboratory capable of running the MUR method.

Response #7

As explained in the response to comment #6, above, under the revised definition of "minimum level" in the sufficiently sensitive methods final rule (79 FR 49001), which has been incorporated into the final permit, the ML need not be based on the lowest calibration standard. The final permit does not require running a calibration point at the ML.

Comment #8 (Boise, Nampa)

The minimum level requirements of "Attachment/Appendix A Minimum Levels" restrict the options of NPDES approved methods listed at 40 CFR Part 136: Table IB. The following methods could utilize calibration curves meeting the definition of a ML, however, the values listed are more appropriate for a MDL due to the low concentration specified. In addition, the ML requirement prevents the use of the most commonly used methods which are titrations or test kits that are analyzed on factory calibrated spectrophotometers.

- Chemical Oxygen Demand
- Total Alkalinity
- Chlorine, Total Residual

ML values in Table A for these parameters should be listed as MDLs.

Response #8

As explained in the response to comment #6, above, under the revised definition of "minimum level" in the sufficiently sensitive methods final rule (79 FR 49001), which has been incorporated into the final permit, the ML need not be based on a calibration curve.

The EPA believes the minimum levels specified in Appendix A for chemical oxygen demand, total alkalinity, and total residual chlorine, are achievable. See also the response to Comment #30.

Comment #9 (Boise, Nampa)

The City of Boise and City of Nampa stated that the minimum level requirement for a statistical average is inappropriate for "Temperature (max 7 day avg)" in the "Attachment/Appendix A: Minimum Levels." ML and MDL are related to instrument sensitivity for T (+/- 0.2 C) and is not applicable or appropriate for a 7 day average temperature. ML needs to be removed from Appendix A for maximum 7 day average temperature.

Response #9

The EPA agrees that the parenthetical "(max. 7-day avg.)" should be deleted from the listing for temperature in Appendix A. Appendix A specifies the required level of sensitivity for monitoring, which is independent and distinct from the statistics that are to be reported. The statistics that are to be reported for temperature are specified elsewhere in the permit. As explained in the response to comment #6, above, in the final permit, the EPA has specified that temperature measurements must have a calibrated accuracy within 0.2 °C.

Comment #10 (Boise, Nampa)

The City of Boise and City of Nampa stated that the minimum levels in Appendix A to the draft permits need to be adjusted, for several reasons.

EPA's proposed draft Methods Update Rule (MUR)[4] seeks to increase the MLs (and MDLs) for many of the parameters listed in Appendix A to reflect "real world" water quality and analytical conditions (e.g. matrices ranging from clean receiving waters to "dirty" receiving water) instead of ultra clean and unrealistic matrices (e.g. MLs for a pollutant in distilled water) used for development of the MLs contained in the draft permits.

The minimum level requirements of "Attachment/Appendix A Minimum levels" appear to be based on published MDLs in EPA methods. The ML values are determined by multiplying the published MDL by 3.18. These EPA methods used MDL calculation methodology are inconsistent with the "2015 Proposed Methods Update Rule (MUR)" (80 FR 8956).

[4] EPA Methods Update Rule-2015, webpage includes February 9, 2015 Federal Register Notice, Fact Sheet, and background materials; http://www2.epa.gov/cwa-methods/methods-update-rule-2015

The published MDLs for EPA methods need to be revised using EPA methods to be compliant with the draft MUR. Compliance with the new methods in MUR will increase MDLs for many methods. Since the basis for the values assigned in "Attachment/Appendix A Minimum Levels" are not consistent with 2015 MUR requirements, they create a significant liability for permittees and are inappropriate for use in NPDES permits.

The Proposed 2015 MUR also proposes significant changes in the organic EPA 600 series methods which require matrix specific MDLs. Commercial labs will need to determine MDLs in various wastewater matrices, which will increase MDLs and MLs.

If the GC/MS EPA methods 624 and EPA 625 for purgeables and base neutrals and acids, respectively, were used for the organics listed in Appendix A, confirmation of the analytes is not needed, however the ML values would need to be increased for this method to be available for a permittee to use.

The proposed new or updated organic EPA 600 series methods contained in the draft 2015 MUR allow blank subtraction in samples, which will have an impact on the ML and should be reflected in Appendix A.

Many of the issues in the Proposed 2015 MUR to 40 CFR 136 have been addressed by the National Environmental Laboratory Accreditation Conference (NELAC) Institute and directly impact organic methods, which are proposed to increase and should be the ML requirement contained in NPDES permits.

The MLs listed in the Proposed 2015 MUR to 40 CFR 136 for EPA methods 624 & 625 are 2-15 times higher than the levels listed in Appendix A.

Response #10

The MLs in the draft permits were not calculated by multiplying published MDLs by 3.18. Rather they were based on MLs required by the Washington State Department of Ecology in its NPDES permits, which were in turn based on a survey of laboratories conducted in 2008. Thus, the EPA believes that the MLs proposed in Appendix A are achievable. If the permittees cannot achieve the MLs in the final permit, the permittee may request different MLs.

However, for many pollutants, the MLs proposed in EPA Methods 608.3, 624.1 and 625.1 in the draft MUR are lower than the most-stringent water quality criterion in effect in Idaho, or the EPA-recommended Clean Water Act Section 304(a) water quality criteria. For other pollutants, the State of Idaho has not established a water quality criterion for the pollutant and the EPA has not established a 304(a) criterion. Methods with an ML at or below the applicable water quality criterion are considered "sufficiently sensitive" (79 FR 49013).

The EPA has therefore revised the MLs in Appendix A to the permits to be equal to the MLs published in the draft MUR, for the pollutants listed in Table 1, below. If the ML proposed in the draft permit was higher than that published in the draft MUR, but less than the most stringent Idaho water quality criterion, then the ML proposed in the draft permit was retained.

Table 1: Pollutants for which the Methods Update Rule (MUR) Minimum Level (ML) is less than Applicable Water Quality Criteria							
Pollutant	**CAS #**	**Draft Permits ML (µg/L)**	**Draft MUR ML (µg/L)**	**Most Stringent ID WQC (µg/L)**	**Most Stringent CWA WQC (µg/L)**	**Most Stringent WQC (µg/L)**	**Ratio of WQC to draft MUR ML**
1,1,1-Trichloroethane	71-55-6	2	11.4	11000	—	11000	**965**
1,1-Dichloroethane	75-34-3	2	0.047	—	—	N/A	**N/A**
1,2-Trans-Dichloroethylene (Ethylene dichloride)	156-60-5	2	4.8	120	—	120	**25.0**
2,4-Dichlorophenol	120-83-2	1	8.1	9.6	93	9.6	**1.19**
2,4-Dimethylphenol	105-67-9	1	8.1	110	—	110	**13.6**
2,6-dinitrotoluene	606-20-2	0.4	5.7	—	—	N/A	**N/A**
2-Chloronaphthalene	91-58-7	0.6	5.7	330	—	330	**57.9**
2-Chlorophenol	95-57-8	2	9.9	30	—	30	**3.03**
2-Nitrophenol	88-75-5	1	10.8	—	—	N/A	**N/A**
4-Bromophenyl phenyl ether	101-55-3	0.4	5.7	—	—	N/A	**N/A**
4-Chlorophenyl phenyl ether	7005-72-3	0.5	12.6	—	—	N/A	**N/A**
4-nitrophenol	100-02-7	1	7.2	—	—	N/A	**N/A**
Acenaphthene	83-32-9	0.4	5.7	26	—	26	**4.56**
Acenaphthylene	208-96-8	0.6	10.5	—	—	N/A	**N/A**
alpha-Endosulfan (Endosulfan I)	959-98-8	0.05	0.033	0.056	0.93	0.056	**1.70**
Anthracene	120-12-7	0.6	5.7	110	9600	110	**19.3**
Benzo(ghi)Perylene	191-24-2	1	12.3	—	—	N/A	**N/A**
beta-Endosulfan (Endosulfan II)	33213-65-9	0.05	0.024	0.056	0.93	0.056	**2.33**
Bis(2-chloroethoxy)methane	111-91-1	21.2	15.9	—	—	N/A	**N/A**
Chlorobenzene	108-90-7	2	18	89	680	89	**4.94**
Chloroform	67-66-3	2	4.8	61	5.7	5.7	**1.19**
Diethyl phthalate	84-66-2	7.6	5.7	200	23000	200	**35.1**
Dimethyl phthalate	131-11-3	6.4	4.8	600	313000	600	**125**
Di-n-butyl phthalate	84-74-2	1	7.5	8.2	2700	8.2	**1.09**
Di-n-octyl phthalate	117-84-0	0.6	7.5	—	—	N/A	**N/A**
Endosulfan sulfate	1031-07-8	0.05	0.021	9.9	0.93	0.93	**44.3**
Endrin aldehyde	7421-93-4	0.05	0.033	0.38	0.76	0.38	**11.5**
Ethylbenzene	100-41-4	2	21.6	32	3100	32	**1.48**
Fluorene	86-73-7	0.6	5.7	21	1300	21	**3.68**
Isophorone	78-59-1	1	6.6	330	8.4	8.4	**1.27**
Methyl bromide (Bromomethane)	74-83-9	10	8.4	130	48	48	**5.71**
Naphthalene	91-20-3	0.6	4.8	—	—	N/A	**N/A**
Nitrobenzene	98-95-3	1	5.7	12	17	12	**2.11**
Parachlorometa cresol (4-chloro-3-methylphenol)	59-50-7	2	9	350	—	350	**38.9**
Phenanthrene	85-01-8	0.6	16.2	—	—	N/A	**N/A**
Phenol	108-95-2	4	4.5	3800	21000	3800	**844**
Pyrene	129-00-0	0.6	5.7	8.1	960	8.1	**1.42**
Toluene	108-88-3	2	18	47	6800	47	**2.61**

Comment #11 (Boise and Nampa)

Mercury is a bioaccumulative pollutant that is a global pollutant[5] and impacts many waters of the United States, including Idaho, the Boise River and Brownlee Reservoir[6]. Idaho fish consumption advisories[7] for mercury have been issued for the Boise River (catfish at Parma, Idaho), Brownlee Reservoir (Carp, Catfish, Crappie, and Perch), and statewide (large and smallmouth bass), making mercury an important permitting issue for all point sources discharging mercury to the Boise River.

Municipal wastewater treatment facilities are generally a minor source of mercury, however they do have a role to play in the control of mercury and the protection of human health[8,9]. The proposed Mercury Minimization Plan and Watershed based Fish Tissue testing requirements proposed in the draft permits appear to be appropriate and are actions municipalities already are or are willing to implement to protect human health and the environment.

Response #11

Thank you for your comment.

Comment #12 (Boise and Nampa)

Boise and Nampa stated that the aquatic life criterion is satisfied and provides no basis for reasonable potential, mercury numeric limits, or monitoring requirements.

The Nampa Fact Sheet and draft permit evaluates and proposes the need for mercury limitations and monitoring requirements using two Idaho water quality standards for mercury, the 12 ng/l aquatic organism criterion[10] and the 0.3 mg/kg methylmercury fish tissue based human health criterion[11] approved by EPA in 2008.

The 12 ng/l aquatic life mercury criterion was incorrectly applied to determine the reasonable potential to exceed, numeric mercury limits, and monitoring requirements.

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[5] United Nations Environment Programme Global Mercury Assessment 2013, available at: http://www.unep.org/PDF/PressReleases/GlobalMercuryAssessment2013.pdf

[6] Idaho Fish Consumption Advisory Program, Boise River listing for Catfish (no more the 3-11 meals per month depending on age and pregnancy, statewide large and small mouth bass advisory of no more than 2-8 meals per month with no other fish consumption; http://healthandwelfare.idaho.gov/Health/EnvironmentalHealth/FishAdvisories/tabid/180/Default.aspx

[7] Idaho Fish Consumption Advisories, Idaho Fish Consumption Advisory Program, http://healthandwelfare.idaho.gov/Health/EnvironmentalHealth/FishAdvisories/tabid/180/default.aspx

[8] Mercury Pollutant Minimization Program Guidance, USEPA Region 5, November 2004.

[9] USEPA, 2010, Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion, 221 p, http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=P1007BKQ.TXT

[10] IDAPA 58.01.02- Water Quality Standards and Wastewater Treatment Requirements, 2004; Section 58.01.02.210.01.a.8, Mercury aquatic life criterion, CCC, B2, footnote g "g. If the CCC for total mercury is exceeded more than once in a three (3) year period in ambient water, the edible portion of aquatic species of concern must be analyzed to determine whether the concentration of methyl mercury exceeds the FDA action level (one (1.0) mg/kg). If the FDA action level is exceeded, the Director must notify the EPA regional administrator, initiate a review and as appropriate, revision of its mercury criterion in these water quality standards, and take other appropriate action such as the issuance of fish consumption advisory for the affected area."

[11] Idaho's Water Quality Standards, IDAPA 58.01.02, IAC 2011, http://adminrules.idaho.gov/rules/current/58/0102.pdf

The Nampa mercury limitations are based on the 12 ng/l aquatic life criterion. If the 12 ng/l criterion is exceeded in the receiving stream more than once every three years, the criterion requires fish tissue testing of the edible portion of consumed species to determine whether the concentration exceeds the 1.0 mg/kg FDA action level. If the 1 mg/kg action level is exceeded, actions to control mercury discharges and notify the public are required.[12]

The reasonable potential analysis appears to use only the water column concentration portion of the 12 ng/l criterion without evaluating the edible fish tissue portion of the criterion using local fish tissue data to determine compliance or non-compliance with the standard, if there is reasonable potential to exceed the state water quality standard, in the determination of numeric limit or other controls, and in determination of associated monitoring requirements.

Historical and recent fish tissue data have been collected and reported by USGS, the Idaho Fish Consumption Advisory Program[13], and the City of Boise Methylmercury Fish Tissue Sampling Program for the Lower Boise River, Snake River and Brownlee Reservoir. The data show fish tissue mercury values range from 0.06 to 0.33 mg/kg methylmercury for samples collected in the Boise and Snake Rivers and Brownlee Reservoir[14]. These levels are well below the 1.0 mg/kg FDA action level and demonstrate compliance with the aquatic life mercury criterion.

Analysis of the applicable 2004 mercury aquatic life criterion continuous concentration of 12 ng/l and footnote g, when correctly evaluated, shows that the 12 ng/l criterion is satisfied at all locations within the Lower Boise Watershed, the Snake River below the confluence with the Boise, and Brownlee Reservoir. No reasonable potential exists to exceed the mercury aquatic life water quality criterion, therefore, no numeric limitations, additional actions or public notification are necessary to satisfy the mercury aquatic life criterion.

The basis and development of numeric mercury limitations contained in Nampa draft permit is incorrect and there is no basis provided for numeric limitations, additional actions or additional monitoring. The Fact Sheet needs to be corrected to reflect that the applicable aquatic life criterion for mercury is satisfied.

Response #12

The commenters are correct that the EPA applied both the aquatic life chronic criterion or criterion continuous concentration (CCC) of 12 ng/L (0.012 µg/L) and the 0.3 mg/kg human health criterion for methylmercury in fish tissue. This is because both of these criteria are in effect for Clean Water Act purposes in Idaho.

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[12] 1DAPA 58.01.02-Water Quality Standards and Wastewater Treatment Requirements, 2004; Section 58.01.02.210.01.a.8, Mercury aquatic life criterion, CCC, 82, footnote g "g. If the CCC for total mercury is exceeded more than once in a three (3) year period in ambient water, the edible portion of aquatic species of concern must be analyzed to determine whether the concentration of methyl mercury exceeds the FDA action level (one (1.0) mg/kg). If the FDA action level is exceeded, the Director must notify the EPA regional administrator, initiate a review and as appropriate, revision of its mercury criterion in these water quality standards, and take other appropriate action such as the issuance of fish consumption advisory for the affected area."

[13] Idaho Fish Consumption Advisories, Idaho Fish Consumption Advisory Program, http://healthandwelfare.idaho.gov/Health/EnvironmentalHealth/FishAdvisories/tabid/180/default.aspx

[14] 2013 Boise River Watershed Based Methylmercury Fish Tissue Sampling Report, Boise City Public Works, 22p. and 2014 Boise River Watershed Based Methylmercury Fish Tissue Sampling Report, Boise City Public Works, 11p.

On December 12, 2008, the EPA disapproved the State of Idaho's removal of its aquatic life water quality criteria for mercury in the water column[15]. The aquatic life water column criteria for total recoverable mercury that the EPA approved in 1997 remain in effect for Clean Water Act purposes (40 CFR 131.21). These criteria are an acute criterion or criterion maximum concentration (CMC) of 2.1 µg/L and a chronic criterion or criterion continuous concentration (CCC) of 0.012 µg/L (12 ng/L). Because these criteria remain in effect for Clean Water Act purposes, the EPA must implement these criteria in NPDES permits (40 CFR 131.21(d)). The numeric effluent limits for mercury in the draft permits for Nampa are based on these criteria.

The commenters point out that, in a footnote to the table of water quality criteria, the Idaho Water Quality Standards had stated the following:

> *If the CCC for total mercury is exceeded more than once in a three (3) year period in ambient water, the edible portion of aquatic species of concern must be analyzed to determine whether the concentration of methyl mercury exceeds the FDA action level (one (1.0) mg/kg). If the FDA action level is exceeded, the Director must notify the EPA regional administrator, initiate a review and as appropriate, revision of its mercury criterion in these water quality standards, and take other appropriate action such as the issuance of fish consumption advisory for the affected area.*

This now-repealed provision of the Idaho WQS concerns sampling for fish tissue to be performed in response to exceedances of the water column mercury CCC, and could result in revisions to the water column mercury criteria. It does not modify the numeric criteria (i.e., the CMC of 2.1 µg/L and CCC of 12 ng/L), which were used as the basis for numeric effluent limits for mercury in the Nampa permit.

The commenters assert that the fact that fish tissue concentrations are below the Food and Drug Administration (FDA) action level of 1.0 mg/kg in the receiving waters demonstrates compliance with the 12 ng/L numeric aquatic life CCC. The commenters then conclude, based on fish tissue concentrations below the FDA action level, that there is no reasonable potential to exceed the 12 ng/L CCC. The EPA disagrees with these assertions for the following reasons.

First, the fact that fish tissue concentrations of methylmercury have not exceeded the FDA action level of 1.0 mg/kg does not necessarily mean that the 12 ng/L CCC, with its associated averaging period and allowable excursion frequency, is attained. The 12 ng/L CCC was based on achieving the 1.0 mg/kg FDA action level, using a bioconcentration factor of 81,700 (EPA 1985). However, bioaccumulation of mercury is highly variable and is influenced by a number of factors, including the age or size of the organism; food web structure; water quality parameters such as pH, DOC, sulfate, alkalinity, and dissolved oxygen; mercury loadings history; proximity to wetlands; watershed land use characteristics; and waterbody productivity, morphology, and hydrology (EPA 2010). Furthermore, bioaccumulation of mercury in fish occurs gradually over the lifetime of the fish, whereas the 12 ng/L CCC has an averaging period of only 4 days, with an excursion frequency of once every three years (EPA 1985). Infrequent, short-term excursions above the 12 ng/L CCC would have a small effect on concentrations of methylmercury in fish tissue, as long as the average concentration of mercury was low. However, such

[15] http://www.deq.idaho.gov/media/451688-epa_letter_mercury_criterion_disapproval.pdf

excursions would nonetheless violate the 12 ng/L CCC (unless they occurred less frequently than once every three years).

Second, even if an exceedance of the 12 ng/L CCC has not occurred in the receiving waters, this would not necessarily mean that a particular discharge would not need to have effluent limits based on the 12 ng/L CCC. Limits must be established not only if a discharge *causes* excursions above water quality standards, but also if a discharge has the *reasonable potential to cause or contribute* to excursions above water quality standards (40 CFR 122.44(d)(1)(i, iii)). In determining whether the subject discharges had the reasonable potential to cause or contribute to excursions above the 12 ng/L CCC, the EPA used the procedures in Section 3.3 of the TSD. Consistent with 40 CFR 122.44(d)(1)(ii), these procedures account for existing controls on point and nonpoint sources of pollution and the variability of the pollutant in the effluent. In this case, since a mixing zone was authorized by the State of Idaho for mercury, the EPA also considered the dilution of the effluent in the receiving water.

Using these procedures, the EPA determined that the discharges from the City of Nampa wastewater treatment plant has the reasonable potential cause or contribute to excursions above the 12 ng/L mercury CCC. Therefore, the EPA must establish effluent limits that are derived from and ensure compliance with the 12 ng/L mercury CCC (40 CFR 122.44(d)(1)(vii)(A)).

Comment #13 (Boise and Nampa)

The Idaho Methylmercury Human Health water quality criterion for fish tissue (0.3 mg/kg) is 3.3 times more stringent than the aquatic life 12 ng/l criterion when correctly evaluated[16]. The Human Health criterion therefore is more stringent and the appropriate criterion for evaluation of reasonable potential, limits or other actions, and monitoring requirements. Idaho and EPA have developed guidance for implementation of the human health criterion. The Fact Sheet needs to use the Human Health mercury criterion for the evaluation of reasonable potential, associated controls, and monitoring requirements for mercury.

The Idaho Mercury Human Health criterion was adopted with implementation guidance[17] that addresses how it would be applied to municipal wastewater treatment facilities, including additional actions and recommended monitoring frequencies based on the level of fish tissue mercury within the watershed. EPA[18] developed methylmercury human health implementation guidance that is essentially identical to the Idaho guidance.

The Fact Sheet needs to be significantly modified and use the lower and appropriate 0.3 mg/kg EPA approved Idaho Methylmercury Human Health criterion and associated Idaho Methylmercury Criteria

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[16] IDAPA 58.01.02 -Water Quality Standards and Wastewater Treatment Requirements, 2004; Section 58.01.02.210.01.a.8, Mercury aquatic life criterion, CCC, B2, footnote g "g. If the CCC for total mercury is exceeded more than once in a three (3) year period in ambient water, the edible portion of aquatic species of concern must be analyzed to determine whether the concentration of methyl mercury exceeds the FDA action level (one (1.0) mg/kg). If the FDA action level is exceeded, the Director must notify the EPA regional administrator, initiate a review and as appropriate, revision of its mercury criterion in these water quality standards, and take other appropriate action such as the issuance of fish consumption advisory for the affected area."

[17] Implementation Guidance for the Idaho Mercury Water Quality Criteria, April 2005, IDEQ, 212 pages, https://www.deq.idaho.gov/media/639808-idaho_mercury_wq_guidance.pdf

[18] Guidance for Implementing the January 2001 Methylmercury Water Quality Criterion, EPA 2010, 221 p, http://nepis.epa.gov/Exe/ZyPURL.cgi?Dockey=P1007BKQ.TXT

Implementation Guidance[19] for the evaluation of the reasonable potential to exceed standards, the appropriate limitations or controls, and the associated monitoring requirements.

Using the Idaho Methylmercury criterion, Idaho and EPA Methylmercury Implementation Guidance, effluent data, and recent fish tissue data (2000-present) from all sources, reasonable potential does appear to be triggered (e.g. quantifiable mercury in the effluent and >24 mg/kg fish tissue below facilities), additional actions do appear to be required (e.g. Mercury Minimization Plans), and watershed based fish tissue and effluent monitoring does appear to be justified.

The Fact Sheet for the draft Nampa NPDES permit needs to be corrected to provide the basis for additional mercury controls and monitoring limits.

Response #13

The commenters' statement that the Idaho methylmercury human health water quality criterion for fish tissue (0.3 mg/kg) is 3.3 times more stringent than the aquatic life 12 ng/l CCC appears to be based on the fact that the 12 ng/L CCC was based on the FDA action level of 1.0 mg/kg, which is 3.3 times the human health criterion. However, since the 12 ng/L CCC is a water column criterion as opposed to a fish tissue criterion, this statement would be true in terms of water column concentrations of mercury only if the bioaccumulation factor was equal to the bioconcentration factor of 81,700 that was used to develop the 12 ng/L aquatic life criterion from the 1.0 mg/kg FDA action level. Bioaccumulation of mercury is highly variable and is influenced by a number of factors, including the age or size of the organism; food web structure; water quality parameters such as pH, DOC, sulfate, alkalinity, and dissolved oxygen; mercury loadings history; proximity to wetlands; watershed land use characteristics; and waterbody productivity, morphology, and hydrology (EPA 2010). Furthermore, bioaccumulation of mercury in fish occurs gradually over the lifetime of the fish, whereas the 12 ng/L CCC has an averaging period of only 4 days (EPA 1985), with an allowed excursion frequency of once every three years. Infrequent, short-term excursions above the 12 ng/L CCC would have a small effect on concentrations of methylmercury in fish tissue, as long as the average concentration of mercury was low. However, such excursions would nonetheless violate the 12 ng/L CCC (unless they occurred less frequently than once every three years).

As discussed in the fact sheet, the EPA has, in fact, implemented the Idaho methylmercury human health criterion in the subject permit in a manner consistent with the IDEQ and EPA guidance referenced by the commenters. See the fact sheet at Pages 23-24.

As explained in the response to comment #12, the EPA must also establish water quality-based effluent limits for mercury if the discharges have the reasonable potential to cause or contribute to excursions above the 12 ng/L CCC, which is the case for Nampa.

Comment #14 (IRU)

National Pollution Discharge Elimination System permits are issued for a period of five years for many good reasons, first and foremost being the opportunity provided every five years to improve permit conditions to better protect the rivers of the United States. In the sixteen years since the City of Meridian Wastewater Treatment plant was last permitted, significant events have occurred that, if they

[19] Implementation Guidance for the Idaho Mercury Water Quality Criteria, April 2005, IDEQ, 212 pages, https://www.deq.idaho.gov/media/639808-idaho_mercury_wq_guidance.pdf

had been considered every five years as required, would have decreased pollution of Indian Creek and the Boise River starting in 2004. These events include the approval of Total Maximum Daily Loads for Indian Creek, the Boise and the Snake rivers, the collection of relevant water quality data by US Geological Survey and others, many EPA-approved reports on the status of Idaho's water quality, and advancements in wastewater treatment technology. During those eleven years, unlimited amounts of phosphorus and other pollutants have been allowed to be discharged to Indian Creek contributing to the impairment of Indian Creek and the Boise and Snake rivers.

Idaho Rivers United does not support administrative extensions of NPDES permits and asks EPA to ensure the timely renewal of this permit five years from issuance.

Response #14

Although the commenter referenced the permit for the City of Meridian in this comment, the EPA assumes that the commenter intended to reference the permit for City of The City of Nampa, since this comment appeared in a letter providing other comments on the draft permit for the City of Nampa.

EPA has issued the permit as expeditiously as possible. Administrative extension of this permit was provided in accordance with federal regulations (40 CFR 122.6).

Comment #15 (IRU)

Idaho Rivers United supports the permit's year round limits on discharge of Total Phosphorus to Indian Creek.

As was made clear in the Fact Sheet, nuisance levels of periphyton can occur in the Boise River during what EPA previously called the non-growing season (October – April) and Total Phosphorus in the Boise River continuously exceeds the 70 µg/L load allocation in the Snake River Hells Canyon TMDL. The Nampa WWTP releases phosphorus-laden effluent continuously, pollution that has had significant negative impacts on the health of Indian Creek, and the Boise and Snake rivers for decades, and these limits are long-overdue.

Response #15

Thank you for your comment.

Comment #16 (ICL)

We do not support a 9 year 11 month compliance schedule for cyanide since attaining the cyanide limits is likely a matter of limiting inflow rather than installing treatment equipment.

The EPA has determined that this WWTP has the reasonable potential to violate water quality limits for cyanide. As such, EPA must issue effluent limits for cyanide to the Nampa WWTP in this permit. However, the EPA has not included interim cyanide limits. This oversight needs to be rectified and interim limits need to be established.

Response #16

Neither the draft permit nor the final permit include a compliance schedule for the new water quality-based effluent limits for weak acid dissociable cyanide. As such, no interim limits have been established for cyanide. The permit contains only final, water quality-based effluent limits for cyanide, which become effective immediately upon the effective date of the final permit.

Comment #17 (ICL)

Although the DEQ provided (and EPA approved) that Nampa could increase its WLA for TSS by allocating to Nampa some of the TSS that had been reserved for growth in the prior Lower Boise Sediment TMDL, it is not appropriate for the EPA to incorporate this change into the City of Nampa's TSS effluent limit. In this instance, because the receiving water, Indian Creek, continues to violate water quality standards for sedimentation and siltation, this increase in allowable TSS discharges represents backsliding, irrespective of the changed conditions at the WWTP. Increasing the TSS effluent limit will cause and/or contribute to a violation of water quality standards.

Response #17

The TSS effluent limits in the permit are consistent with the City's wasteload allocations in the *Lower Boise River TMDL* (IDEQ 1999) and in the *Lower Boise River TMDL 2015 Sediment and Bacteria Addendum* (IDEQ 2015). The 2015 Sediment and Bacteria Addendum addressed the impairment for sedimentation and siltation in Indian Creek and has been approved by the EPA. Therefore the effluent limits for TSS are as stringent as necessary to protect water quality in both Indian Creek and the Boise River, are consistent with applicable waste load allocations in an approved TMDL, and do not constitute permit backsliding. *See* CWA section 303(d)(4).

Comment #18 (Nampa)

In Part I.B, Table 1, footnote #7, the proposed permit requires that temperature data be gathered via thermistors, which the City does not currently own. The software for the device must then be used to generate (export) a spreadsheet or text file, to be submitted monthly to the EPA as an electronic attachment to the City's DMRs. Since the City does not possess the technology, the City requests that DEQ provide a one-year compliance schedule for this requirement that will allow the City time to procure necessary equipment.

Response #18

The EPA agrees that it is reasonable to allow one year to begin continuous temperature monitoring of the effluent and receiving water. The final permit requires an effluent temperature sample frequency of five times per week and a receiving water temperature sample frequency of once per week, for the first year. For the effluent, this monitoring frequency is the same as the monitoring frequency for pH, which is also measured with a grab sample. For the receiving water, this monitoring frequency is the same as the monitoring frequency for turbidity, which is also measured with a grab sample. The permit also requires that grab samples for temperature be taken from 4 – 6 PM and that receiving water temperature samples be taken within 1 hour of an effluent sample.

Beginning one year after the effective date of the final permit, the final permit requires continuous monitoring of the effluent and receiving water temperature, as proposed in the draft permit.

Comment #19 (Nampa)

In Part I.B.3.b of the draft permit, the surface water monitoring requirements detail that the permittee must record a visual observation of the receiving water in the vicinity of where the effluent meets the surface water. This requirement does not specify any scientific data gathering other than viewer observation. The City requests adding more objective criteria to this section to provide more defensible description of surface water characteristics or removing this requirement. The following language is suggested as an addition to this section:

The permittee must observe the surface of the receiving water in the vicinity of where the effluent enters the surface water. The permittee must maintain a written log of the observation which includes the date, time, observer, and whether there is presence of floating, suspended or submerged matter. The log must be retained and made available to EPA or IDEQ upon request. The log should note, as a binary, yes/no response, whether there is presence of floating, suspended or submerged matter and include a picture taken at the time of observation.

Response #19

The EPA agrees with the language suggested by the commenter and has edited the final permit accordingly. In the final permit, the EPA has replaced the word "should" with "must" and the word "picture" with "photograph" in the last sentence of the permittee's suggested language.

Comment #20 (Nampa)

In Table 3 of the draft permit, the City does not agree with the Category 5 listing of Indian Creek for temperature and the resulting NPDES permit limits. As described in the Petition for Administrative Review regarding the 2012 Integrated Report filed by the City before the Idaho Board of Environmental Quality on March 4, 2014, "The department's (DEQ's) final 2012 Integrated Report made a substantial and significant change from the draft Report because the relevant sections of Indian Creek are now added for temperature on the §303(d) list." The City believes that there is insufficient reliable scientific data to support this impairment finding and that the technical basis for this listing warrants further evaluation and modeling.

Response #20

The State of Idaho's decision to list Indian Creek as impaired due to temperature in its 2012 Integrated Report is beyond the scope of the proposed permitting action. The basis for the temperature limits in the draft permit is explained in Appendix G to the Fact Sheet and is independent from the State of Idaho's Category 5 temperature listing for Indian Creek.

Comment #21 (Nampa)

The proposed permit requires complete collection of one-year of continuous temperature monitoring data prior to the removal of a trickling filter. The City has already commenced with the Phase I Upgrades to comply with the proposed interim total phosphorus limit. The initial step of this project was the removal of a trickling filter. Therefore, the City cannot collect the required data and requests that this provision be removed.

Response #21

The EPA believes the City is referring to Part I.C.3.d.i of the draft permit, which reads, "Within fifteen (15) months of the EDP, complete collection of at least one year of continuous temperature monitoring data and submit an evaluation of current monthly temperature variations to DEQ and EPA." It is not stated in the draft or final permits that these data must be collected prior to the removal of a trickling filter.

This requirement was included in the draft permit because it was a requirement in the State of Idaho's draft Clean Water Act Section 401 certification of the permit. The final permit includes similar conditions that are included in the State of Idaho's final Clean Water Act Section 401 certification.

Comment #22 (Nampa)

In Part I.D.7.d of the draft permit, the City recommends the following language change: "If implementation of the initial investigation workplan clearly identifies the source of toxicity to the satisfaction of EPA (e.g., a temporary plant upset), ~~and~~ **OR** none of the six accelerated chronic toxicity tests required under Part 1.D.7.b are above the applicable average monthly limit in Part I.B of this permit, the permittee may return to the regular chronic toxicity testing cycle specified in Part I.C.2.a." This change will both protect water quality and not overly burden the City should it be able to ascertain the source of the toxicity or verify through additional testing that the effluent is not toxic.

Response #22

The issue raised by this comment is whether it is necessary to complete a toxicity reduction evaluation (TRE) if an exceedance of a WET trigger occurs during routine testing but not during subsequent accelerated testing.

According to the *EPA Regions 8, 9 and 10 Toxicity Training Tool* (Denton et al. 2007), accelerated testing and a TRE/TIE should occur stepwise (Page 88). That is to say, the TRE work plan should be initiated in response to an exceedance of a WET trigger during accelerated testing, instead of being undertaken concurrently with the accelerated testing.

The EPA has edited the WET testing language in the final permit to follow this stepwise approach. The EPA believes this achieves the intent of the language change proposed by the commenter.

The *EPA Regions 8, 9 and 10 Toxicity Training Tool* also states that, "EPA Regions 9 and 10 recommend that an initial TRE/TIE Work Plan be developed by the permittee within 60-90 days of the effective date of the permit." The EPA has edited part I.D.5 of the permit to allow 90 days to complete the initial investigation TRE workplan.

Comment #23 (Nampa)

Regarding Part II.A.8.e.iv on Page 28 of the draft permit, The GC/MS Analysis has never been performed by the City. The City understands the procedure detailed in the draft permit for the GC/MS Analysis, however it is unclear what has to be done following completion of the analysis. The City requests that DEQ clarify the steps taken after collection has been performed.

Response #23

The final permit has been edited to state that the City must report the results of the GC/MS analysis in the annual pretreatment report.

Comment #24 (Nampa)

The City is requesting clarification as to the intent of including reporting requirements for biosolids in the pretreatment section of the NPDES permit. This information has historically been included as a stand-alone section under the NPDES permit.

Response #24

As stated in the fact sheet at Page 22, EPA Region 10 separates wastewater and sludge permitting. Thus there is no stand-alone section for biosolids in the permit. However, among the objectives of the national pretreatment program are "to prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal

sludge" and "to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges" (40 CFR 403.2). Section 4.3 of the EPA's *Local Limits Development Guidance* (EPA 2004) recommends sampling of POTW sludge as part of the development of local limits and on an ongoing basis. Thus, it is appropriate to include sludge sampling requirements in the pretreatment section of the permit.

Comment #25 (Nampa)

The City would like to clarify the following requirement for routine sampling in Part III.A of the permit: "In order to ensure that the effluent limits set forth in this permit are not violated at times other than when routine samples are taken, the permittee must collect additional samples at the appropriate outfall whenever any discharge occurs that may reasonably be expected to cause or contribute to a violation that is unlikely to be detected by a routine sample."

It is our understanding that this sampling is needed under extreme conditions, such as an upset condition. Under such a condition, our primary goal is returning the plan to normal operating conditions as quickly as possible. In light of this priority, please clarify the frequency the City is supposed to collect additional samples.

Response #25

The intent of the second and third paragraph of Part III.A of the permit is to ensure representative sampling, consistent with the first paragraph of Part III.A and with 40 CFR 122.41(j). It is not possible to specify the appropriate frequency for the additional sampling required in the second and third paragraph of Part III.A, because the appropriate frequency will depend on the severity and duration of the event compelling the additional sampling.

Comment #26 (Nampa)

The City requests that EPA amend Part IV.F.1 of the permit to define "bypass" as presented in this section. The City strives to operate the Nampa WWTP as efficiently as possible while protecting water quality. To this end, the City optimizes the unit processes online based on influent loadings, current process operations, and effluent requirements. Therefore, the following modifications to this section are suggested:

> *1. Bypass not exceeding limitations. The permittee may allow any bypass of an entire unit process to occur that does not cause effluent limitations to be exceeded. Unit processes may be bypassed for essential maintenance or to optimize the operations of the facility provided that effluent limitations are not exceeded but ~~only if it also is for essential maintenance to assure efficient operation.~~ These bypasses are not subject to the provisions of paragraphs 2 and 3 of this Part.*

Response #26

Part IV.F of the permit implements 40 CFR 122.41(m). The first paragraph of 40 CFR 122.41 reads, in relevant part:

> *The following conditions apply to all NPDES permits. ... All conditions applicable to NPDES permits shall be incorporated into the permits either expressly or by reference.*

Thus, the EPA cannot edit the language of Part IV.F of the permit as requested by the commenter.

The permit does, in fact, include a definition of the term "bypass," in Part VI. The definition of "bypass" in the permit is identical to the definition in 40 CFR 122.41(m) and reads "'Bypass' means the intentional diversion of waste streams from any portion of a treatment facility."

Seasonal effluent limitations which allow the facility to shut down a specific pollution control process during certain periods of the year are not considered to be a bypass. Any variation in effluent limits accounted for and recognized in the permit which allows a facility to dispense with some unit processes under certain conditions is not considered bypassing (49 FR 38037).

Comment #27 (IRU)

When do the interim limits take effect? Why did EPA select 6.4 mg/L for the first 5 years and 500 µg/L for the second five years (May 1 – Sept 30)? Why did EPA establish an interim limit of 1,500 µg/L for Oct. 1 – April 30? Why aren't they seasonal like the final limits? Why are the final limits pounds per day and the interim limits mg/L or µg/L? Why are the limits for the first 5 years in mg/L and for the 2nd 5 years in µg/L?

Response #27

Interim limits for total phosphorus (TP) and mercury take effect immediately upon the effective date of the final permit unless otherwise stated in the permit.

The EPA did not "select" the interim limits, rather, they were specified by the State of Idaho in its draft Clean Water Act Section 401 certification of the permit. The interim May – September TP limits are lowered to 500 µg/L (0.5 mg/L) and an additional interim limit of 1,500 µg/L (1.5 mg/L) from October – April is established after five years because, by that time, as shown in Table 3 of the draft permit, the Phase I facility upgrades will have been completed, thus allowing the City to achieve lower effluent concentrations of phosphorus.

Regarding the commenter's question about the units for the interim TP concentration limits, the EPA agrees that it would be preferable for all of the interim TP concentration limits to be expressed using the same units. The EPA has expressed all of the interim TP concentration limits in units of mg/L.

The final water quality-based effluent limits for TP are expressed in terms of mass (lb/day) because they are based on the mass WLAs in the *Lower Boise River TMDL: 2015 Total Phosphorus Addendum* (IDEQ 2015). The interim limits are specified in the State of Idaho's Clean Water Act Section 401 certification. The State of Idaho is not required to establish interim limits expressed in terms of mass simply because the final effluent limits are expressed in terms of mass. However, federal regulations state that, in general, effluent limits shall be expressed in terms of mass, although pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations (40 CFR 122.45(f)). Therefore, in the final permit, the EPA has established interim TP and mercury effluent limits in terms of mass, in addition to the concentration limits that were proposed in the draft permit. The interim mass limits are calculated from the interim concentration limits based on the design flow of the POTW (18 mgd), consistent with 40 CFR 122.45(b).

Because the interim limits for TP are, in fact, seasonal (similar to the final effluent limits), the EPA assumes that the commenter's question of why the interim limits are not seasonal is in reference to the interim effluent limits for mercury. The interim limits are specified in the State of Idaho's Clean Water

Act Section 401 certification. The State of Idaho is not required to establish seasonal interim limits simply because the final effluent limits are seasonal.

Comment #28 (IRU)

EPA should not permit Nampa to increase their current discharge. According to the 2015 Total Phosphorus TMDL Addendum, the Nampa WWTP discharge of Total Phosphorus is 4.97 mg/L. The proposed interim limit is 6.4 mg/L. EPA needs to set the interim limit for the first 5 years to no greater than 4.97 mg/L.

Response #28

The commenter appears to be referring to Table 15 of the Lower Boise River TMDL: 2015 Total Phosphorus Addendum. This table lists the City of Nampa's mean TP concentration as 4.97 mg/L. Footnote b to this table specifies that this is the TP concentration that was measured between May 1, 2012 and September 30, 2012.

At other times, the City's TP concentration has been considerably higher. The effluent concentration of TP was greater than 6.4 mg/L about 3% of the time during 2010 and 2011. Furthermore, the City of Nampa currently does not have any treatment in place specifically for phosphorus. Because 6.4 mg/L is within the range of TP discharges measured by the City, the EPA believes an annual average of 6.4 mg/L is a reasonable interim limit for TP, until planned treatment enhancements can be completed.

Comment #29 (IRU)

EPA should require twice-per-year effluent monitoring for chlorpyrifos to determine if this pesticide of concern is entering Indian Creek through the WWTP.

Response #29

The EPA does not agree that effluent monitoring for chlorpyrifos is necessary. The State of Idaho has not adopted water quality criteria for chlorpyrifos and it is not among the parameters that must be reported on the NPDES permit application form for POTWs (40 CFR 122.21(j)(4)). Although some streams in the Lower Boise watershed were listed in the State of Idaho's 2012 303(d)/305(b) integrated report as being impaired because of chlorpyrifos, neither Indian Creek nor the Boise River were listed as such. Therefore, the EPA has no basis to require effluent monitoring for chlorpyrifos.

Comment #30 (Nampa)

The City is requesting additional clarification as to the reasoning that DEQ used to justify a lower compliance evaluation level for chlorine in the revised permit (50 mg/L) as opposed to the 1999 permit (100 mg/L).

Response #30

The commenter provided incorrect units for the chlorine compliance evaluation level in both the 1999 permit and the draft permit. The correct units are µg/L, as opposed to mg/L.

Currently approved methods have method detection limits for chlorine as low as 10 µg/L (e.g., Standard Method 4500 Cl-G). Thus, the EPA believes a minimum level of 50 µg/L is attainable for chlorine.

Comment #31 (Nampa)

On Page 19, in Section V.B, the fact sheet states, "The draft permit proposes more frequent monitoring for ammonia because the permittee has had difficulty complying with the effluent limits for ammonia in the prior permit." The Nampa WWTP has consistently met the effluent ammonia limits from the previous permit as shown in Table 1 of the Fact Sheet. Based on the data presented in this table, the Nampa WWTP has exceeded its effluent ammonia limit 5 times over a six year period, which equates to 0.2%. The above referenced sentence should be removed from the Fact Sheet.

Response #31

The fact sheet is a final document and will not be edited.

The EPA believes the referenced statement on Page 19 of the fact sheet is accurate. Although the violations have not been frequent, the permittee has violated the ammonia limits in the 1999 permit at times, with the most recent violation in September 2013. The September 2013 violation was not captured in the summary provided in Table 1 of the fact sheet, as Table 1 was based on a database query performed on May 17, 2013.

The EPA believes the proposed effluent monitoring frequency for ammonia of twice per week is appropriate.

Comment #32 (Nampa)

The Pretreatment Requirements section should be updated to reflect the information submitted in the most recent, 2014, Pretreatment Annual Report.

Response #32

The fact sheet is a final document and will not be edited.

Comment #33 (ICL)

We do not support the provision of this draft permit that provides for a 9 year 11 month compliance schedule for copper.

EPA and DEQ have justified a 9 year 11 month compliance schedule for total phosphorus based on the time (and funding) needed to evaluate and implement various potential facility upgrades.

However, the achievement of final effluent limits for copper is not based on pending facility upgrades. Rather, copper compliance is based on the city identifying the contributing facilities and developing and implementing a pollutant minimization plan. There are a limited number of generally well-understood types of facilities (like circuit board manufactures) that typically discharge copper into the influent of WWTPs. Whereas total phosphorus compliance will require years of complicated construction at the WWTP, copper compliance will require that the city simply change the behavior of a limited number of facilities discharging to the WWTP. There is no justification for such a protracted compliance schedule for copper and it should be greatly shortened or completely eliminated.

We do not support the provision in this draft permit that provides for a 9 year 11 month compliance schedule for mercury.

EPA and DEQ have justified a 9 year 11 month compliance schedule for total phosphorus based on the time (and funding) needed to evaluate and implement various potential facility upgrades.

However, the achievement of final effluent limits for mercury is not based on pending facility upgrades. Rather, mercury compliance is based on the city developing and implementing a Mercury Minimization Plan. Developing such a plan should not take the city too long – as this is pretty standard and the city will undoubtedly be benefiting from the many other Mercury Minimization Plans that have been created in Idaho and across the United States. There are a limited number of generally well-understood types of facilities that typically discharge mercury into the influent of WWTPs. Whereas total phosphorus compliance will require years of complicated construction at the WWTP, mercury compliance will require that the city simply change the behavior of a limited number of facilities discharging to the WWTP. There is no justification for such a protracted compliance schedule for mercury and it should be greatly shortened or completely eliminated.

Response #33

The EPA believes it is reasonable for the compliance schedules for copper and mercury to be the same length as the compliance schedule for TP. As stated in the State of Idaho's draft Clean Water Act Section 401 certification, "it is anticipated that the addition of biological nutrient removal and improved tertiary filtration implemented for phosphorus removal will provide some level of enhanced removal for metals as general effluent quality is improved."

Copper is abundant in the Earth's crust and thus occurs naturally in water. Copper is a common material for water pipes. Thus, domestic users of the City of Nampa's POTW likely contribute copper to the POTW and therefore it is unlikely that it could be controlled entirely through reductions in inflow. Thus it is reasonable for the compliance schedule for copper to be the same length as the compliance schedule for TP.

The EPA agrees that the development and implementation of the mercury minimization plan will likely reduce discharges of mercury from the City of Nampa WWTP. However, it is unclear whether the reductions realized from the mercury minimization plan will be adequate to consistently achieve the final numeric water quality-based effluent limits for mercury for outfall 001. Similar to copper, the EPA expects that enhanced biological nutrient removal and improved tertiary filtration will result in reductions in mercury discharges. Thus, it is reasonable for the compliance schedule for mercury to be the same length as the compliance schedule for TP.

Comment #34 (ICL)

The EPA has determined that this WWTP has the reasonable potential to violate water quality limits for copper. As such, EPA must issue effluent limits for copper to the Nampa WWTP in this permit. However, the EPA has not included interim copper limits. This oversight needs to be rectified and interim limits need to be established.

Response #34

As stated by the commenter, the EPA has determined that the City of Nampa WWTP has the reasonable potential to cause or contribute to excursions above water quality standards for copper. The permit includes water quality-based effluent limits for copper, however, these limits are subject to a compliance schedule and do not take effect immediately upon the effective date of the final permit.

The federal regulations concerning compliance schedules state that for compliance schedules longer than one-year "the schedule shall set forth interim requirements and the dates for their achievement"

(40 CFR 122.47(a)(3)). However, nothing in the federal compliance schedule rule nor the State of Idaho's compliance schedule authorizing provision requires interim effluent limitations. The compliance schedule authorized by the State of Idaho has interim requirements and the dates for their achievement as required by 40 CFR 122.47(a)(3).

Federal regulations speak to interim effluent limitations at 40 CFR 122.44(l). This regulation states that, "interim effluent limitations, standards or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.62.)" The previous permit for the City of Nampa did not have any effluent limits for copper. Thus, in this case, 40 CFR 122.44(l) does not require interim effluent limits for copper.

Comment #35 (Nampa)

The City appreciates DEQ and EPA's diligent work and cooperation in developing this document. The City supports the DEQ's goal of improving water quality in the Lower Boise River watershed.

Response #35

Thank you for your comment.

Comment #36 (Nampa)

The chlorine, total ammonia, and total hardness minimum levels listed by DEQ cannot be measured by the City's lab equipment. If DEQ decides to continue with using this approach for these constituents, the City requests that a one year compliance schedule be established to allow the City time to acquire the equipment capable of testing at said minimum levels.

Response #36

Regarding effluent monitoring for ammonia, the permit requires only that the City "must achieve a minimum level (ML) less than the effluent limitation" (Part I.B.6.a). The most stringent effluent limit for ammonia in the permit is 1.31 mg/L. The permit does not require receiving water monitoring for ammonia. Thus, the City need not achieve the 50 µg/L minimum level for ammonia in Appendix A.

Regarding hardness, the City has stated that the City can achieve a minimum level of 1 – 2 mg/L as $CaCO_3$. As stated in the fact sheet, the 5th percentile hardness of Indian Creek downstream from the discharge is 120 mg/L as CaCO3 from April – October and 200 mg/L as $CaCO_3$ from November –March. Thus, the EPA expects that an ML of 2 mg/L as $CaCO_3$ will adequately characterize the hardness of the effluent and receiving water. In the final permit, the EPA has changed the ML for hardness to 2 mg/L as $CaCO_3$.

The EPA agrees that it is reasonable to allow the required ML and compliance evaluation level for chlorine to remain at 100 µg/L for 1 year, to allow the City time to acquire new equipment to be able to comply with the 50 µg/L ML and compliance evaluation level proposed in the draft permit.

Comment #37 (Nampa)

The total phosphorus limits in the proposed draft NPDES permit will require significant investment by the City to address. The most recent estimate for this investment is approximately $90 million. Therefore, the City supports EPA's inclusion of a 10-year compliance schedule for phosphorus. This will

allow the City adequate time to plan, fund, design, and construct the required facilities to meet these new, more stringent total phosphorus limits.

Response #37
Thank you for your comment.

Comment #38 (Nampa)
The City believes that the proposed winter interim limit of 1.5 mg/L total phosphorus is appropriate given the City's implementation plan. This revised limit allows the City to continue forward with its current construction and funding plan without incurring unplanned additional costs for chemical treatment.

Response #38
Thank you for your comment.

Comment #39 (Nampa)
The temperature limits in the proposed draft NPDES permit will require significant investment by the City to address. Therefore, the City supports EPA's inclusion of a 15-year compliance schedule for temperature. This will allow the City adequate time to plan, fund, design, and construct the required facilities to meet these new, stringent temperature limits.

Response #39
Thank you for your comment.

Comment #40 (Nampa)
The City supports the inclusion of a 10-year compliance schedule for mercury as outlined in Table 3 and Table 4. The primary means for controlling mercury is through behavior modification for dischargers resulting from the completion of the Mercury Minimization Plan. However, if the results of the mercury minimization efforts do not result in the required reductions, the City would need to investigate alternative methods to meeting this stringent limit. If these alternatives require capital upgrades, the City would need sufficient time for evaluation, funding, design, and construction of these facilities. Therefore, the 10-year compliance schedule for mercury is appropriate to allow time for the development of the Mercury Minimization Plan, measurement of its effectiveness, and the implementation of other alternatives if necessary.

Response #40
Thank you for your comment.

Comment #41 (Nampa)
The City supports the inclusion of a 10-year compliance schedule for copper. As described in Section 1.C.3.e, the City intends to identify influent sources of copper in a step-wise fashion focusing first on likely contributors and wastewater characterization. Following the completion of this study, it may be necessary to construct capital facilities to meet the limit, which will require time to plan, fund, design, and construct. For these reasons, a 10-vear compliance schedule for copper is appropriate.

Response #41
Thank you for your comment.

Comment #42 (Nampa)

The weekly phosphorus limit noted in Table I and described further in Appendix F of the Fact Sheet is based on an arbitrary assumption of the coefficient of variation of effluent phosphorus concentrations. As noted in the research cited in Comment # 13, there is significant statistical variability is a characteristic of all nutrient removal plants and that this variability has to be considered in both identifying appropriate technologies in engineering the plants as well as determining appropriate limits in a regulatory setting process. While the City does not support the inclusion of weekly limits for phosphorus (Comment # 13}, preliminary biological process modeling has shown significant variability in projected effluent discharge concentrations resulting from variable influent loading conditions. Therefore, the City requests that a coefficient of variation (CV} of 1.2, which is the upper bound of the typical range, be used for the calculation of weekly limits. This assumption is consistent with other facilities operating similar processes in the area. Assuming this CV, the City believes the following are appropriate weekly limits should they be deemed necessary:

May-September: 15 lb/day x 2.35 = 35.25 lb/day

October-April: 52.6 lb/day x 2.35 2 123.6 lb/day

Response #42

As explained in the response to comment #4, the EPA has determined that it is impracticable to establish average weekly limits for total phosphorus at this time. Thus, the issue of the coefficient of variation that should be used to calculate average weekly limits is moot.

Comment #43 (Nampa)

The City is working towards uploading all monitoring data and other reports electronically using NetDMR. These DMRs from the City website will be available for public viewing. The City is requesting a period of six months to allow IT staff to configure the City website so that DMRs can be uploaded and viewed effectively.

Response #43

The EPA agrees that is acceptable to allow six months from the effective date of the final permit for the City to configure its website for posting of effluent data.

Comment #44 (Nampa)

The City requests that it not be included in EPA's pilot project for 'next generation compliance' efforts. The City is faced with a number of new requirements, each requiring significant capital costs, as a result of the requirements of the renewed NPDES permit. With this level of commitment, participating in this pilot project is an overly onerous requirement for the City. Furthermore, similar requirements have not been included for the City of Meridian, who is facing a similar level of investment.

Response #44

The EPA has not removed the next generation compliance requirements from the permit. However, as stated in the response to comment #28, the EPA has allowed six months from the effective date of the permit for the City to configure its website for posting of effluent data.

The EPA does not agree that these requirements are overly onerous. The permit language allows for effluent data to be displayed in tables viewable directly in an internet browser or as Portable Document

Format (PDF) files. A PDF file can be created in a number of ways, including by scanning a DMR that was submitted to the EPA or by "printing" to PDF from a spreadsheet or word processing program.

As explained on Page 28 of the Fact Sheet, part of the basis for including the next generation compliance requirements in this permit was to address environmental justice. As explained on Page 30 of the Fact Sheet for the City of Meridian draft permit, the Meridian WWTP is not located within or near any Census block groups that are potentially overburdened.

Comment #45 (Nampa)

The proposed permit states that the City must report any instance of noncompliance for which 24-hour telephone reporting is required by Part III.G of this permit on its publicly-accessible website within 24 hours from the time the City becomes aware of the circumstances. The City is requesting clarification as to what is required to be reported as part of this permit requirement.

Response #45

The draft permit language that the City is referring to in this comment reads as follows:

> *The Permittee must report any instance of noncompliance for which 24-hour telephone reporting is required by Part III.G of this permit on its publicly-accessible website within 24 hours from the time the permittee becomes aware of the circumstances.*

The EPA agrees that this draft language is unclear as to what must be reported on the website. Therefore, the EPA has changed this requirement to read as follows:

> *The Permittee must report on its publicly-accessible website any instance of noncompliance for which 24-hour telephone reporting is required by Part III.G of this permit by posting to its publicly-accessible website the written submission required in Part III.G.2 of this permit within 7 days of submitting such written submission to EPA.*

Part III.G.2 of the permit specifies the required content of the written submission that must follow 24-hour telephone reporting, thus clarifying what must be posted to the website as well. The EPA believes that the additional detail provided in the written submission (which would likely not be known within 24 hours of becoming aware of noncompliance) would be more meaningful to the public than the cursory information that would be known within 24 hours.

Comment #46 (Nampa)

The priority pollutants, volatile compounds, base/neutral compounds, dioxins, and pesticides/PCBs have testing parameters that the City cannot currently test. If DEQ decides to continue with using this approach for these constituents, the City requests that a 1-year compliance schedule be established to allow the City time to acquire the equipment capable of testing these parameters.

Response #46

There are some priority pollutants with twice per year sampling requirements as part of the pretreatment requirements in the prior permit (Part I.D), specifically copper, cyanide, mercury, arsenic, cadmium, chromium, lead, nickel, selenium, silver, and zinc. The EPA expects that the City should be able to continue sampling for these pollutants twice per year.

The EPA agrees that monitoring for other priority pollutants, volatile compounds, base/neutral compounds and pesticides may begin within 1 year of the effective date of the final permit.

The permit does not require any analysis for dioxin or PCBs.

Comment #47 (Nampa)

The fact sheet states, "The facility produces Class B biosolids which are usually applied to land in southeastern Canyon County." The Nampa WWTP discontinued land application and currently disposes of biosolids at the Simco Road Landfill. This information should be updated to reflect current operations.

Response #47

The Fact Sheet is a final document, the purpose of which is to explain the conditions proposed in the draft permit. It will not be edited.

Comment #48 (IRU)

It should be stated that the monitoring is required while the permit is in effect.

Response #48

All of the permit conditions, including monitoring requirements, are effective and enforceable as long as the permit is in effect, including any period of time during which the permit is administratively continued under 40 CFR 122.6. It is not necessary to state this.

Comment #49 (IRU)

IRU supports all of the effluent monitoring requirements.

Response #49

Thank you for your comment.

Comment #50 (IRU)

Idaho Rivers United supports the surface water monitoring requirements, especially the requirement that the monitoring must continue for as long as the permit remains in effect.

Response #50

Thank you for your comment.

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Appendix B: Pioneer Irrigation District Agreement

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Golden Eagle Building
1101 W. River St., Ste. 110
P.O. Box 7985
Boise, Idaho 83707
Tel. (208) 629-7447

Challis Office
1301 E. Main Ave.
P.O. Box 36
Challis, Idaho 83226
Tel. (208) 879-4488

Twin Falls Office
236 River Vista Place
Suite 301
Twin Falls, Idaho 83301
Tel. (208) 969-9585

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** Also licensed in Washington*

March 8, 2018

Mark Hilty
Hamilton, Michaelson & Hilty, LLP
1303 - 12th Avenue Road
Nampa, Idaho 83686

Re: Recycled Water Discharge and Use Agreement

Dear Mark:

Enclosed for your records is one of the two duplicate, fully executed, originals of the *Recycled Water Discharge And Use Agreement*, between the City of Nampa and Pioneer Irrigation District, dated March 7, 2018. Pioneer will retain the second duplicate original for its records.

Very truly yours,

Andrew J. Waldera

AJW/dll
Enclosures
cc: Pioneer Irrigation District

RECYCLED WATER DISCHARGE AND USE AGREEMENT

This RECYCLED WATER DISCHARGE AND USE AGREEMENT ("Agreement") is made and entered into as of the date of the latest signature on the signature pages of this Agreement, by and between the City of Nampa ("City") and Pioneer Irrigation District ("Pioneer") for the purpose of allowing the discharge of recycled water from the Nampa Wastewater Treatment Plant to Pioneer's Phyllis Canal.

WHEREAS, City owns, operates and maintains a public wastewater collection and treatment system which provides wastewater and collection services for City customers; and

WHEREAS, City owns and operates the Nampa Wastewater Treatment Plant ("NWWTP") located at 340 W Railroad St., Nampa, Idaho 83687, to treat collected wastewater; and

WHEREAS, Pioneer owns and operates the Phyllis Canal, passing within approximately one-half (1/2) mile from the NWWTP, which provides irrigation water to lands located within the Pioneer service area; and

WHEREAS, City currently discharges treated wastewater from the NWWTP to Indian Creek pursuant to an NPDES discharge permit issued by the U.S. Environmental Protection Agency ("EPA"), Permit No. ID0022063, which permit is current and in good standing; and

WHEREAS, the City desires to have the option to seasonally discharge Class A recycled water to Pioneer's Phyllis Canal ("Recycled Water") as necessary to provide NPDES permit compliance flexibility related to City's Indian Creek discharges; and

WHEREAS, Pioneer desires to seasonally receive Recycled Water from the City as a supplemental source of irrigation water supply; and

WHEREAS, City and Pioneer agree that it is in the best interests of the citizens and landowners of both entities to enter into a long-term agreement providing terms for the discharge and use of Recycled Water from the NWWTP to the Phyllis Canal.

NOW, THEREFORE, in consideration of the foregoing, it is mutually agreed by the parties that:

SECTION A -CITY OBLIGATIONS

1. City, at its sole cost, shall design, construct and maintain necessary improvements to connect the outflow of the NWWTP to the Phyllis Canal. City shall obtain written approval of piping and connection plans and designs from Pioneer prior to beginning construction of the improvements necessary to make the connection.

2. Upon connection, the City shall be authorized to discharge up to 41 cfs (annual average) of Recycled Water, or more if approved in subsequent writing by Pioneer. The timing of discharges shall be governed by the following provisions:

a. For discharges that occur during times when Pioneer is using the Phyllis Canal for irrigation water delivery ("Irrigation Season"), City shall forecast and provide Pioneer the estimated flow rates and duration of any anticipated Recycled Water discharge to the Phyllis Canal on a weekly basis for the upcoming week so that Pioneer can coordinate its canal operations accordingly.

b. If City desires to discharge Recycled Water at times other than during the Irrigation Season such discharges shall be coordinated with, and approved in advance by, Pioneer so as to ensure compatibility with Pioneer's canal operations, maintenance schedules and obligations. Provided, however, that in the absence of an emergency beyond Pioneer and City's reasonable control, Pioneer shall plan its canal operations, maintenance schedules and obligations to accommodate the discharge of Recycled Water to the Phyllis Canal under this Agreement every year between May 1 and October 1.

c. City may commence discharges as soon as the 2026 Irrigation Season but cannot commit to any specific commencement date. City anticipates at this time that discharges will be underway by, or before, the Irrigation Season for the year 2031.

3. Unless otherwise agreed to in writing by the parties and approved by the Idaho Department of Environmental Quality ("DEQ"), all Recycled Water discharged to Pioneer's Phyllis Canal shall meet or exceed the water quality requirements for Class A Recycled Water as specified in IDAPA 58.01.17, Recycled Water Rules. However, it is understood that all non-water quality-related requirements such as signage, setbacks and recycled water piping will not be applicable. The City shall also be responsible for meeting any more stringent requirements, if required, by DEQ.

4. City, at its sole cost, will be responsible for operation and maintenance of all piping, pumping and other conveyance facilities from the NWWTP to the point of discharge to the Phyllis Canal. City shall ensure that at all times a functioning and accurate measurement device is installed, maintained and operating downstream of the NWWTP but upstream from the point of connection to the Phyllis Canal for purposes of measuring discharges. The measuring device shall be automated, capable of sending Pioneer flow data in real time so that Pioneer can detect and track/monitor discharge flow fluctuations and coordinate its canal operation and maintenance activities accordingly. Pioneer shall have the right to inspect and verify the functionality and accuracy of the measuring device upon request. City also agrees to explore additional discharge automation opportunities in the future in cooperation with Pioneer, which automation may, for example, link instantaneous City Recycled Water discharge data with Pioneer Phyllis Canal diversions at the Boise River and other canal input locations effectively mitigating canal flow fluctuations.

5. City shall comply with any and all applicable local, state, and/or federal laws, rules

and regulations, including obtaining any and all permits necessary, concerning the construction and maintenance of the connection facilities and the discharge of Recycled Water to the Phyllis Canal.

6. The City shall conduct effluent testing in accordance with all applicable laws, rules, regulations and permits concerning its discharge of Recycled Water to the Phyllis Canal. The test results shall be shared with Pioneer via electronic media on a monthly basis. The City shall notify Pioneer within 24 hours of determination that the City is out of compliance with any Class A Recycled Water quality requirement and shall take steps reasonably necessary to cease all discharges into the Phyllis Canal until City has established it is able to discharge consistent with Class A water quality requirements/criteria. City shall immediately cease discharge if the City or Pioneer determines that City's discharge fails to meet Class A Recycled Water standards in accordance with IDAPA 58.01.17, or otherwise presents an immediate health risk to Pioneer patrons.

7. Up to a maximum amount of $5,000, City agrees to pay all attorney fees, and any other fees and costs incurred by Pioneer from and after October 1, 2017 in connection with the negotiation, preparation and execution of this Agreement and any related agreements and other documents, within forty five (45) days of the City receiving itemized invoices. The billing shall be sent directly to the City, attention Public Works Director.

8. City shall use its best efforts to obtain all necessary discharge permits and upon obtaining said permits shall complete design and construction of piping and other construction necessary to enable it to discharge into the Phyllis Canal. City anticipates construction shall be complete no later than March 15, 2031.

9. City reserves the right to serve itself and its own municipal irrigation system customers with Recycled Water, provided such use is compliant with all applicable laws, rules and regulations, including Idaho Code Sections 67-6537 and 31-3805.

10. City shall comply with any request by Pioneer to suspend discharges in the event of an emergency or other circumstance which requires Pioneer to dewater or reduce flows in its canal system.

SECTION B -PIONEER OBLIGATIONS

1. Subject to the provisions of this Agreement, Pioneer agrees to allow the City to do all things reasonably necessary to connect the Recycled Water outflow of the NWWTP to the Phyllis Canal at the point(s) shown on **Exhibit A** attached hereto and incorporated by reference herein. Pioneer shall review and provide written comment and/or approval of City-prepared piping and connection plans and designs prior to the City beginning construction of the improvements necessary to make the connection. Pioneer will grant the City all necessary licenses and easements to allow for construction and maintenance of the connection consistent with its (Pioneer's) review of facility encroachments under Idaho Code Section 42-1209.

2. Upon connection, Pioneer authorizes the City to discharge up to 41 cfs (annual

average) of Recycled Water to the Phyllis Canal each year consistent with Section A.2, above.

3. Pioneer acknowledges that the City is not obligated, nor does it guarantee, to provide any Recycled Water flow to Pioneer. Pioneer also acknowledges that the City needs the use of the Phyllis Canal for effluent temperature mitigation and that Pioneer will handle, manage and convey discharged Recycled Water as an integrated part of its irrigation operations.

4. Pioneer shall actively cooperate with City in obtaining all permits and approvals from DEQ necessary for the discharge contemplated under this Agreement. It is the parties' intent under this Agreement to obtain a recycled wastewater re-use permit from DEQ under IDAPA 58.01.17. The parties are not obligated to seek or obtain an NPDES permit authorizing the discharge of Recycled Water to the Phyllis Canal contemplated herein. To the contrary, the parties find any NPDES permit requirement unnecessary and inconsistent with Idaho's Water Quality Standards.

SECTION C -MISCELLANEOUS PROVISIONS

1. This Agreement shall continue in force until terminated by either party as provided herein.

2. Due to the substantial up-front costs incurred by the City in making the connection from its NWWTP to the Phyllis Canal and City's corresponding long-term NPDES Permit compliance requirements, during the first twenty-five (25) years of this Agreement Pioneer may only terminate this Agreement if: 1) the City is determined to be in material breach; or 2) the discharge of Recycled Water into the Phyllis Canal will require Pioneer to obtain and comply with an NPDES permit for its operations; or 3) the acceptance of the Recycled Water imposes additional requirements or restrictions upon Pioneer, including water quality monitoring or reporting not otherwise currently required of it that cannot or will not be performed by City or by mutual agreement between City and Pioneer; or 4) termination is required pursuant to an administrative or judicial order; or 5) the discharge of Recycled Water causes (or threatens to cause) Pioneer to be in violation of any law, rule or regulation of any governmental agency having or asserting jurisdiction over Pioneer and its facilities and activities. After twenty-five (25) years, Pioneer may terminate this Agreement with or without cause by providing at least five (5) years written notice to the City of intent to terminate. At termination, City will take all necessary steps, at its own expense, to cease the Recycled Water discharge and disconnect the City piping from the Phyllis Canal.

3. The City may terminate this Agreement if Pioneer is determined to be in material breach of this Agreement, or without cause by providing at least ten (10) years written notice to Pioneer of its intent to terminate. In the event either party claims a material breach of this Agreement, the parties shall enter into a dispute resolution process, which shall include good faith negotiations attempting to resolve the dispute in a manner saving and continuing the terms of this

Agreement.

4. This Agreement shall be declared null and void should the City and Pioneer fail to obtain any necessary approvals, including permits, licenses or easements, for the discharge of Recycled Water to the Phyllis Canal.

5. The City shall defend, indemnify and save and hold harmless Pioneer from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses arising or resulting from the City's discharge of Recycled Water under this Agreement not caused by or arising out of the negligent conduct of Pioneer or its agents, contractors or employees. Pioneer shall defend, indemnify and save and hold harmless City from and for any and all losses, claims, actions, judgments for damages, or injury to persons or property and losses and expenses arising or resulting from the conveyance of the Recycled Water following its discharge into the Phyllis Canal not caused by or arising out of the negligent conduct of City or its agents, contractors or employees. Nothing herein shall be construed as a waiver of the parties' respective rights, claims, or defenses under the Idaho Tort Claims Act.

6. If necessary or desired, and expressly agreed to by the parties, Pioneer and City shall cooperatively educate and inform the public and Pioneer patrons of the benefits and advantages realized by Pioneer and City as a result of this Agreement.

7. No waiver or modification of this Agreement shall be valid unless it is in writing and signed by each of the parties hereto.

8. This Agreement shall be binding upon, and inure to the benefit of, the parties and their heirs, successors, and assigns.

9. If either party hereto shall be determined to be in material breach of any of the terms hereof, such party shall pay to the non-defaulting party all of the non-defaulting party's costs and expenses, including reasonable attorneys' fees, incurred by such party in enforcing the terms of this Agreement, subject to the good faith dispute resolution requirements of Section C.3, above.

10. This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof. This Agreement supersedes any and all other Agreements, whether or not in writing, between the parties with respect to the subject matter hereof.

11. This Agreement shall be subject to and governed by the law of the State of Idaho. Exclusive jurisdiction and venue for the interpretation and enforcement of this Agreement lies in

the District Court for the Third Judicial District, Canyon County, Idaho.

12. The headings in this Agreement are inserted for convenience only and shall not be considered in interpreting the provisions hereof. The recitals are a part of this Agreement and contractual.

13. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

14. The failure of a party to insist on the strict performance of any provision of this Agreement or to exercise any right or remedy upon a breach hereof shall not constitute a waiver of any provision of this Agreement or limit such party's right to enforce any provision or exercise any right.

15. City shall not allow any liens as a result of any labor performed or materials supplied in connection with its activities under this Agreement to attach to the Phyllis Canal, its corresponding irrigation easement and right-of-way, or to any other adjacent lands or easements held by Pioneer.

16. The parties hereto agree that nothing herein contained shall be construed to create a joint venture, partnership, or other similar relationship which might subject any party to liability for the debts and/or obligations of the other, except as otherwise expressly agreed in this Agreement. No director, officer, staff member, agent, or designee of either party hereto shall incur any liability hereunder to the other party hereto, or to any other party in such person's individual capacity by reason of such person's actions hereunder or execution hereof.

17. Notwithstanding anything to the contrary in this Agreement, City acknowledges and agrees that it is solely responsible for the operation and maintenance of the NWWTP, and all related infrastructure, including the Recycled Water discharge pipeline contemplated in this Agreement. City also acknowledges and agrees that it is solely responsible for achieving and maintaining any and all applicable regulatory compliance regarding the operation of the NWWTP including, without limitation, NPDES Permit No. ID0022063. Pioneer shall not be liable for any costs or expenses associated with the NWWTP or its related infrastructure, or for any costs or expenses related to the regulatory burdens thereof including, without limitation, any fines, penalties, expenses, fees or costs arising from any regulatory enforcement actions commenced against City in relation thereto.

18. All notices shall be given in writing to the other party at their address set forth

below, and shall be effective upon receipt:

Pioneer: Pioneer Irrigation District
P.O. Box 426
Caldwell, ID 83606
Attn: Superintendent

Nampa: City of Nampa
411 3rd Street So.
Nampa, Idaho 83651
Attention: Public Works Director

19. This Agreement shall not be used or construed as creating or establishing, or entitling any third party to create or establish, any water right in connection with the Recycled Water.

20. The parties represent and warrant that the person signing this Agreement on behalf of each party has been duly authorized to do so, and is fully vested with the authority to bind that party in all respects.

THE PARTIES hereto have executed this Agreement effective as of the latest date of execution set forth below.

THE CITY OF NAMPA, IDAHO

By _____
Deborah Kling, Mayor
Dated 3-5-18

ATTEST :

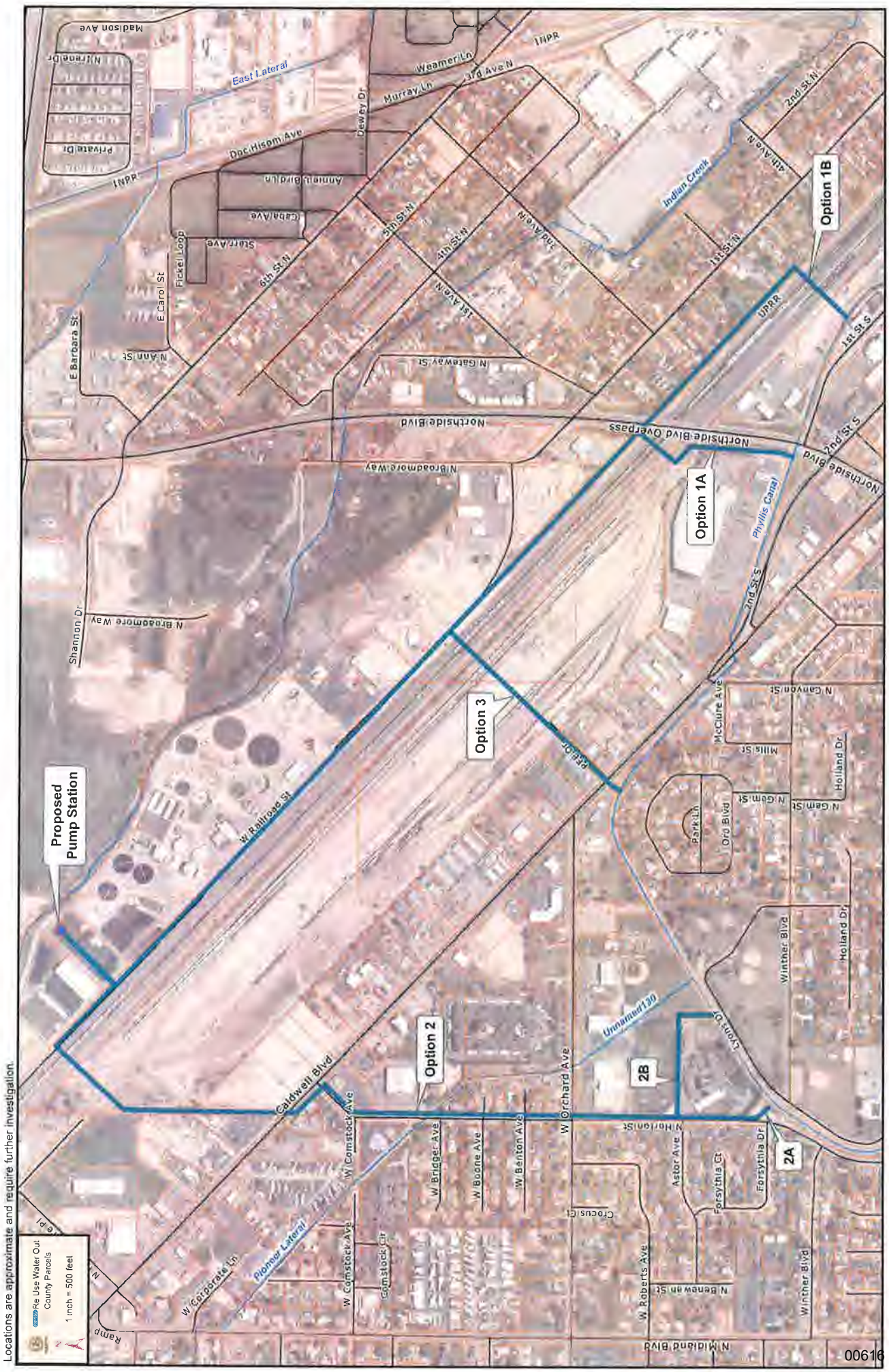
_____
City Clerk

PIONEER IRRIGATION DISTRICT

By _____
Alan Newbill President
Dated 3/7/2018

ATTEST :

_____
Secretary


Option 1A
Option 1B
Option 2
Option 3
2A
2B
Proposed Pump Station
Re Use Water Out
County Parcels
1 inch = 500 feet
Locations are approximate and require further investigation.
00616

Appendix C: Indian Creek Background Flow Data

Table C-1. May 2012 Indian Creek Flow and Water Quality Data						
Date	Flow	Temperature	NO_2-NO_3	TKN	Total Nitrogen	Total Phosphorus
	cfs	°C	mg/l	mg/l	mg/l	mg/l
5/1/2012	64	14.3	–	–	–	–
5/2/2012	63	9.8	–	–	–	0.17
5/3/2012	72	–	–	–	–	–
5/4/2012	77	–	–	–	–	–
5/5/2012	72	–	–	–	–	–
5/6/2012	75	–	–	–	–	–
5/7/2012	77	14.4	–	–	–	–
5/8/2012	68	–	–	–	–	–
5/9/2012	56	11.4	2.14	0.49	2.63	0.13
5/10/2012	51	–	–	–	–	–
5/11/2012	42	–	–	–	–	–
5/12/2012	42	–	–	–	–	–
5/13/2012	43	–	–	–	–	–
5/14/2012	43	–	–	–	–	–
5/15/2012	46	16.5	–	–	–	–
5/16/2012	45	13.8	–	–	–	0.24
5/17/2012	45	–	–	–	–	–
5/18/2012	48	–	–	–	–	–
5/19/2012	48	–	–	–	–	–
5/20/2012	48	–	–	–	–	–
5/21/2012	47	17.5	–	–	–	–
5/22/2012	48	–	–	–	–	–
5/23/2012	49	12.5	–	–	–	0.20
5/24/2012	49	–	–	–	–	–
5/25/2012	51	–	–	–	–	–
5/26/2012	60	–	–	–	–	–
5/27/2012	63	–	–	–	–	–
5/28/2012	57	–	–	–	–	–
5/29/2012	51	–	–	–	–	–
5/30/2012	51	13.6	–	–	–	0.24
5/31/2012	50	15.5	–	–	–	–
Average	**55**	**13.9**	**2.14**	**0.49**	**2.63**	**0.20**

Table C-2. June 2012 Indian Creek Flow and Water Quality Data						
Date	Flow	Temperature	NO_2-NO_3	TKN	Total Nitrogen	Total Phosphorus
	cfs	°C	mg/l	mg/l	mg/l	mg/l
6/1/2012	49	–	–	–	–	–
6/2/2012	50	–	–	–	–	–
6/3/2012	47	–	–	–	–	–
6/4/2012	56	–	–	–	–	–
6/5/2012	44	15.3	–	–	–	–
6/6/2012	47	11.7	–	–	–	0.20
6/7/2012	44	–	–	–	–	–
6/8/2012	44	–	–	–	–	–
6/9/2012	47	–	–	–	–	–
6/10/2012	49	–	–	–	–	–
6/11/2012	47	18.0	–	–	–	–
6/12/2012	45	–	–	–	–	–
6/13/2012	42	15.4	4.80	0.61	5.41	0.19
6/14/2012	50	–	–	–	–	–
6/15/2012	38	–	–	–	–	–
6/16/2012	38	–	–	–	–	–
6/17/2012	39	–	–	–	–	–
6/18/2012	38	18.1	–	–	–	–
6/19/2012	28	–	–	–	–	–
6/20/2012	32	14.3	–	–	–	0.20
6/21/2012	36	–	–	–	–	–
6/22/2012	24	–	–	–	–	–
6/23/2012	24	–	–	–	–	–
6/24/2012	24	–	–	–	–	–
6/25/2012	24	–	–	–	–	–
6/26/2012	24	17.6	–	–	–	–
6/27/2012	26	15.0	–	–	–	0.24
6/28/2012	29	–	–	–	–	–
6/29/2012	28	–	–	–	–	–
6/30/2012	30	–	–	–	–	–
Average	**38**	**15.7**	**4.80**	**0.61**	**5.41**	**0.21**

Table C-3. July 2012 Indian Creek Background Flow Data						
Date	Flow	Temperature	NO2-NO3	TKN	Total Nitrogen	Total Phosphorus
	cfs	°C	mg/l	mg/l	mg/l	mg/l
7/1/2012	32	–	–	–	–	–
7/2/2012	31	19.9	–	–	–	–
7/3/2012	29	18.0	–	–	–	0.23
7/4/2012	29	–	–	–	–	–
7/5/2012	32	–	–	–	–	–
7/6/2012	30	–	–	–	–	–
7/7/2012	31	–	–	–	–	–
7/8/2012	33	–	–	–	–	–
7/9/2012	34	–	–	–	–	–
7/10/2012	33	19.0	–	–	–	–
7/11/2012	50	18.6	3.87	0.43	4.30	0.26
7/12/2012	54	–	–	–	–	–
7/13/2012	58	–	–	–	–	–
7/14/2012	59	–	–	–	–	–
7/15/2012	61	–	–	–	–	–
7/16/2012	62	–	–	–	–	–
7/17/2012	55	18.1	–	–	–	--
7/18/2012	54	18.5	–	–	–	0.21
7/19/2012	36	–	–	–	–	–
7/20/2012	33	–	–	–	–	–
7/21/2012	34	–	–	–	–	–
7/22/2012	34	–	–	–	–	–
7/23/2012	35	–	–	–	–	–
7/24/2012	34	18.3	–	–	–	-
7/25/2012	31	17.8	–	–	–	0.22
7/26/2012	30	–	–	–	–	–
7/27/2012	28	–	–	–	–	–
7/28/2012	27	–	–	–	–	–
7/29/2012	28	–	–	–	–	–
7/30/2012	29	–	–	–	–	–
7/31/2012	28	–	–	–	–	–

Table C-4. August 2012 Indian Creek Flow and Water Quality Data						
Date	Flow	Temperature	NO_2-NO_3	TKN	Total Nitrogen	Total Phosphorus
	cfs	°C	mg/l	mg/l	mg/l	mg/l
8/1/2012	29	18.2	4.47	0.68	5.15	0.26
8/2/2012	29	19.1	–	–	–	–
8/3/2012	28	–	–	–	–	–
8/4/2012	29	–	–	–	–	–
8/5/2012	29	–	–	–	–	–
8/6/2012	28	–	–	–	–	–
8/7/2012	29	19.6	–	–	–	–
8/8/2012	30	18.4	–	–	–	0.32
8/9/2012	31	–	–	–	–	–
8/10/2012	31	–	–	–	–	–
8/11/2012	31	–	–	–	–	–
8/12/2012	35	–	–	–	–	–
8/13/2012	39	–	–	–	–	–
8/14/2012	42	18.4	–	–	–	–
8/15/2012	42	–	–	–	–	–
8/16/2012	41	17.9	–	–	–	0.23
8/17/2012	41	–	–	–	–	–
8/18/2012	41	–	–	–	–	–
8/19/2012	44	–	–	–	–	–
8/20/2012	47	–	–	–	–	–
8/21/2012	46	18.5	–	–	–	–
8/22/2012	45	17.6	–	–	–	0.26
8/23/2012	45	–	–	–	–	–
8/24/2012	45	–	–	–	–	–
8/25/2012	47	–	–	–	–	–
8/26/2012	54	–	–	–	–	–
8/27/2012	62	–	–	–	–	–
8/28/2012	60	–	–	–	–	–
8/29/2012	50	17.1	–	–	–	0.24
8/30/2012	50	17.5	–	–	–	–
8/31/2012	53	–	–	–	–	–
Average	**40**	**18.2**	**4.47**	**0.68**	**5.15**	**0.26**

Table C-5. September 2012 Indian Creek Flow and Water Quality Data						
Date	Flow	Temperature	NO_2-NO_3	TKN	Total Nitrogen	Total Phosphorus
	cfs	°C	mg/l	mg/l	mg/l	mg/l
9/1/2012	53	–	–	–	–	–
9/2/2012	53	–	–	–	–	–
9/3/2012	54	–	–	–	–	–
9/4/2012	53	–	–	–	–	–
9/5/2012	54	16.0	–	–	–	0.19
9/6/2012	54	–	–	–	–	–
9/7/2012	53	–	–	–	–	–
9/8/2012	56	–	–	–	–	–
9/9/2012	70	17.4	–	–	–	–
9/10/2012	70	–	–	–	–	–
9/11/2012	70	–	–	–	–	–
9/12/2012	70	14.1	3.07	0.45	3.52	0.20
9/13/2012	69	15.5	–	–	–	–
9/14/2012	71	–	–	–	–	–
9/15/2012	71	–	–	–	–	–
9/16/2012	69	–	–	–	–	–
9/17/2012	70	–	–	–	–	–
9/18/2012	70	15.5	–	–	–	–
9/19/2012	70	14.4	–	–	–	0.17
9/20/2012	71	–	–	–	–	–
9/21/2012	72	–	–	–	–	–
9/22/2012	71	–	–	–	–	–
9/23/2012	71	–	–	–	–	–
9/24/2012	72	–	–	–	–	–
9/25/2012	72	16.0	–	–	–	–
9/26/2012	72	15.8	–	–	–	0.17
9/27/2012	72	–	–	–	–	–
9/28/2012	72	–	–	–	–	–
9/29/2012	71	–	–	–	–	–
9/30/2012	71	–	–	–	–	–
Average	**66**	**15.6**	**3.07**	**0.45**	**3.52**	**0.18**

Appendix D: Phyllis Canal Background Data

Table D-1. Phyllis Canal Background Data									
Date	Temperature	TDS	Total P	Ortho P (as P)	TKN	NH_3	NO_3-NO_2	NO_3	TN
	°C	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
4/25/2007			0.16			0.02		0.1	
5/2/2007			0.39			0.07		<0.1	
6/6/2007			0.41			0.06		<0.1	
7/11/2007			0.33			0.70		<0.1	
8/8/2007			0.30			0.16		1.0	
9/12/2007			0.39			0.18		1.1	
10/3/2007			0.43			0.04		1.2	
4/16/2008			0.50			0.04	1.75	1.8	
4/30/2008			0.40			0.04			
5/13/2008			0.32			0.03	1.20	1.3	
5/13/2008	10.5		0.32	0.25	0.60	0.03	1.20		1.80
5/28/2008			0.28			0.06	1.65	0.2	
5/28/2008	12.0		0.28	0.15	0.40	0.06	0.65		1.05
6/10/2008			0.24			0.01	0.68	0.4	
6/10/2008	12.2		0.24	0.18	0.30	0.01	0.68		0.98
6/25/2008			0.36			0.01	1.34	0.9	
6/25/2008	15.2		0.36	0.27	0.60	0.01	1.34		1.94
7/1/2008			0.34			0.11	1.03	0.7	
7/1/2008	17.0		0.34	0.25	0.50	0.11	1.03		1.53
7/16/2008			0.26			0.10	0.99	0.6	
7/16/2008	17.1		0.26	0.20	0.50	0.10	0.99		1.49
8/12/2008			0.31			0.14	1.68	1.3	
8/12/2008	18.0		0.31	0.25	0.30	0.14	1.68		1.98
8/27/2008			0.33			0.03	1.62	1.2	
8/27/2008	16.5		0.33	0.31	0.40	0.03	1.62		2.02
9/9/2008	17.0		0.33	0.30	0.05	0.04	1.50		1.55
9/24/2008			0.26			0.10	1.12	0.9	
9/24/2008	15.0		0.26	0.27	0.50	0.10	1.12		1.62
10/7/2008			0.24			0.05	1.06	0.6	
10/7/2008	15.2		0.24	0.23	0.50	0.05	1.06		1.56
5/14/2009			0.26			0.30		0.6	
6/4/2009			0.22			0.10		0.3	
6/18/2009			0.14			0.09		0.3	
6/24/2009			0.14			0.08		0.3	
7/8/2009			0.25			0.05		0.4	
7/22/2009			0.34			0.04		0.9	
8/12/2009			0.32			0.04		0.7	
8/26/2009			0.32			0.05		1.0	
9/30/2009			0.29			0.02		0.8	

Table D-1. Phyllis Canal Background Data									
Date	Temperature	TDS	Total P	Ortho P (as P)	TKN	NH_3	NO_3-NO_2	NO_3	TN
	°C	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
2007–2009 Average	**15.1**		**0.30**	**0.24**	**0.42**	**0.09**	**1.23**	**0.77**	**1.6**
8/20/2018	19.0	140	0.08		0.32		2.03		2.35
8/21/2018	19.1	134	0.07		0.32		1.72		2.04
8/22/2018	20.1	136	0.11		0.28		1.71		1.99
8/23/2018	20.1	126	0.07		0.30		3.53		3.83
8/24/2018	19.5	140	0.07		0.34		1.67		2.01
8/25/2018	20.5	135	0.18		0.32		1.71		2.03
8/27/2018	18.3	134	0.08		0.33		1.51		1.84
8/28/2018	19.2	104	0.06		0.28		1.63		1.91
8/29/2018	17.7	134	0.03		0.31		1.30		1.61
8/30/2018	19.0	136	0.09		0.46		1.60		2.06
8/31/2018	20.1	106	0.04		0.33		1.24		1.57
9/1/2018	17.8	125	0.11		0.36		1.42		1.78
9/3/2018	19.8	111	0.06		0.29		1.10		1.39
9/4/2018	18.2	122	0.07		0.31		1.33		1.64
9/5/2018	19.4	145	0.08		0.33		1.40		1.73
9/6/2018	21.6	166	0.08		0.36		1.72		2.08
9/7/2018	19.2	130	0.06		0.33		1.67		2.00
9/8/2018	20.0	144	0.08		0.41		1.82		2.23
9/10/2018	17.7	170	0.08		0.45		1.47		1.92
9/11/2018	17.7	153	0.08		0.36		1.69		2.05
9/12/2018	17.8	148	0.06		0.31		1.48		1.79
9/13/2018	16.6	169	0.14		0.38		1.48		1.86
9/14/2018	17.4	147	0.08		0.42		1.51		1.93
9/15/2018	17.7	164	0.06		0.39		1.65		2.04
2018 Average	**18.9**	**138**	**0.08**		**0.35**		**1.64**		**1.99**
Overall Average	**17.7**	**138**	**0.22**	**0.24**	**0.37**	**0.09**	**1.44**	**0.77**	**1.86**

Appendix E: Groundwater Quality Modelling Documentation

Recycled Water Reuse Permit Application
Appendix E
Groundwater Quality Modelling

Prepared for
City of Nampa
Nampa, Idaho
April 24, 2019

Limitations:

This document was prepared solely for City of Nampa in accordance with professional standards at the time the services were performed and in accordance with the contract between City of Nampa and Brown and Caldwell dated January 1, 2009. This document is governed by the specific scope of work authorized by City of Nampa; it is not intended to be relied upon by any other party except for regulatory authorities contemplated by the scope of work. We have relied on information or instructions provided by City of Nampa and other parties and, unless otherwise expressly indicated, have made no independent investigation as to the validity, completeness, or accuracy of such information.

Table of Contents

List of Tables

Section 1: Introduction and Background

Contaminant transport modeling was conducted to assess impact to groundwater from canal seepage for nitrate and total dissolved solids (TDS). Modeling was conducted with the Water Reuse/Land Treatment System (WR/LTS) model obtained from the Idaho Department of Environmental Quality (IDEQ). The WR/LTS model tool consists of two modules, the Nutrient/Hydraulic Balance module and the Groundwater Contaminant Transport module and is conventionally used to estimate groundwater impacts from reuse water applied to agricultural land. The Nutrient/Hydraulic Balance module calculates constituent loading rates, crop uptake and groundwater constituent loss, hydraulic loading rate, and percolate analyte concentration and volume. The percolate concentration and volume are then used as inputs into the Groundwater Contaminant Transport module that calculates groundwater constituent concentration at a defined downgradient location (IDEQ, 2018).

Predicting impacts to groundwater chemistry resulting from canal seepage receiving Class A recycled water from the Nampa Wastewater Treatment Plant (WWTP) is an atypical application of the model that does not require the Nutrient/Hydraulic Balance module. Percolate volume and analyte concentration that would have been generated from the Nutrient/Hydraulic Balance Module are analytical estimates. Percolate concentration was estimated as the concentrations in the Phyllis Canal after the addition of Class A recycled water. Section 7.5.2 of the Preliminary Technical Report provides additional detail. Percolate volume was estimated using published canal seepage estimates, canal flow rate, and areal extent and is described in Section 3. Other Groundwater Contamination Transport inputs define the geology, aquifer characteristics, and orientation of the source relative to groundwater flow.

The Groundwater Contaminant Transport module guidance instructs the user to define the land treatment swath that is a polygon oriented with groundwater flow direction. The swath length parallel and perpendicular to groundwater flow are key parameters for modeling impacts. The swath would be the perimeter of the field in the agricultural water reuse scenario typical of the model application. In this canal seepage application, two swaths were defined along the Phyllis Canal downstream of the injection point of treated effluent and upstream of other return flows to the canal. One swath was defined in a portion of the canal that flows perpendicular to groundwater flow direction and another in a portion of the canal that flows parallel to groundwater flow. Swath orientation to groundwater flow is the predominant input variable in the Groundwater Contaminant Transport module, and the selection of reaches flowing parallel and perpendicular to groundwater provides impact endmembers.

Section 2: Background Groundwater Quality

Background groundwater quality was determined with analyte data contained in the State of Idaho's Environmental Data Management System (EDMS). The EDMS is a database of well construction/location data and groundwater quality data that can be assessed using a web-based interactive map. Wells were identified in the vicinity of anticipated impact and included wells directly upgradient of the Class A Recycled water discharge location (Figure 10). Well and analyte data was filtered to include only wells in the shallow aquifer (80 feet or less) and a water quality sampling date within the past 10 years for NO_3. Using the filters applied to nitrate data in the EDMS results in only one TDS data point. To capture a range of TDS results in the shallow aquifer, well depth was filtered to 100 feet or less, and the sample date range was filtered to include the past 30 years. The TDS dataset spans 1991 – 2011. Nitrate and TDS results are included in Table E-1. Background analyte concentration is a model input and is calculated as the average of the filtered data.

A total of 26 wells were identified in the region of interest. When the dataset was filtered for well depth and sampling date, the background nitrate concentration was calculated from nine samples and the TDS were estimated with five data points. Background nitrate concentration was estimated to be 7.3 mg/L and the TDS concentration to be 512 mg/L. Both background analyte concentration estimates are above the canal water concentrations.

Table E-1. Background Groundwater Analyte Data

Analyte	Well Depth (ft)	Sample Date	Concentration (mg/L)
Nitrate	83	2017-06-28	4.8
	67	2014-07-16	7.3
	48	2016-07-07	7.6
	80	2015-06-23	8.8
	80	2012-09-11	8.4
	69	2012-09-11	7.7
	78	2012-09-26	6.0
	38	2012-09-11	0.31
	80	2012-09-18	5.1
	Median		7.3
Total dissolved solids	48	2011-06-27	538
	92	2001-06-28	279
	83	2007-06-29	501
	63	1998-07-08	512
	90	1991-08-27	533
	Median		512

Section 3: Model Inputs

The Groundwater Contaminant Transport module requires mixing zone depth, hydrogeologic, and groundwater transport data inputs. Known input parameters were entered while less certain parameters were estimated and a sensitivity analysis conducted to determine range of potential impacts. Mixing zone depth inputs include the treatment swath dimensions, percolate volume, percolate constituent concentration, and background groundwater constituent concentration. The percolate volume and constituent concentration are typically retrieved from the Nutrient/Hydraulic Balance module. In this application, percolate constituent concentration was calculated using the constituent concentration in the effluent and canal water. Percolate volume was estimated from published local canal loss rate (12 percent to 20 percent)[1] and assumed treatment

[1] Carlson, R.A., and C.R. Petrich. 1999. New York Canal geologic cross section, seepage gain/loss data and ground water hydrographs: compilation and interim findings. Treasure Valley Hydrologic Project Open File Report. 6 p. Berenbrock, C. 1999. Streamflow gains and losses in the Lower Boise River Basin, Idaho, 1996–97. U.S. Geological Survey Water Resources Investigations Report 99-4105.

swath volume with a 5 foot water column (1,700 feet x 25 feet x 5 feet). Hydrogeologic inputs are the hydraulic conductivity (high, low range), hydraulic gradient, aquifer material, aquifer porosity, and aquifer thickness. Groundwater transport calculation spatial and temporal inputs are required; however, the soil and chemical properties do not apply for the conservative species modeled (nitrate and TDS).

Table E-2. Model Inputs

Input Parameter	Value	Units	Discussion of Sensitivity	Input Value Justification
Land treatment swath length parallel to groundwater flow	1,700 x 25	ft	Model highly sensitive to parameter	Swath dimensions for the sections parallel to and perpendicular to groundwater flow. 25 ft is canal width. Swath is shown on Figure 11.
Land treatment swath width perpendicular to groundwater flow	25 x 1,700	ft	Model highly sensitive to parameter	Swath dimensions for the sections parallel to and perpendicular to groundwater flow. 25 ft is canal width.
Percolate volume	7.2 - 12	in/acre	Model sensitive to value, higher value more dilution and larger spatial scale to background	Value estimated on published canal loss estimates [1] and calculated using canal loss estimate (acre-foot) and distributed along length of treatment swath
Percolate constituent concentration: (nitrate, TDS)	Nitrate 5.75 TDS 213	mg/L	Model sensitive to value	Preliminary Technical Report Section 7.5.2.
Upgradient groundwater concentration: (nitrate, TDS)	Nitrate 7.3 TDS 512	mg/L	Model sensitive to value	Statistical estimation based on available data
Aquifer hydraulic conductivity: high range, low range	100; 500	mg/L	Model highly sensitive to parameter, accounted for in the model by default	Value range from the IWRRI Treasure Valley Groundwater model study and taken from the IDEQ Guidance for Reclamation and Reuse of Municipal and Industrial Wastewater
Aquifer hydraulic gradient	0.002	Unitless	Model sensitive to value	Estimated from localized groundwater contours [2]
Aquifer material	Silt, clay, sand		Model sensitive to parameter	Select from drop down menu in tool, simulations run with each primary aquifer material shown on Figure 11.
Aquifer effective porosity (enter suggested or other value as a percent)	26–60	%	Model sensitive to parameter	Recommended ranges dependent on aquifer material selected.
Aquifer thickness	85	ft	Model insensitive to parameter	Estimated with analyte data processing
Spatial coordinates of concern (x,y,z)	100, 0, 0	ft	Model insensitive to parameter	Hypothetical downgradient point of concern
Depth of vertical profile to calculate and observe	110.5	ft	Model insensitive to parameter	Model Guide suggests 1.3 times aquifer depth
Time that the source is discharging	100,000	days	Model sensitive to parameter	Steady state conditions simulated with high value
AREAL model calculation domain (length, width)	1,000, 1,700	ft	Model insensitive to parameter	Dimension of area modeled, entered dimensions of swath

[1] *Carlson, R.A., and C.R. Petrich. 1999. New York Canal geologic cross section, seepage gain/loss data and ground water hydrographs: compilation and interim findings. Treasure Valley Hydrologic Project Open File Report. 6 p. Berenbrock, C. 1999. Streamflow gains and losses in the Lower Boise River Basin, Idaho, 1996–97. U.S. Geological Survey Water Resources Investigations Report 99-4105.*

[2] *Petrich, C., Urban, S. 2004. Idaho Water Resources Research Institute Research Report: Characterization of Ground Water Flow in the Lower Boise River Basin. IWRRI-2004-01.*

Section 4: Results

The Groundwater Contaminant Transport module results in a vertical and lateral dilution of background groundwater concentration for nitrate and TDS. This is the expected result because percolate concentration is less than background groundwater concentration. The model is highly sensitive to land treatment swath orientation. Mixing and dilution is exaggerated when the canal is oriented parallel to groundwater flow direction, and mixing is greatly reduced when the swath is perpendicular to groundwater flow. The model is slightly sensitive to changes in hydrogeological/aquifer characteristics. Sensitivity analysis of uncertain input parameters modified the spatial extent of dilution, but in all cases, dilution was in the near field with increasing concentrations to background level at distance.

Section 5: Summary

Groundwater chemistry impacts resulting from canal seepage representative of the reuse permit scenario were evaluated with the use of the IDEQ's WR/LTS model. Two solutes were analyzed, nitrate and TDS. This application of the WR/LTS model is unconventional and required method modification, most notably the omission of the Nutrient/Hydraulic Balance module as a precursor to the Groundwater Contaminant Transport module. The percolate volume and concentration that are outputs of the Nutrient/Hydraulic Balance module were analytically derived. Background groundwater quality was estimated using available data on the State of Idaho's EDMS database, and the percolate solute concentrations were below background. The model results showed a dilution of nitrate and TDS concentration that gradually increased to background levels at distance.

Section 6: Supporting Figures

Figures in this section are included to support assumptions used for model inputs as described in Section 3.

6.1 Well Logs

Well logs were available for two of the wells in the immediate proximity of the modeled sections of the canal. These logs provide information for aquifer material, aquifer thickness, aquifer hydraulic conductivity, aquifer effective porosity, and depth of vertical profile to calculate and observe. Well logs are included below. Geologic information for the broader area is provided in Figure 11.

834815

Office Use Only
Well ID No. 405342
Inspected by
Twp ____ Rge ____ Sec ____
____ 1/4 ____ 1/4 ____ 1/4
Lat: : : Long: : :

Form 238-7 6/02 (03)

IDAHO DEPARTMENT OF WATER RESOURCES
WELL DRILLER'S REPORT

1. WELL TAG NO. D 0039350
DRILLING PERMIT NO.
Water Right or Injection Well No.

2. OWNER:
Name Daniel Reece
Address 1104 Smith Ave
City Nampa State Id Zip 83651

3. LOCATION OF WELL by legal description:
You must provide address or Lot, Blk, Sub. or Directions to well.
Twp. 3 North ☒ or South ☐
Rge. 3 East ☐ or West ☒
Sec. 20 ____ 1/4 (10 acres) SE 1/4 (40 acres) NE 1/4 (160 acres)
Gov't Lot ____ County Canyon
Lat: : : Long: : :
Address of Well Site behind 1104 Smith Ave City Nampa
(Give at least name of road + Distance to Road or Landmark)
Lt. ____ Blk. ____ Sub. Name ____

4. USE:
☒ Domestic ☐ Municipal ☐ Monitor ☐ Irrigation
☐ Thermal ☐ Injection ☐ Other

5. TYPE OF WORK check all that apply (Replacement etc.)
☒ New Well ☐ Modify ☐ Abandonment ☐ Other

6. DRILL METHOD:
☒ Air Rotary ☐ Cable ☐ Mud Rotary ☐ Other

7. SEALING PROCEDURES

Seal Material	From	To	Weight / Volume	Seal Placement Method
Bentonite	0	20	950 #	overbore

Was drive shoe used? ☒ Y ☐ N Shoe Depth(s) 73'
Was drive shoe seal tested? ☐ Y ☒ N How?

8. CASING/LINER:

Diameter	From	To	Gauge	Material	Casing	Liner	Welded	Threaded
6"	+2	73	250	Steel	☒	☐	☒	☐
					☐	☐	☐	☐
					☐	☐	☐	☐

Length of Headpipe ____ Length of Tailpipe ____
Packer ☐ Y ☐ N Type ____

9. PERFORATIONS/SCREENS PACKER TYPE
Perforation Method
Screen Type & Method of Installation none - open

From	To	Slot Size	Number	Diameter	Material	Casing	Liner
						☐	☐
						☐	☐
						☐	☐

10. FILTER PACK

Filter Material	From	To	Weight / Volume	Placement Method

11. STATIC WATER LEVEL OR ARTESIAN PRESSURE:
3 ft. below ground Artesian pressure ____ lb.
Depth flow encountered ____ ft. Describe access port or control devices:
well cap

12. WELL TESTS:
☐ Pump ☐ Bailer ☐ Air ☐ Flowing Artesian

Yield gal./min.	Drawdown	Pumping Level	Time
100			1 hour

Water Temp. 64° Bottom hole temp.
Water Quality test or comments: Iron .5 PH 7.5
Grains 8 Depth first Water Encounter 20'

13. LITHOLOGIC LOG: (Describe repairs or abandonment)

Bore Dia.	From	To	Remarks: Lithology, Water Quality & Temperature	Water Y	Water N
10	0	16	top soil		
"	16	20	Sand		
6	20	21	Sand	X	
"	21	45	coarse Sand w/clay	X	
"	45	54	Sandy clay	X	
"	54	62	Fractured clay	X	
"	62	72	Sandy clay	X	
"	72	73	coarse sand	X	
"	73	94	lava rock	X	
"	94	97	red clay	X	

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AUG 0 1 2005
WATER RESOURCES
WESTERN REGION

Completed Depth 97 (Measurable)
Date: Started 07-20-05 Completed 07-21-05

14. DRILLER'S CERTIFICATION
I/We certify that all minimum well construction standards were complied with at the time the rig was removed.
Company Name Adamson Pump & Drill Firm No. 457
Principal Driller Dave Adamson Date 07-21-05
and
Driller or Operator II Dave Adamson Date 07-21-05
Operator I ____ Date ____
Principal Driller and Rig Operator *Required*
Operator I must have signature of Driller/Operator II.

00633

FORWARD WHITE COPY TO WATER RESOURCES

Form 238-7
1/78

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

USE TYPEWRITER OR BALLPOINT PEN

WELL DRILLER'S REPORT

State law requires that this report be filed with the Director, Department of Water Resources within 30 days after the completion or abandonment of the well.

1. WELL OWNER

Name Mc DOMALD'S (BILL HALL)

Address NAMPA, IDAHO

Owner's Permit No. _____

2. NATURE OF WORK

☒ New well ☐ Deepened ☐ Replacement
☐ Abandoned (describe method of abandoning) _____.

3. PROPOSED USE

☒ Domestic ☐ Irrigation ☐ Test ☐ Municipal
☐ Industrial ☐ Stock ☐ Waste Disposal or Injection
☐ Other _____ (specify type)

4. METHOD DRILLED

☒ Rotary ☒ Air ☐ Hydraulic ☐ Reverse rotary
☐ Cable ☐ Dug ☐ Other _____

5. WELL CONSTRUCTION

Casing schedule: ☒ Steel ☐ Concrete ☐ Other _____

Thickness		Diameter		From		To	
.250	inches	6	inches +	1'6"	feet	69'2"	feet
	inches		inches		feet		feet
	inches		inches		feet		feet
	inches		inches		feet		feet

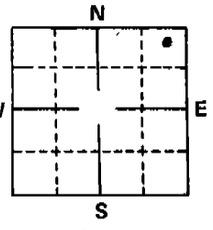
Was casing drive shoe used? ☒ Yes ☐ No
Was a packer or seal used? ☐ Yes ☒ No
Perforated? ☐ Yes ☒ No
How perforated? ☐ Factory ☐ Knife ☐ Torch
Size of perforation _____ inches by _____ inches

Number		From		To	
	perforations		feet		feet
	perforations		feet		feet
	perforations		feet		feet

Well screen installed? ☐ Yes ☒ No
Manufacturer's name _____
Type _____ Model No. _____
Diameter ____ Slot size ____ Set from _____ feet to _____ feet
Diameter ____ Slot size ____ Set from _____ feet to _____ feet
Gravel packed? ☐ Yes ☒ No ☐ Size of gravel _____
Placed from _____ feet to _____ feet
Surface seal depth 20' Material used in seal: ☐ Cement grout ☒ Puddling clay ☒ Well cuttings
Sealing procedure used: ☐ Slurry pit ☐ Temp. surface casing ☒ Overbore to seal depth
Method of joining casing: ☐ Threaded ☒ Welded ☐ Solvent Weld ☐ Cemented between strata
Describe access port _____

6. LOCATION OF WELL

Sketch map location must agree with written location. 63



Subdivision Name _____
Lot No. _____ Block No. _____
County CANYON
N. E.¼ N. E.¼ Sec. 21, T. 3 N/S, R. 2 E/W.

7. WATER LEVEL

Static water level 17 feet below land surface.
Flowing? ☐ Yes ☒ No G.P.M. flow _____
Artesian closed-in pressure _____ p.s.i.
Controlled by: ☐ Valve ☐ Cap ☐ Plug
Temperature _____ °F. Quality _____

8. WELL TEST DATA

☐ Pump ☐ Bailer ☒ Air ☐ Other _____

Discharge G.P.M.	Pumping Level	Hours Pumped
75		2

9. LITHOLOGIC LOG

103128

Hole Diam.	Depth From	Depth To	Material	Water Yes	Water No
8"	0'	6"	pavement		x
8"	6"	2'	sand and gravel		x
8"	2'	12'	sand with clay layers		x
8"	12'	24'	sand and gravel		x
6"	24'	30'	snd		x
6"	30'	56'	sand and clay layers		x
6"	56'	67'	sand with some gravel	x	
6"	67'	103'	rock	x	
6"	103'		sand and gravel	x	

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NOV 15 1979
Department of Water Resources
Western Regional Office

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APR 11 1980
Department of Water Resources

10.

Work started 6-11-79 finished 6-11-79

11. DRILLERS CERTIFICATION

I/We certify that all minimum well construction standards were complied with at the time the rig was removed.

Firm Name BILL DOTY WELL DRILLING Firm No. 42
Address Rt. 7 CALDWELL, IDAHO Date 8-31-79
Signed by (Firm Official) Bill Doty
and
(Operator) CERTIFIED

USE ADDITIONAL SHEETS IF NECESSARY — FORWARD THE WHITE COPY TO THE DEPARTMENT

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6.2 Dispersion Graphs

Horizontal and vertical dispersion of percolate constituent concentrations are plotted on the following graphs.

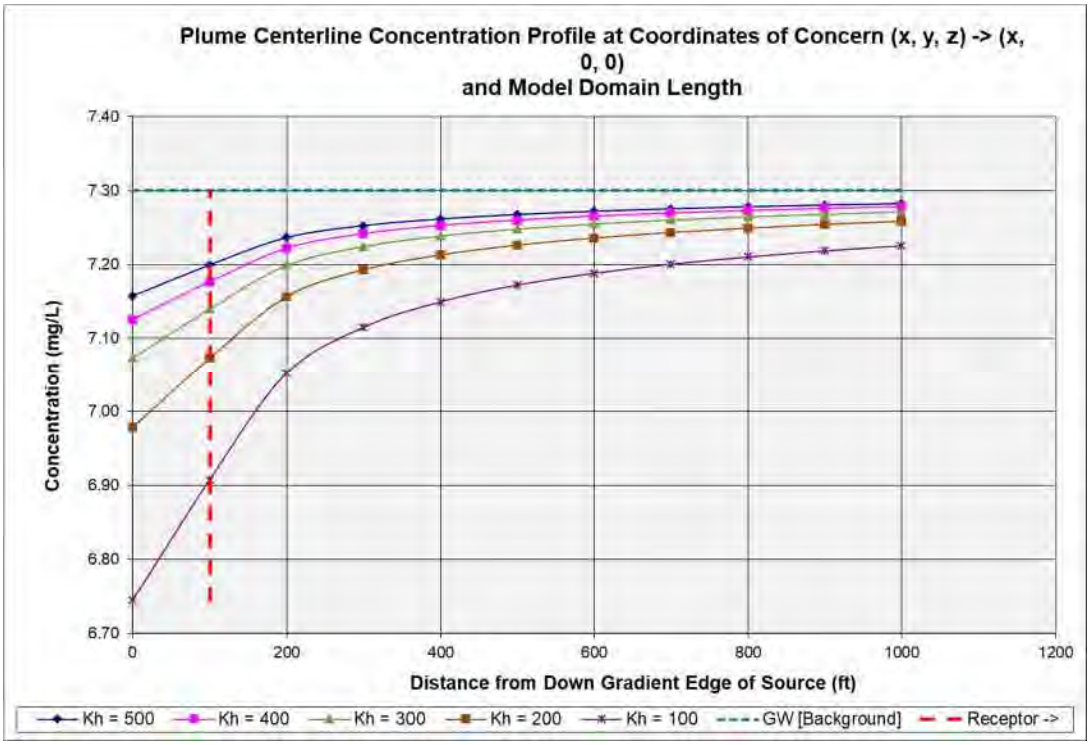

Figure E-1. NO_3 Concentration Profiles Treatment Swath Parallel to Groundwater Flow

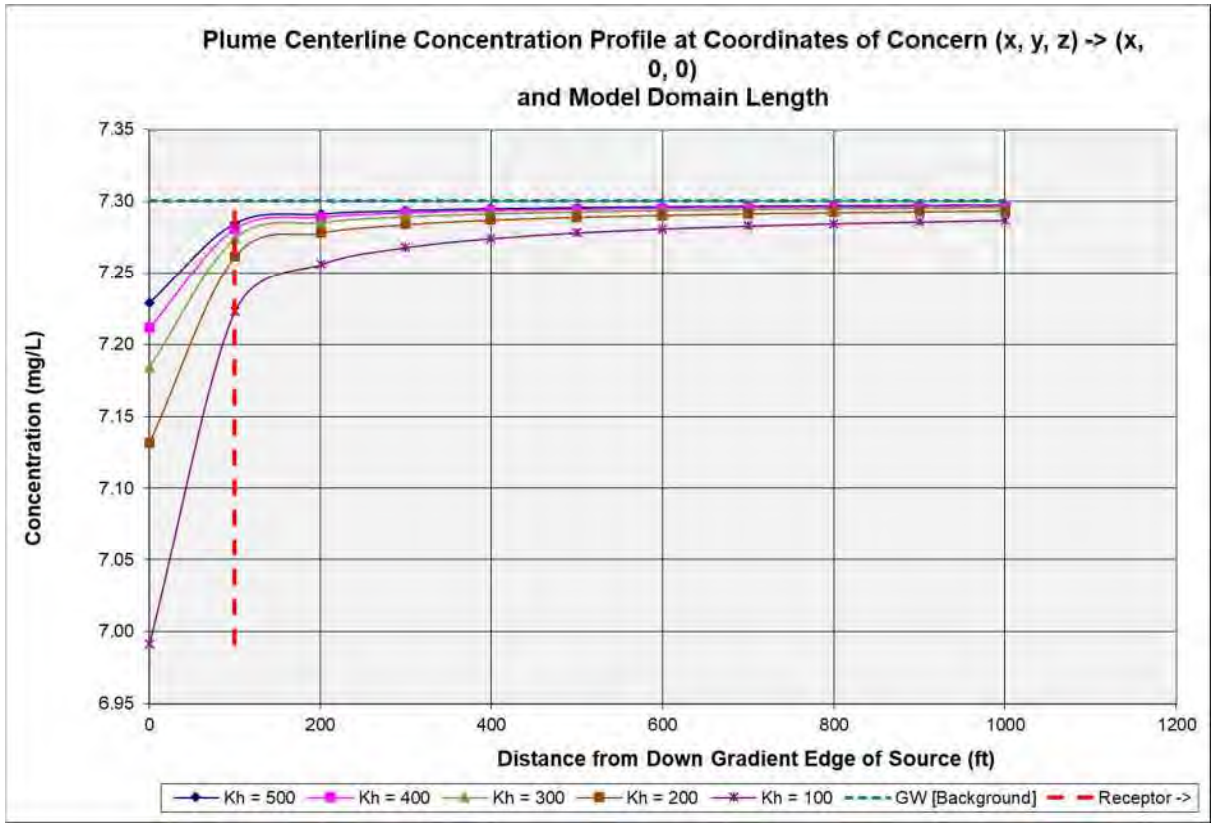

Figure E-2. NO_3 Concentration Profiles Treatment Swath Perpendicular to Groundwater Flow

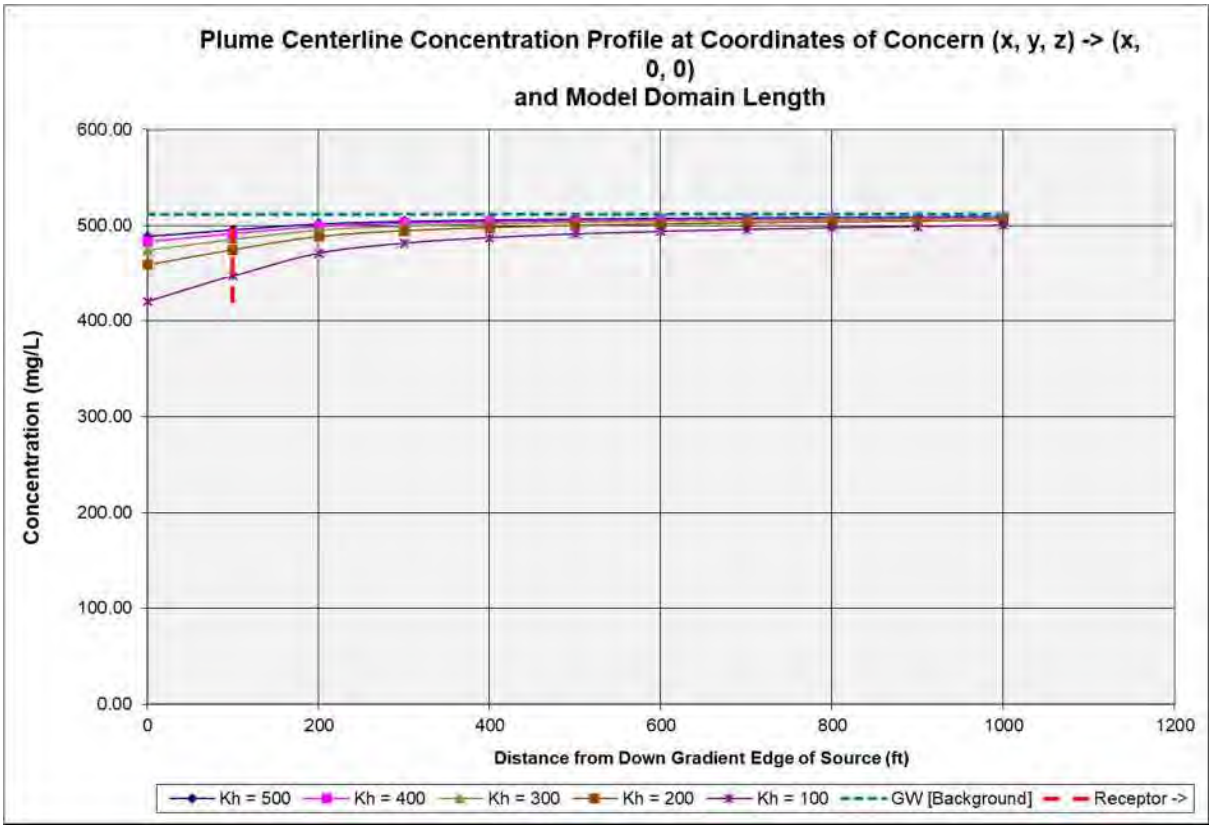

Figure E-3. TDS Concentration Profiles Treatment Swath Parallel to Groundwater Flow

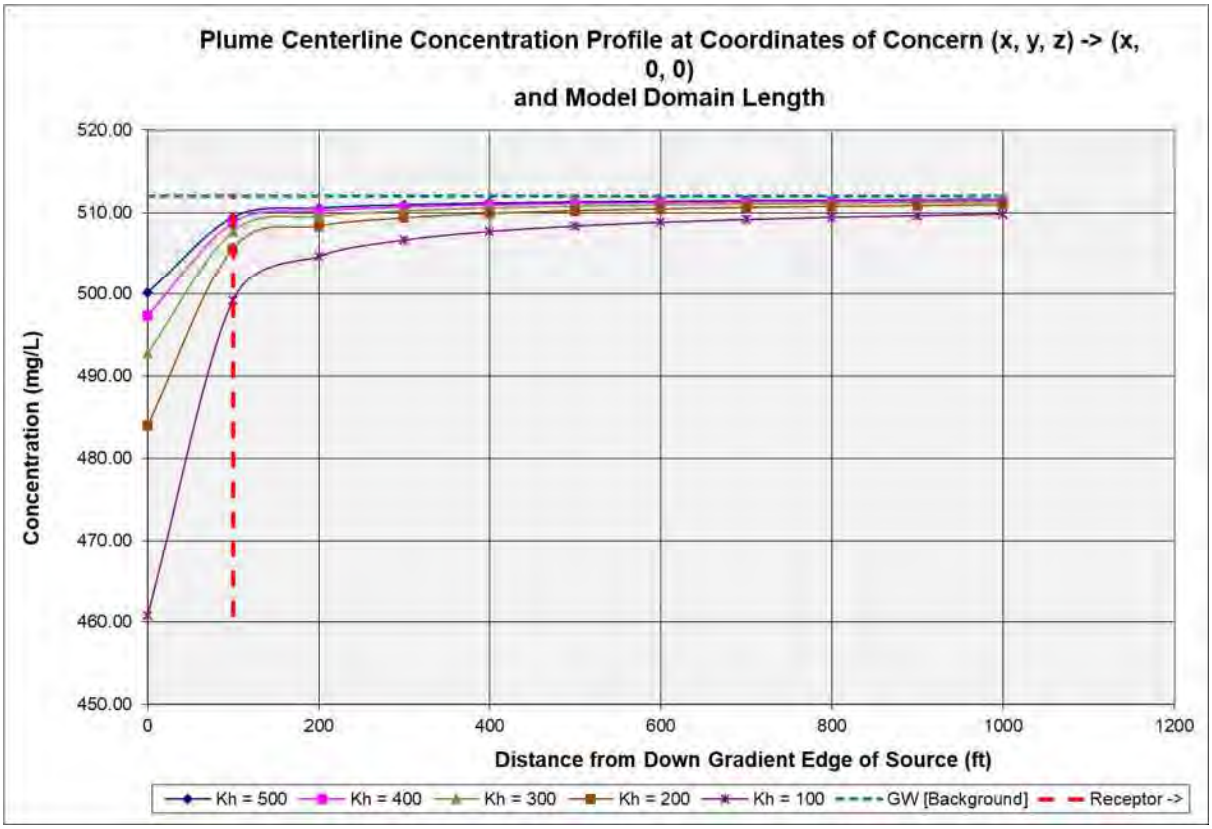

Figure E-4. TDS Concentration Profiles Treatment Swath Perpendicular to Groundwater Flow

Appendix F: Available Water and Irrigation Water Requirement Documentation

Recycled Water Reuse Permit Application
Appendix F
Crop Nutrient and Water Uptake

Prepared for
City of Nampa
Nampa, Idaho
March 19, 2019

Table of Contents

List of Tables

Section 1: Irrigation Water Requirement

Land uses and crop types were used to determine Irrigation Water Requirement (IWR) in the areas served by the Phyllis Canal downstream from the proposed recycled water discharge location. Table F-1 shows the acreage of each land use/crop type as derived from land use GIS data in the USDA National Agricultural Statistics Service Cropland Data Layer from 2017 (NASS, 2017). These include developed land (turf grass), alfalfa, grass pasture, winter (grain) wheat, snap and dry beans-seed, peas-seed, corn–moderate season, sugar beets, grass hay, and mixed vegetables.

Table F-1. Land Use/Crop Type Acreage

Land Use/Crop Type	Acreage
Developed/open space	5,336
Developed/low intensity	3,986
Alfalfa	2,985
Grass/pasture	2,528
Developed/medium intensity	1,168
Winter wheat	878
Dry beans	714
Peas	248
Corn	1,458
Sugar beets	543
Developed/high intensity	200
Fallow/idle cropland [1]	294
Other hay/non-alfalfa	192
Mixed vegetables: sum of all land uses under 40 acres	1,642
Total acreage	22,172

Source: National Agricultural Statistics Service: Cropscape program (NASS, 2017).

[1] Area not included in irrigation acreage for loading analysis.

The developed/turf grass classification was comprised of 4 subcategories. These included developed/open space, developed low intensity, developed medium intensity and developed high intensity. To conservatively estimate the available land for irrigation in each category this analysis de-rated the GIS land acreage for each of these subcategories. It was assumed that developed open space only had 80% of the land available for irrigation, developed low intensity assumed that 40% of the land was available for irrigation while developed medium intensity and developed high intensity assumed 30% and 20% available land for irrigation, respectively. The sum of these areas in acres make up the land used for IWR in Table F-2 below. For each of the other major classifications, the whole acreage was assumed to be available for irrigation. IWR is calculated for these in Tables F-3 through F-11

The IWR was calculated using a growing season from May 1 to September 30. The precipitation deficit data for each crop is from the Nampa Station (PN-AM—NMPI) of the University of Idaho Kimberly Research and

Extension Center, ET Idaho Program (UI, 2019). The precipitation deficit is the difference between the potential evapotranspiration and the amount of effective precipitation (water that infiltrates into the soil and can be accessed by plant roots). To paraphrase the Kimberly Research and Extension Center; the precipitation deficit is synonymous with the net IWR when occurring during the growing season and generally is the most appropriate "ET" parameter to use for irrigation system design.

The monthly mean value in mm/day was used for this analysis. This value was converted to mm/month. Next, an assumed irrigation efficiency of 0.60 was applied for all developed/turf grass land; this is a conservative value based on EPA's claim that 50% of water used for residential irrigation is wasted due to evaporation, window, or runoff (UESPA, 2017). An assumed irrigation efficiency of 0.60 – 0.70 was used for all other non-developed land uses, based on expected irrigation application method (Irmak, 2011). The monthly precipitation deficit was divided by the irrigation efficiency to determine the IWR for each month in acre-inches. This value was then divided by the available acreage and finally converted into a total monthly IWR in million gallons for each crop type. This process was repeated for each of the land uses/crop types in Table F-1.

Table F-2 Irrigation Water Requirements for Developed/Turf Grass

Month	mm/day	days/month	mm/month	mm/in	Irrigation Efficiency	IWR (Inches)	ac-in/ac	gal/ac-in	Acres [1]	MGAL
May	4.48	31	138.88	25.4	0.6	9.11	9.11	27,150	6,252	1,547
June	5.69	30	170.70	25.4	0.6	11.20	11.20	27,150	6,252	1,901
July	6.7	31	207.70	25.4	0.6	13.63	13.63	27,150	6,252	2,313
August	5.74	31	177.94	25.4	0.6	11.68	11.68	27,150	6,252	1,982
Sept	3.9	30	117.00	25.4	0.6	7.68	7.68	27,150	6,252	1,303
Total			812.22			53.30	53.30			9,046

[1] *Acreage reductions by land use:*

Irrigation acreage for developed, open space, reduced by 20% for loading analysis.

Irrigation acreage for developed, low density, reduced by 60% for loading analysis.

Irrigation acreage for developed, medium density, reduced by 70% for loading analysis.

Irrigation acreage for developed, high density, reduced by 80% for loading analysis.

Table F-3 Irrigation Water Requirements for Alfalfa

Month	mm/day	days/month	mm/month	mm/in	Irrigation Efficiency	IWR (Inches)	ac-in/ac	gal/ac-in	Acres	MGAL
May	5.02	31	155.62	25.4	0.7	8.75	8.75	27,150	2,985	709
June	5.04	30	151.20	25.4	0.7	8.50	8.50	27,150	2,985	689
July	5.96	31	184.76	25.4	0.7	10.39	10.39	27,150	2,985	842
August	5.46	31	169.26	25.4	0.7	9.52	9.52	27,150	2,985	772
Sept	3.91	30	117.30	25.4	0.7	6.60	6.60	27,150	2,985	535
Total			778.14			43.76	43.76			3,547

Table F-4 Irrigation Water Requirements for Grass Pasture										
Month	mm/day	days/month	mm/month	mm/in	Irrigation Efficiency	IWR (Inches)	ac-in/ac	gal/ac-in	Acres	MGAL
May	3.71	31	115.01	25.4	0.6	7.55	7.55	27,150	2528	518
June	4.77	30	143.10	25.4	0.6	9.39	9.39	27,150	2528	644
July	5.47	31	169.57	25.4	0.6	11.13	11.13	27,150	2528	764
August	4.34	31	134.54	25.4	0.6	8.83	8.83	27,150	2528	606
Sept	2.5	30	75.00	25.4	0.6	4.92	4.92	27,150	2528	338
Total			637.22			41.81	41.81			2,870

Table F-5 Irrigation Water Requirements for Winter Grain Wheat										
Month	mm/day	days/month	mm/month	mm/in	Irrigation Efficiency	IWR (Inches)	ac-in/ac	gal/ac-in	Acres	MGAL
May	5.44	31	168.64	25.4	0.7	9.48	9.48	27,150	878	226
June	4.7	30	141.00	25.4	0.7	7.93	7.93	27,150	878	189
July	0.85	31	26.35	25.4	0.7	1.48	1.48	27,150	878	35
August	0.63	31	19.53	25.4	0.7	1.10	1.10	27,150	878	26
Sept	0.29	30	8.70	25.4	0.7	0.49	0.49	27,150	878	12
Total			364.22			20.48	20.48			488

Table F-6 Irrigation Water Requirements for Snap and Dry Beans (seed)										
Month	mm/day	days/month	mm/month	mm/in	Irrigation Efficiency	IWR (Inches)	ac-in/ac	gal/ac-in	Acres	MGAL
May	0.02	31	0.62	25.4	0.7	0.03	0.03	27,150	714	1
June	3.46	30	103.80	25.4	0.7	5.84	5.84	27,150	714	113
July	7.24	31	224.44	25.4	0.7	12.62	12.62	27,150	714	245
August	2.42	31	75.02	25.4	0.7	4.22	4.22	27,150	714	82
Sept	-0.04	30	-1.20	25.4	0.7	-0.07	-0.07	27,150	714	0
Total			402.68			22.65	22.65			441

Table F-7 Irrigation Water Requirements for Peas (seed)										
Month	mm/day	days/month	mm/month	mm/in	Irrigation Efficiency	IWR (Inches)	ac-in/ac	gal/ac-in	Acres	MGAL
May	4.64	31	143.84	25.4	0.7	8.09	8.09	27,150	248	54
June	4.3	30	129.00	25.4	0.7	7.26	7.26	27,150	248	49
July	0.68	31	21.08	25.4	0.7	1.19	1.19	27,150	248	8
August	-0.01	31	-0.31	25.4	0.7	-0.02	-0.02	27,150	248	0
Sept	-0.1	30	-3.00	25.4	0.7	-0.17	-0.17	27,150	248	0
Total			290.61			16.34	16.34			111

Table F-8 Irrigation Water Requirements for Corn (field, moderate season length)										
Month	mm/day	days/month	mm/month	mm/in	Irrigation Efficiency	IWR (Inches)	ac-in/ac	gal/ac-in	Acres	MGAL
May	0.44	31	13.64	25.4	0.7	0.77	0.77	27,150	1,458	30
June	3.84	30	115.20	25.4	0.7	6.48	6.48	27,150	1,458	256
July	7.73	31	239.63	25.4	0.7	13.48	13.48	27,150	1,458	534
August	6.42	31	199.02	25.4	0.7	11.19	11.19	27,150	1,458	443
Sept	2.81	30	84.30	25.4	0.7	4.74	4.74	27,150	1,458	188
Total			651.79			36.66	36.66			1,451

Table F-9 Irrigation Water Requirements for Sugar Beets										
Month	mm/day	days/month	mm/month	mm/in	Irrigation Efficiency	IWR (Inches)	ac-in/ac	gal/ac-in	Acres	MGAL
May	1.87	31	57.97	25.4	0.7	3.26	3.26	27,150	543	48
June	6.47	30	194.10	25.4	0.7	10.92	10.92	27,150	543	161
July	8.47	31	262.57	25.4	0.7	14.77	14.77	27,150	543	218
August	6.78	31	210.18	25.4	0.7	11.82	11.82	27,150	543	174
Sept	3.97	30	119.10	25.4	0.7	6.70	6.70	27,150	543	99
Total			843.92			47.46	47.46			700

Table F-10 Irrigation Water Requirements for Grass Hay										
Month	mm/day	days/month	mm/month	mm/in	Irrigation Efficiency	IWR (Inches)	ac-in/ac	gal/ac-in	Acres	MGAL
May	5.11	31	158.41	25.4	0.6	10.39	10.39	27,150	192	54
June	6.13	30	183.90	25.4	0.6	12.07	12.07	27,150	192	63
July	6.37	31	197.47	25.4	0.6	12.96	12.96	27,150	192	68
August	5.47	31	169.57	25.4	0.6	11.13	11.13	27,150	192	58
Sept	3.36	30	100.80	25.4	0.6	6.61	6.61	27,150	192	34
Total			810.15			53.16	53.16			277

Table F-11 Irrigation Water Requirements for Mixed Vegetables										
Month	mm/day	days/month	mm/month	mm/in	Irrigation Efficiency	IWR (Inches)	ac-in/ac	gal/ac-in	Acres	MGAL
May	2.49	31	77.19	25.4	0.7	4.34	4.34	27,150	1,642	194
June	5.96	30	178.80	25.4	0.7	10.06	10.06	27,150	1,642	448
July	7.25	31	224.75	25.4	0.7	12.64	12.64	27,150	1,642	564
August	6.07	31	188.17	25.4	0.7	10.58	10.58	27,150	1,642	472
Sept	3.57	30	107.10	25.4	0.7	6.02	6.02	27,150	1,642	269
Total			776.01			43.65	43.65			1,946

Section 2: Total Water Available

Table F-12 contains an approximate accounting of the irrigation water that is typically available to the PID service area downstream from the proposed recycled water discharge location (with the irrigation water that will be made available by the City's recycled water reuse program) and the estimated irrigation water requirement (IWR) for the land use and crop types in the service area.

The following formula was used determine the approximate volume of irrigation water that is typically available in the PID service area below the proposed recycled water discharge location.

$$\begin{aligned} &Typical\ volume\ in\ the\ Phyllis\ Canal\ at\ the\ proposed\ discharge\ location \\ &+ Recycled\ water\ from\ the\ Nampa\ WWTP \\ &+ Pumping\ and\ inputs\ from\ drains\ and\ tailwaters\ of\ neighboring\ irrigation\ districts \\ &- Losses\ to\ groundwater\ from\ the\ bottom\ of\ the\ Phyllis\ Canal\ and\ Laterals \\ &- Losses\ to\ the\ atmosphere\ from\ the\ water\ surface\ in\ the\ Phyllis\ Canal\ and\ Laterals \\ &= \boldsymbol{Total\ Water\ Available} \end{aligned}$$

Table F-12. Irrigation Water Available and Required per Month (M) During period of Recycled Water Discharge							
Month	Typical volume in the Phyllis Canal [1] (MG/Month)	Recycled water [2] (MG/Month)	Inputs from drains [3] (MG/month)	Conveyance losses to groundwater [4] (MG/Month)	Conveyance losses to atmosphere [4] (MG/Month)	Total Water Available (MG/Month)	Total Water Required [5] (MG/Month)
May	4,000	620	1,403	(1,191)	(7.8)	4,824	3,382
June	3,871	600	1,357	(1,152)	(9.1)	4,667	4,515
July	4,000	620	1,403	(1,191)	(10.2)	4,822	5,589
August	4,000	620	1,403	(1,152)	(8.7)	4,863	4,614
September	3,871	600	1,357	(1,191)	(6.2)	4,631	2,774
Total Growing Season	19,742	3,060	6,922	(5,876)	(42)	23,806	20,874

[1] *See Preliminary Technical Report Section 7.5.1.4.*

[2] *Planned recycled water flow rate: 31cfs (20 MGD).*

[3] *See Preliminary Technical Report Table 7-2.*

[4] *See Table F-13.*

[5] *Sum of Values in Tables F-2 – F-11.*

Water losses are expected from unlined and uncovered canals and laterals. Literature estimates for canal water loss through seepage exist for the Nampa area and are included in Carlson and Petrich, 1999 and Berenbrock, 1999. These sources were used to determine typical loss per acre to groundwater from the Phyllis Canal and lateral diversions from the Phyllis Canal. Values are shown in Table F-13. Losses to the atmosphere were calculated in a manner similar to the IWR calculations in Appendix F Section 1. These calculations are shown in Table F-14. Results are included in Table F-13.

Canal and lateral acreages were measured in GIS using georeferenced orthographic imagery. Most of the Phyllis Canal and the major laterals exhibit a nearly rectangular channel geometry. Therefore, surface area and bottom area are assumed to be equal. Laterals that do not surface were assumed to be piped, and therefore are not included in groundwater loss calculations or loss to atmosphere calculations.

Table F-13. Losses from Phyllis Canal and Laterals		
Canal/Lateral	Surface/bottom area (acres)	Loss to groundwater (MG/day)
Phyllis Canal	47	29.4
15.0 Lateral	3.85	2.4
Stevens Lateral	1.8	1.1
Stone Lateral	2.26	1.4
McCarthy Lateral	0.45	0.3
25.1 Lateral	3.12	2
Douglas Lateral	0.09	0.1
Torbett Lateral	0.52	0.3
Smiley Lateral	0.55	0.4
Whittig Lateral	0.34	0.2
Talcott Lateral	0.23	0.1

Table F-13. Losses from Phyllis Canal and Laterals		
Canal/Lateral	Surface/bottom area (acres)	Loss to groundwater (MG/day)
Shelp Lateral	0.36	0.2
Pipe Gulch Laterals	0.82	0.5
Totals	61.4	38.4

Table F-14. Evaporative Loss from Phyllis Canal and Laterals								
Month	mm/day [1]	days/month	mm/month	mm/in	Water Loss (ac-in/acre)	gal/ac-in	Acres	MGAL
May	3.85	31	119.35	25.4	4.70	27,150	61.4	7.83
June	4.6	30	138.00	25.4	5.43	27,150	61.4	9.06
July	4.99	31	154.69	25.4	6.09	27,150	61.4	10.15
August	4.29	31	132.99	25.4	5.24	27,150	61.4	8.73
Sept	3.14	30	94.20	25.4	3.71	27,150	61.4	6.18
Total			639.23		25.17			42.0

[1] *Evapotranspiration rates taken from Nampa Station (PN-AM—NMPI) of the University of Idaho Kimberly Research and Extension Center, ET Idaho Program (UI, 2019).*

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **RIVERSIDE IRRIGATION DISTRICT LTD.'S PRE-HEARING CONFERENCE MEMORANDUM**

COMES NOW, Riverside Irrigation District Ltd. ("Riverside"), by and through its attorneys of record, Barker Rosholt & Simpson LLP, and hereby submits this Pre-hearing Conference memo in advance of the Pre-hearing Conference hearing scheduled for July 8, 2020, before the Director.

The City of Nampa's reuse permit issued by IDEQ authorizes delivery of water to Pioneer's Phyllis Canal and requires elimination of Nampa's irrigation season discharges to Indian Creek. Nampa proposes to begin this use on or around 2026, according to IDEQ staff evaluation of the reuse permit.

Riverside's Petition sought a ruling from the Department on two points: 1) Pioneer cannot divert or accept water from the City of Nampa or apply any of that water to land in the Pioneer District boundaries under the reuse permit without obtaining a water right, and 2) any attempt by Pioneer or the City to divert water under the permit to Pioneer without applying for a water right is

in contravenes Idaho law. The Director's *Order* of June 11, 2020, recognized that the Riverside Petition sought ruling on those precise issues. *Order* p. 1.

In an *Order* dated May 7, 2020, the Director set a continued prehearing conference for July 8, 2020, at 2:00 p.m. At the last prehearing conference, counsel for the various parties seeking intervention and Riverside advised the Director that they would be entering into a stipulation of facts to present to the Director for his consideration in ruling on the Petition, and agreed to prepare such a stipulation. The municipal intervenors and Idaho Power Company all agreed to limit their involvement to the stipulated facts agreed upon between Nampa, Pioneer and Riverside for purposes of the ruling on the petition for declaratory relief. The Director so ordered in his petition granting the motions to intervene. Order June 11, 2020.

On June 30, 2020, the City of Nampa submitted to the Department a document entitled Stipulation Regarding Legal Issues and a document entitled Stipulation of Facts. Neither the Stipulation Regarding Legal Issues nor the Stipulation of Facts has been stipulated to by Riverside. Nor had it been when submitted on June 30 submission. Prior to the City of Nampa's June 30th submittals, counsel for Riverside had attempted to obtain additional information related to Pioneer's use of the reuse water and its arrangements with the City of Nampa. Riverside was advised that some of the agreements it requested did not exist, only to find out later that there were such agreements that had been requested did exist. Some of those agreements have now been provided. Riverside also posed some questions and was advised that those questions would take some time to answer. Some of that information was provided after the "stipulations" were submitted. Before the City submitted these documents, counsel for Riverside had prepared preliminary edits to the "stipulations" and was awaiting additional information requested to make additional changes. Riverside also has identified additional documents as part of its investigation

that Riverside intends to offer as stipulated exhibits beyond those Nampa has included in its "stipulation."

Riverside intends to attempt to work with the Nampa and Pioneer to develop a more neutral set of facts that can be agreed to and to add additional facts and exhibits that Riverside believes are pertinent to the decision of the Director. Counsel for Riverside was unable to complete that task prior to the status conference, in part because of a deadline for filing a brief with the Ninth Circuit Court of Appeals on July 6, 2020. Riverside still intends to work with Nampa and Pioneer if they are willing to do so, but will need some additional time to evaluate the information and documents recently provided. Perhaps Riverside will need additional information from Nampa and Pioneer concerning the arrangements between the two of them for water use.

With respect to the proposed stipulation regarding legal issues, Riverside does not agree with the City of Nampa's attempt to re-write Riverside's petition. The legal issues that Riverside petitioned to be determined are set forth in the Petition, not Nampa's purported stipulation. Riverside does not agree that the legal issues that Nampa has set out properly frame the issues raised by the Petition. Nor does Riverside believe that an intervenor, like Nampa is, has the right to reformulate Riverside's Petition. This is Riverside's Petition; not Nampa's.

Nampa also proposes to expand the Petition to include an advisory ruling on the scope of mitigation that might be required. When an application for a water right is filed, the applicant must provide the information required by Rule 35. IDAPA 37.03.08.035. The Department's rules provide mandatory steps for processing including, public notice, protests, additional information requirements, etc. IDAPA 37.03.08.40. The Director must apply the statutory criteria, even if there is no protest. IDAPA 37.03.08.45. Conditions of approval may be required. IDAPA 37.03.08.50. Nampa would skip over the Idaho water right process. Riverside believes that any conditions on a

water right should be informed by Idaho's statutory process.

Riverside does not believe that this Petition is the appropriate vehicle to determine the elements or conditions on a water right should Pioneer be required to seek one. Conditions require evaluation by the Department under the water right application process that should not be truncated in the manner suggested by Nampa.

Procedurally, the proposed Stipulation of Facts provide that the parties may seek to offer additional facts and exhibit beyond the information agreed to in the stipulation and contained in the exhibits. If a party decides to insert additional facts or exhibits that are not in the stipulated record, the opposing party will need an opportunity to evaluate that information and perhaps engage in discovery with respect to any new information or documentation that one party is attempting to inject, before being required to respond to that new information.

With respect to the proposed Stipulation of Facts, Riverside had intended to respond to Nampa's proposed stipulation and will still do so if appropriate. Nampa's proposed Stipulation of Facts fall into several broad categories: (1) undisputed facts that Riverside can stipulate to; (2) spin on or characterization of facts which must be either discarded or set out in a more neutral fashion to be agreeable; (3) proposed legal conclusions or facts which Riverside will not agree to; and (4) statements of Nampa's future intent. These statements of future may or may not be true, but Riverside can not agree that they are facts. Finally, there are additional facts and documents that Riverside believes need to be included in the record that were omitted from the proposed statement of facts prepared by Nampa.

CONCLUSION

Riverside believes that additional time is necessary to work out a mutually agreeable stipulation of facts and documents admissible in evidence. Once that stipulation of facts has

worked out, the Parties can propose a briefing schedule based upon the stipulated facts and evidence for consideration by the Director.

DATED this 8th day of July 2020.

BARKER, ROSHOLT & SIMPSON LLP

Albert P. Barker
Attorneys for Riverside Irrigation District Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of July, 2020, I caused to be served a true and correct copy of the foregoing **PRE-HEARING CONFERENCE MEMORANDUM** by the method indicated below, and addressed to each of the following:

Original to:

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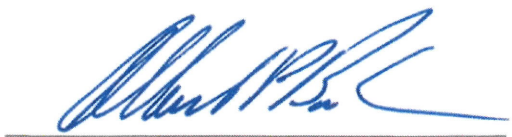

Albert P. Barker

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER REUSE PERMIT NO. M-225-01	Docket No. P-DR-2020-001 **SCHEDULING ORDER; NOTICE OF CONTINUED PREHEARING CONFERENCE**

BACKGROUND

On July 8, 2020, the Director of the Idaho Department of Water Resources ("IDWR" or "Agency") held a continued prehearing conference in the above referenced matter. All parties were represented either in person or by phone. Based upon discussion at the prehearing conference, the Director adopts the schedule set forth below. The parties also agreed to a continued prehearing conference on August 20, 2020.

SCHEDULING ORDER

IT IS HEREBY ORDERED that the following schedule is ADOPTED:

September 29, 2020 Deadline for Petitioner Riverside to submit its opening brief.

October 27, 2020 Deadline for parties to submit response briefs to Riverside's opening brief.

November 17, 2020 Deadline for Riverside to reply to party response briefs.

December 8, 2020 Deadline for party sur-replies to Riverside's reply brief.

NOTICE OF CONTINUED PREHEARING CONFERENCE

A prehearing conference will be held in the above-captioned matter on **August 20, 2020, at 10:00 a.m.** at the Department's state office, located at 322 E. Front Street, 6th Floor Conference Rooms, Boise, Idaho.

The purpose of the prehearing conference will be to discuss whether a hearing needs to be set, a review of the briefing schedule set forth above, and other items listed in the Department's Rule of Procedure 510. *See* IDAPA 37.01.01.510.

The parties must be represented at the continued prehearing conference, either by video or in person. IDWR will arrange a video conference for those who choose not to appear in person. Within one week prior to the prehearing conference, IDWR will communicate video and telephonic conference links to the parties enabling them to join the video prehearing conference.

The continued prehearing conference will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the Department's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department or at https://adminrules.idaho.gov/rules/current/37/370101.pdf.

The continued prehearing conference will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please contact Kimberle English at (208) 287-4815, no later than five (5) days prior to the conference.

DATED this 15th day of July 2020.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July 2020, I served a true and correct copy of the foregoing document on the following by the method(s) indicated:

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **REUSE PROPONENTS' NOTIFICATION REGARDING EFFORTS TO REACH STIPULATIONS REGARDING FACTUAL AND LEGAL ISSUES**

This document, *Reuse Proponents' Notification Regarding Efforts to Reach Stipulations Regarding Factual and Legal Issues*, is submitted jointly by the Cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Nampa, Pocatello, Post Falls, and Rupert, the Association of Idaho Cities, the Hayden Area Regional Sewer Board, and Pioneer Irrigation District. These parties are referred to collectively as "Reuse Proponents." This submission follows and relates to *Reuse*

Proponents' Submission Regarding Legal Issues ("*Submission*") and *Reuse Proponents' Stipulation of Facts*, both filed on June 30, 2020.

Reuse Proponents have been unable to negotiate a stipulation with Riverside Irrigation District and Idaho Power Company ("Reuse Opponents") regarding legal issues in this proceeding. The *Submission* continues to reflect the Reuse Proponents' view of the scope and structure of the legal issues presented by this contested case; however, the Reuse Proponents acknowledge that ultimately the Hearing Officer will determine the scope of legal issues that are appropriate for decision and application in any final order in this matter.

Reuse Proponents continue to negotiate stipulated facts with Reuse Opponents and remain hopeful that an agreement can be reached on such a stipulation. More discussion regarding the status of the parties' efforts to negotiate stipulated facts can be had at the August 20 Prehearing Conference.

Respectfully submitted this 14th day of August, 2020.

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I HEREBY CERTIFY that on this 14th day of August, 2020, the foregoing was filed, served, and copied as shown below.

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **RIVERSIDE IRRIGATION DISTRICT LTD.'S SECOND PRE-HEARING CONFERENCE MEMORANDUM**

COMES NOW, Riverside Irrigation District Ltd. ("Riverside"), by and through its attorneys of record, Barker Rosholt & Simpson LLP, and hereby submits this Second Pre-hearing Conference Memorandum in advance of the Pre-hearing Conference hearing scheduled for August 20, 2020, before the Director.

Riverside's Petition sought a ruling from the Department on two points: 1) Pioneer cannot divert or accept water from the City of Nampa or apply any of that water to land in the Pioneer District boundaries under the reuse permit without obtaining a water right, and 2) any attempt by Pioneer or the City to divert water under the permit to Pioneer without applying for a water right contravenes Idaho law. The Director's *Order* of June 11, 2020, recognized that the Riverside Petition sought ruling on those precise issues. *Order* p. 1.

The Cities and Pioneer offered a proposed stipulation regarding numerous legal issues. As noted in the prior memorandum, Riverside does not agree with the intervenors' attempt to re-write

Riverside's petition. The legal issues that Riverside petitioned to be determined are set forth in the Petition. Riverside does not agree that the peripheral legal issues in the Cities and Pioneer's proposed stipulation properly frame the issues raised by the Petition. Riverside does believe that intervenors, have the right to reformulate Riverside's Petition. They take the case as they find it. This is Riverside's Petition; not Nampa's.

The Cities and Pioneer also propose to expand the Petition to include an advisory ruling on the scope of mitigation that might be required. As set forth in Riverside's initial Pre-hearing Memo, Riverside does not agree. Those issues should be decided in the context of an application, if one is required.

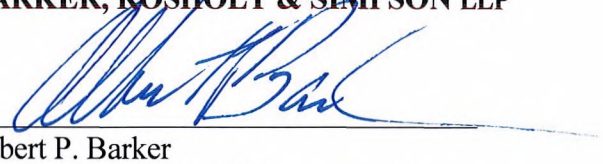
With respect to the proposed Stipulation of Facts, Riverside has responded to the Cities and Pioneer's proposed stipulation. The City and Pioneer replied this week. Riverside believes that agreement is likely to be reached, on most of the stipulation. However, as of this date, there is no final stipulation of facts to submit.

CONCLUSION

Riverside believes that some additional time is necessary to work out a mutually agreeable stipulation of facts and documents admissible in evidence. We are hopeful that the current briefing schedule can be maintained.

DATED this 19th day of August 2020.

BARKER, ROSHOLT & SIMPSON LLP



Albert P. Barker
Attorneys for Riverside Irrigation District Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of August, 2020, I caused to be served a true and correct copy of the foregoing **SECOND PRE-HEARING CONFERENCE MEMORANDUM** by the method indicated below, and addressed to each of the following:

Original to:

Director Gary Spackman Idaho Department of Water Resources 322 E. Front St. P.O. Box 83720 Boise, ID 83700-0098	_____ U.S. Mail, Postage Prepaid _____ Hand Delivery _____ Overnight Mail __X__ Facsimile __X__ Email

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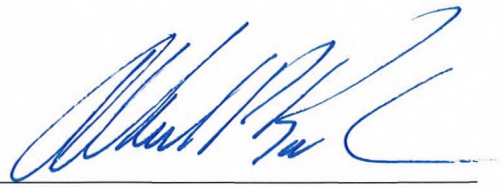

Albert P. Barker

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER REUSE PERMIT NO. M-225-01	Docket No. P-DR-2020-001 **NOTICE OF CONTINUED PREHEARING CONFERENCE**

BACKGROUND

On August 20, 2020, the Director of the Idaho Department of Water Resources ("Department") held a continued prehearing conference via videoconference in the above referenced matter. All parties were represented either in person, by phone or by videoconference. The Director received an update on party negotiations related to potential fact and legal issue stipulations. The parties agreed to a continued prehearing conference on September 11, 2020.

NOTICE OF CONTINUED PREHEARING CONFERENCE

A prehearing conference will be held in the above-captioned matter on **September 11, 2020, at 10:00 a.m.** at the Department's state office, located at 322 E. Front Street, 6th Floor Conference Rooms, Boise, Idaho.

The purpose of the prehearing conference will be to discuss whether the parties have reached a stipulation as to facts in this matter, whether the current briefing schedule needs to be changed, or whether a hearing needs to be set, as well as any other items listed in the Department's Rule of Procedure 510. *See* IDAPA 37.01.01.510.

The parties must be represented at the continued prehearing conference, either by telephone, video, or in person. IDWR will arrange an audio/video conference for those who choose not to appear in person. Within one week prior to the prehearing conference IDWR will forward the audio/video links and log in information to the parties to allow them to join the video prehearing conference.

The continued prehearing conference will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67, Idaho Code, and the Department's Rules of Procedure, IDAPA 37.01.01. A copy of the Rules of Procedure may be obtained from the Department or at https://adminrules.idaho.gov/rules/current/37/370101.pdf.

The continued prehearing conference will be conducted in a facility which meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the conference, please contact Kimberle English at (208) 287-4815, no later than five (5) days prior to the conference.

DATED this 25th day of August 2020.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of August 2020, I served a true and correct copy of the foregoing document on the following by the method(s) indicated:

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Attorneys for City of Nampa

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **STIPULATION REGARDING EXHIBITS A-T AND OTHER EVIDENCE**

Pursuant to IDAPA 37.01.01.413.01.d and 37.01.01.557, Riverside Irrigation District, Pioneer Irrigation District, City of Nampa, City of Boise, City of Caldwell, City of Idaho Falls, City of Jerome, City of Meridian, City of Pocatello, City of Post Falls, and City of Rupert, the Association of Idaho Cities, Hayden Area Regional Sewer Board, and Idaho Power Company ("Parties") hereby stipulate as follows.

I. STIPULATION AS TO EXHIBITS A-T

The Parties hereby stipulate to the admission of the following documents, each of which has been submitted separately as an exhibit:

Exhibit A	Map showing Canyon County irrigation districts (Reuse Application, Figure 5)
Exhibit B	Map showing Nampa's area of city impact and the district boundaries of irrigation districts
Exhibit C	Map showing proposed alternatives for discharge of recycled water to Phyllis Canal (Attachment to Reuse Agreement)
Exhibit D	Map of Recycled Water Flow through Pioneer (Reuse Application, Figure 8)
Exhibit E	Map of Recycled Water Flow through Pioneer: Focus on Upper Portion of Area of Analysis (Reuse Application, Figure 9)
Exhibit F	Reuse Agreement (3/7/2018)
Exhibit G	Reuse Permit (1/21/2020)
Exhibit H	IDEQ's Staff Analysis of Nampa's Reuse Permit Application (10/10/2019)
Exhibit I	EPA Fact sheet: Nampa's NPDES Permit (2015)
Exhibit J	Application for Reuse Permit (including cover letter, Preliminary Technical Report, Plan of Operations, Figures 1-13, and Appendices A-F) (3/19/2019)
Exhibit K	Map Showing Irrigation Districts within Nampa's Area of City Impact

Exhibit L	Current Agreement between Pioneer Irrigation District and City of Nampa for Municipal Irrigation System (Sept. 9, 1974)
Exhibit M	2019 Billing from Pioneer Irrigation District to City of Nampa for 2,984.77 Acres
Exhibit N	2019 Billing from Boise-Kuna Irrigation District to City of Nampa for 436.90 acres
Exhibit O	2019 Billing from Nampa & Meridian Irrigation District to City of Nampa for 4,077.93 Acres
Exhibit P	Spreadsheet of Pioneer Irrigation District Water Rights
Exhibit Q	Riverside Comments on Reuse Permit
Exhibit R	IDEQ's Response to Riverside's Comments
Exhibit S	Wastewater Re-use Partnership: City of Nampa and Pioneer Irrigation District – Different Source But Hardly Revolutionary (presentation by Andy Waldera)
Exhibit T	Minutes – Nampa City Council (Feb. 20, 2018) (agenda item #29 – Nampa Wastewater Treatment Plant Facility Plan) (pages 1, 31-47)

Not all Parties are in a position of knowledge allowing them to stipulate to the accuracy of every fact and expert opinion contained in each of the documents listed above. However, all Parties stipulate that they do not intend to challenge or to offer contrary evidence with respect to the facts or expert opinions set out in those documents. The Parties offer no such stipulation as to any non-expert opinion stated in any of the documents.

II. STIPULATION AS TO OTHER EVIDENCE

The Parties agree that the facts that may form the basis of the decision in this proceeding are limited to those facts relating to the actions proposed by Nampa and Pioneer under the Reuse Permit and how those proposed actions may impact or affect other water users, including Riverside. The Parties agree that the facts contained in the exhibits described in the section I

above and the separate *Stipulation of Facts by All Parties* ("Stipulation of Facts") are potentially material to the Department's declaratory ruling and may form the basis of that ruling.

In the Stipulation of Facts and the stipulated Exhibits, the Parties have endeavored to identify a broad range of facts and documents that are potentially relevant and material and could provide a factual basis for the declaratory ruling. However, it is not always possible to recognize at the outset every fact that may be relevant and material. In addition, some Parties may wish to offer evidence or information regarding their own water rights or operations for illustrative, comparative, or explanatory purposes. Accordingly, this Stipulation does not preclude a Party from offering additional facts that constitute matters of public record or are otherwise eligible for and subject to administrative notice under Rule 602 (IDAPA 37.01.01.602) by requesting the hearing officer take judicial notice of such facts or information in accordance with Rule 201, Idaho Rules of Evidence. Upon timely request, any Party is entitled to be heard on the propriety of taking judicial notice and the nature of the facts to be noticed. In addition, one or more of the Parties may present additional relevant and material evidence upon the stipulation or non-objection of all other Parties.

In the absence of agreement by other Parties or as otherwise provided above, any Party must seek leave of the Hearing Officer before any such facts or documents can be admitted into evidence. A Party seeking leave to establish such additional facts shall set out the reasons that such facts were not offered earlier so as to avoid surprise and the need for any adjustment in the schedule of proceedings. Any party objecting to submission of such additional facts or documents shall be entitled to seek such relief or remedy from the Hearing Officer as is suitable in the circumstances.

The Parties agree that, while other facts or evidence may be discussed by Parties in briefing or otherwise, the declaratory ruling should be grounded only in facts pertinent to Nampa, Pioneer, and Riverside, and their respective water rights, infrastructure, and operations, and that there is no need for any Party to contest facts or evidence discussed or offered with respect to the water rights, infrastructure, or operations of other intervenors, which are not the subject of this proceeding.

Respectfully submitted this 11th day of September, 2020.

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BARKER ROSHOLT & SIMPSON LLP

John K. Simpson
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Respectfully submitted this 11th day of September, 2020.

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I HEREBY CERTIFY that on this 11th day of September, 2020, the foregoing was filed, served, and copied as shown below.

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **STIPULATION OF FACTS BY ALL PARTIES**

Pursuant to the Idaho Department of Water Resource's ("Department" or "IDWR") Rule 557 (IDAPA 37.01.01.557), this Stipulation of Facts ("Stipulation") is submitted jointly by Riverside Irrigation District ("Riverside"), Pioneer Irrigation District ("Pioneer"), City of Nampa ("Nampa"), City of Boise, City of Caldwell, City of Idaho Falls, City of Jerome, City of Meridian, City of Pocatello, City of Post Falls, City of Rupert, the Association of Idaho Cities, Hayden Area Regional Sewer Board, and Idaho Power Company (collectively, "Parties").

I. EXHIBITS

The Parties have entered into a separate stipulation with respect to the following exhibits, which exhibits are referenced in the stipulated facts below:

Exhibit A	Map showing Canyon County irrigation districts (Reuse Application, Figure 5)
Exhibit B	Map showing Nampa's area of city impact and the district boundaries of irrigation districts
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Exhibit M	2019 Billing from Pioneer Irrigation District to City of Nampa for 2,984.77 Acres
Exhibit N	2019 Billing from Boise-Kuna Irrigation District to City of Nampa for 436.90 acres
Exhibit O	2019 Billing from Nampa & Meridian Irrigation District to City of Nampa for 4,077.93 Acres
Exhibit P	Spreadsheet of Pioneer Irrigation District Water Rights
Exhibit Q	Riverside Comments on Reuse Permit
Exhibit R	IDEQ's Response to Riverside's Comments
Exhibit S	Wastewater Re-use Partnership: City of Nampa and Pioneer Irrigation District – Different Source But Hardly Revolutionary (presentation by Andy Waldera)
Exhibit T	Minutes – Nampa City Council (Feb. 20, 2018) (agenda item #29 – Nampa Wastewater Treatment Plant Facility Plan) (pages 1, 31-47)

II. STIPULATED FACTS

Pursuant to Rule 557, all Parties except Idaho Power Company stipulate to the facts set out in the numbered paragraphs below. Idaho Power Company is not in a position of knowledge with respect to these facts to enable it to stipulate to their accuracy. However, Idaho Power Company stipulates that it does not currently intend to challenge or to offer contrary evidence with respect to the facts set out below.

1. Pioneer is a duly organized and operating Idaho irrigation district with water rights authorizing irrigation of up to 34,204.16 acres of land within its authorized water right place of use. Pioneer's apportioned benefit under Idaho Code § 43-404 (delivery obligation) is one miner's inch (0.02 cfs) per acre. Pioneer's place of use is described by a general description

in the manner set forth in Idaho Code § 42-219, using a digital boundary as defined in Idaho Code § 42-202B.

2. The land served by Pioneer includes north and northwest Nampa and much of the City of Caldwell.

3. A map showing the overlap of the district boundaries of Pioneer and other irrigation districts within Nampa's area of city impact is submitted separately as Exhibit B.

4. Pioneer is the owner of those water rights listed in Exhibit P, showing the water right numbers, priority date, rate of diversion, source, and use. The sources of water for Pioneer's water rights include Boise River, Indian Creek, Wilson Drain, Mason Creek Drain, Five Mile Creek Drain, Pipe Gulch Draw Creek Drain, Elijah Drain, and groundwater wells.

5. Riverside is a duly organized and operating non-profit corporation with water rights authorizing irrigation up to 10,158 acres within its authorized water right place of use located primarily west of Greenleaf, Idaho. Riverside's place of use is described by a general description in the manner set forth in Idaho Code § 42-219, using a digital boundary as defined in Idaho Code § 42-202B.

6. Nampa is a duly organized and operating Idaho municipal corporation with a population of approximately 100,000.

7. Nampa is a "municipality" within the definition of Idaho Code § 42-202B(4) and is a "municipal water provider" within the meaning of Idaho Code § 42-202B(5).

8. Nampa owns and operates two historically separate municipal water delivery systems, one for potable water ("Potable System") and one for non-potable pressurized irrigation water ("Non-Potable System").

9. Nampa's Potable System relies on a system of municipal wells, owned and operated by Nampa, from which it diverts ground water under the municipal water rights shown in Table 1 below. Nampa's Potable System is served exclusively by groundwater.

Table 1: Ground water rights associated with Nampa's Potable Systen

Water Right No.	Nominal Diversion Rate (cfs	Priority	Authorized Purpose	Basis
63-02779	2.00	9/2/1949	Municipal	Decree (SRBA)
63-02781	3.00	9/2/1949	Municipal	Decree (SRBA)
63-05258	2.10	7/20/1954	Municipal	Decree (SRBA)
63-07567	2.79	3/6/1972	Municipal	Decree (SRBA)
63-08324	3.00	6/1/1976	Municipal	Decree (SRBA)
63-09180	4.00	9/27/1978	Municipal	Decree (SRBA)
63-10212	2.23	6/28/1983	Municipal	Decree (SRBA)
63-11729	2.68	3/6/1992	Municipal	License (Post-SRBA)
63-12463	3.00	6/25/1998	Municipal	License (Post-SRBA)
63-12474	3.50	10/1/1998	Municipal	License (Post-SRBA)
63-12506	3.50	2/2/1999	Municipal	License (Post-SRBA)
63-12543	4.00	7/30/1999	Municipal	License (Post-SRBA)
63-12591	3.50	8/21/2000	Municipal	License (Post-SRBA)
63-28219	1.22	12/24/1937	Municipal	Decree (SRBA)
63-28220	1.93	12/1/1949	Municipal	Decree (SRBA)
63-31243	2.60	5/14/2001	Municipal	License (Post-SRBA)
63-33022	4.50	3/31/2008	Municipal	License (Post-SRBA)
63-32835	5.00	6/15/2018	Municipal	License (Post-SRBA)

10. Each of the water rights set out in Table 1 above is authorized for "municipal purposes" in accordance with Idaho Code § 42-202B(6).

11. Each of the water rights set out in Table 1 above has a place of use corresponding to Nampa's expanding service area, in accordance with Idaho Code § 42-202B(9).

12. Each of the water rights set out in Table 1 above is subject to the conditions set forth in the water rights.

13. Nampa's Non-Potable System relies on a combination of ground water and surface water. Nampa receives a majority of its irrigation water from surface water supplied by irrigation districts.

14. Nampa obtains surface water for its Non-Potable System from three irrigation districts: Pioneer, NMID, and Boise-Kuna. Exhibit A is a map showing the place of use of these and other irrigation districts serving Canyon County. See also Exhibit K showing irrigation districts within Nampa' area of city impact.

15. Nampa relies on surface water from Pioneer, NMID, and Boise-Kuna for roughly 60 percent of the irrigation water delivered to municipal customers by its Non-Potable System. This percentage is based on the number of acres falling within the three irrigation districts (2,985.00 + 436.90 + 4,077.93 = 7,499.83, as provided in paragraphs 20 and 21) compared to the number of acres currently served by Nampa's Non-Potable System (12,590.58 acres within city limits).

16. Nampa holds one surface water right (no. 63-7954) from the Elijah Drain for use in its Non-Potable System. Nampa has groundwater rights for its Non-Potable System shown in Table 2 below.

Table 2: Ground water rights associated with Nampa's Non-Potable System

Water Right No.	Nominal Diversion Rate (cfs)	Priority	Basis
63-02449	0.80	8/13/1931	Decree (SRBA)
63-02450	1.00	8/13/1931	Decree (SRBA)
63-02484	1.62	8/22/1933	Decree (SRBA)
63-02780	2.50	9/2/1949	Decree (SRBA)
63-02787	30.00	9/2/1949	Decree (SRBA)
63-02943	1.74	6/13/1953	Decree (SRBA)
63-03257	0.58	8/29/1961	Decree (SRBA)
63-05257	0.30	1/1/1905	Decree (SRBA)
63-07003	7.68	6/9/1967	Decree (SRBA)
63-07708	0.40	2/14/1973	Decree (SRBA)
63-08312	0.50	5/24/1976	Decree (SRBA)
63-08539	0.78	3/14/1977	Decree (SRBA)
63-09853	1.00	1/17/1982	Decree (SRBA)
63-09889	1.50	3/30/1982	Decree (SRBA)
63-10211	7.71	3/9/1984	License
63-10319	2.05	8/28/1985	License
63-11511	1.50	3/28/1990	License
63-11894	0.51	1/24/1997	License
63-12322	0.84	2/20/1996	License

63-31504	3.73	5/28/2002	License
63-31598	0.20	10/29/2002	License
63-31949	3.40	6/14/2004	License
63-31961	1.46	3/1/1991	License
63-32179	0.24	4/20/1987	License
63-32337	5.00	12/12/2005	License
63-33968	4.00	7/15/2014	Application for Permit
63-34229	7.00	4/29/2016	Application for Permit
63-34742	4.00	6/10/2019	Application for Permit

17. Nampa represents that it currently diverts less than the inch-per-acre made available by Pioneer for diversion from Phyllis Canal laterals to Nampa's Non-Potable System. Nampa pumped a total of 1,144,730,400 gallons (3,513.05 acre-feet) during the 2019 irrigation season from Pioneer's system to the Non-Potable System. This equates to an average of 9.57 cfs (based on an irrigation season of 185 days, per paragraph 29). Multiplying this average by Nampa's peaking factor of 2.26 yields a peak hour pumping rate of 21.64 cfs. This peaking factor (2.26) is found in Nampa's 2014 Irrigation System Master Plan, page 5-3. This peaking rate is less than the peak hour "default peaking factor" of 3.0 contained in IDWR's RAFN Handbook, page 15 (Mar. 16, 2015). Nampa's current installed capacity for pumping from the Phyllis Canal to the Non-Potable System is 33.3 cfs. Riverside does not have sufficient knowledge to confirm or deny these representations, but stipulates that it does not currently intend to challenge or to offer contrary evidence with respect to the facts set out in this paragraph.

18. Nampa's Water right 63-7954 and its water rights in Table 2 above are subject to the purpose of use, place of use and other conditions set forth in the water rights.

19. Nampa has established a municipal irrigation system under Idaho Code Title 50, Chapter 18 to deliver non-potable water. A map of Nampa's municipal irrigation system is attached as Exhibit K. Nampa has entered into contracts with Pioneer, NMID and Boise-Kuna

for delivery of water to the municipal irrigation system. A copy of the Nampa-Pioneer contract now in effect (dated September 9, 1974) is set out in Exhibit L.

20. Pioneer delivers surface water to Nampa's Non-Potable System from its Phyllis Canal and laterals. These deliveries from Pioneer serve 2,985 acres within Nampa's Non-Potable system (as documented in Pioneer's "2019 Irrigation Assessments – Pioneer Account #7777" dated October 10, 2019) (copy set out in Exhibit M). Pioneer also makes additional, non-pressurized deliveries to Pioneer's land owners who are also Nampa residents and businesses who do not receive water from Nampa's Non-Potable System. Some of these additional, non-pressurized deliveries include Nampa itself. Pioneer's non-pressurized deliveries to Nampa are as follows (by Pioneer account number):

#0571-1 –	City of Nampa – W Railroad St – 8.34 acres;
#0280-107 –	City of Nampa (Nampa Parks & Forestry) – N. Black Butte Ct. – 5.42 acres;
#0495 –	City of Nampa (Nampa Parks & Forestry) – Madison Ave. – 2.74 acres;
#0744-1 –	City of Nampa – N. Middleton Rd. - 0.91 acres;
#0514 –	City of Nampa (Nampa Parks & Forestry) – 654 Carol Ave. – 1.24 acres;
#0515 –	City of Nampa (Nampa Parks & Forestry) – Carol Ave. – 2.09 acres;
#0443-28 –	City of Nampa (Nampa Parks & Forestry) – 16409 11th Ave North – 1.33 acres;
#0411-3 –	City of Nampa (Nampa Parks & Forestry) – N. Franklin Blvd. – 30.51 acres;
#0818-2 –	City of Nampa (Waterworks Division) – 0 W. Orchard Ave. – 0.55 acres;
#1093-3 –	City of Nampa (Public Works Department) – 0 Northside Blvd. – 0.49 acres;

#1091-6 – City of Nampa (Waterworks Division) – N. Franklin Blvd. – 0.41 acres;

#1371 – City of Nampa – 14255 Midway Rd. – 51.87 acres;

#1371-1 – City of Nampa – 14309 Midway Rd. – 0.59 acres;

#0764 1 – City of Nampa (Nampa Parks & Forestry) – 11370 Smith Ave. – 9.36 acres; and

#0298-6 – City of Nampa – 2030 Caldwell Blvd. – 0.38 acres.

21. Boise-Kuna delivers water to Nampa's Non-Potable System for 436.90 acres (Exhibit N). NMID delivers water to Nampa's Non-Potable System for 4,077.93 acres. (Exhibit O).

22. Nampa supplements its surface water supply for its Non-Potable System with ground water pumped from a number of municipal wells, owned and operated by Nampa, under a number of municipal water rights, shown on Table 2 above.

23. Municipal water that is delivered by Nampa to its municipal customers via Nampa's Potable System generates sewage that is collected from residents, businesses, and institutions in Nampa by Nampa's sewage system. This "influent" is delivered to Nampa's Wastewater Treatment Plant ("WWTP"). The treated water leaving the WWTP is known as "effluent."

24. The terms "effluent" and "wastewater" (without a space) are used interchangeably in this Stipulation.

25. Effluent leaving the WWTP is composed primarily of treated sewage deriving from municipal water delivered to Nampa's customers via Nampa's Potable System, but also includes relatively small amounts of treated sewage from properties within Nampa served by private wells, operational water introduced at the WWTP, and infiltration/inflow (groundwater and surface inputs, e.g., through manhole covers). Specifically, of the roughly 18.6 cfs in

Nampa's current wastewater stream (see paragraph 29), 0.77 cfs comes from properties within Nampa served by private wells, 0.70 cfs is operational water introduced at the WWTP, and 2.62 cfs is infiltration/inflow water.

26. Nampa represents that the relative size of the operational water and infiltration/inflow components of its wastewater stream is within the normal or typical range for municipal sewage systems. Riverside does not have sufficient knowledge to confirm or deny this representation, but stipulates that it does not currently intend to challenge or to offer contrary evidence with respect to this statement.

27. At this time, the wastewater collected by Nampa is treated and then discharged from Nampa's WWTP to Indian Creek at a point just north of the Union Pacific Railroad tracks and just west of Northside Boulevard.

28. The WWTP discharge point is upstream of Riverside's point of diversion on Indian Creek.

29. Currently, Nampa discharges approximately 18.6 cfs (6,825 acre-feet) of wastewater to Indian Creek during the 185-day irrigation season and 17.0 cfs (6,069 acre-feet) during the 180-day non-irrigation season. These numbers are based on recent Discharge Monitoring Reports ("DMRs") submitted by Nampa to IDEQ. Monthly data for the years 2017-2019 is presented in Table 3 below.

TABLE 3: EFFLUENT DATA - Based on DMR reports submitted by Nampa to IDEQ
(Available at https://www.cityofnampa.us/1021/Monthly-Reporting)
(See DRM line labeled "flow, in conduit or thru treatment plant")

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2017 Effluent Flow - Average (GPD)	11.406	11.895	10.869	10.985	11.339	11.754	11.638	12.000	12.095	11.571	10.502	10.028
2017 Effluent Flow - Average (cfs)	17.648	18.405	16.817	16.997	17.544	18.187	18.007	18.567	18.714	17.903	16.249	15.516
2018 Effluent Flow - Average (GPD)	9.833	9.525	9.505	9.682	10.154	11.084	11.275	11.148	11.122	10.927	10.416	10.489
2018 Effluent Flow - Average (cfs)	15.214	14.738	14.707	14.981	15.711	17.150	17.445	17.249	17.209	16.907	16.116	16.229
2019 Effluent Flow - Average (GPD)	10.470	10.764	10.589	10.636	12.037	12.224	11.840	11.555	12.047	11.434	11.039	10.632
2019 Effluent Flow - Average (cfs)	16.200	16.655	16.384	16.457	18.624	18.914	18.320	17.879	18.640	17.691	17.080	16.451

30. Wastewater currently discharged by Nampa to Indian Creek is comingled in Indian Creek with waste water from other water users and other waters of the State. The water in Indian Creek has historically been diverted and put to use by downstream water right holders, including Riverside.

31. During the irrigation season, Riverside typically diverts most, if not all, of the flow of Indian Creek into the Riverside Canal where the canal and the creek intersect. See Exhibit H at page 30 (page 22 of IDEQ's Staff Analysis of Nampa's Reuse Permit Application). Riverside estimates that more than 50 percent of its supply comes from Indian Creek. The other Parties do not have sufficient knowledge to confirm or deny these representations, but they stipulate that they do not currently intend to challenge or to offer contrary evidence with respect to the facts set out in this paragraph.

32. Riverside water right sources also include the Boise River, Mammen Gulch Creek/Drain, West End Drain, East Arena Drain, Christian Gulch Wasteway, Guess Gulch Creek, and Meadows Gulch Drain.

33. Riverside diverts water from Indian Creek at the Riverside Canal west of the City of Caldwell. Riverside has the right to divert approximately 180 cfs of water from Indian Creek under Water Right Nos. 63-2279 and 63-2374 with 1915 and 1922 priority dates.

34. As a result of the *Reuse Permit*, Nampa intends to eliminate all of its WWTP wastewater discharge to Indian Creek during the irrigation season, and intends to continue to discharge to Indian Creek during the non-irrigation season.

35. Pioneer does not hold a water right, nor has it sought a water right, that expressly authorizes it to accept wastewater from Nampa pursuant to its Reuse Agreement with Nampa.

36. The effluent limitations (aka discharge limits) applicable to Nampa's WWTP effluent are governed by NPDES Permit No. ID0022063 issued to Nampa pursuant to the Clean Water Act by EPA on September 20, 2016 (effective November 1, 2016). A copy of this permit appears as Appendix A to Nampa's Application for Reuse Permit, see Exhibit J, pp. 129-184. The NPDES Permit requires Nampa to provide pollution control and treatment of its wastewater stream based on discharge limits (numeric standards applicable to the discharge) prior to discharge to Indian Creek. These discharge limits are aimed at meeting water quality standards set by the State of Idaho (ambient standards applicable to the receiving waters). Among others, the NPDES Permit contains discharge limits for nutrients (total phosphorus, aka TP) and temperature.

37. Recognizing that compliance with these TP and temperature effluent limits was not immediately achievable (Fact Sheet for Nampa's NPDES Permit, Exhibit I, p. 15), EPA established interim effluent limitations and a compliance schedule. The interim effluent limitations for TP are set out in Table 4 on page 12 of the NPDES Permit (Exhibit J, p. 143). The compliance schedule is set out in Table 3 on pages 12-13 of the NPDES Permit (Exhibit J, pp. 142-143).

38. Under the compliance schedule, Nampa must meet the final effluent limitations for phosphorus on September 30, 2026 and for temperature on September 30, 2031. See tasks 6-8 on Table 3 at page 12 of the permit (Exhibit J, p. 143). The final effluent limitations that must be met are found in Table 1 for phosphorus (Exhibit J, p. 136-137) and Table 2 for temperature (Exhibit J, p. 139). To meet these standards, Nampa estimates that it will have to spend approximately $210 million on pollution control system upgrades.

39. Under the NPDES Permit, Nampa is required to evaluate options and provide deliverables to EPA before 2026 or 2031, advising the steps it is taking to achieve these stricter limitations. Tasks 5, 5A, and 5B of the compliance schedule (Exhibit J, p. 142) require action by Nampa, including evaluation of options to achieve compliance with the final effluent limits, such as "seasonal re-use" (which Nampa has pursued in the form of the Reuse Project) and reporting of the methods selected to reach compliance. These schedules reflect the fact that WWTP-related projects take years to plan and implement.

40. In contrast to the $210 million cost to comply with the final effluent limits in the NPDES permit for discharge to Indian Creek, Nampa estimates that pollution control upgrades based on irrigation season delivery of water to the Phyllis Canal (generally April 1 through November 1) under the *Reuse Permit* will entail net costs of roughly $190 million (reflecting savings of roughly $40 million offset by additional costs of roughly $20 million) yielding net savings of roughly $20 million. These anticipated savings are explained further in the following three paragraphs.

41. Nampa estimates that roughly $20 million of the $210 million upgrade cost corresponds to the cost of meeting temperature limits in Indian Creek, which are more stringent during the summer irrigation season. IDEQ's water quality standards treat irrigation canals as manmade waterbodies with a water quality standard of "agricultural water supply." IDAPA 58.01.02.101; 58.01.02.252.02. Accordingly, the effluent limits for temperature in the NPDES permit do not apply to discharges to the Phyllis Canal, as there is currently no temperature criterion for agricultural water supply.

42. Nampa's NPDES Permit provides a TMDL-based wasteload allocation for phosphorus of 0.1 ppm (or mg/l), and a wasteload allocation for winter discharges of 0.35 ppm

(or mg/l). See Exhibit H, p. 30. Under the *Reuse Permit*, Nampa received a year-round (Phyllis Canal in the summer and Indian Creek in the winter) limit of 0.35 ppm (or mg/l). See Exhibit G, p. 20. Nampa estimates this will result in saving another roughly $20 million, bringing the total estimated savings to $40 million.

43. The roughly $40 million in estimated savings will be offset by an additional roughly $20 million in estimated costs entailed in constructing the Class A recycled water system, including infrastructure for delivery to the Phyllis Canal, necessitated by the *Reuse Permit.* The net result ($40 million in savings less $20 million in additional costs) will be an estimated savings of $20 million to Nampa and its customers achieved by implementing the recycled water program authorized by the *Reuse Permit.*

44. In many respects, the Class A recycled water proposed to be discharged to the Phyllis Canal will be of higher quality than the background quality of the irrigation water in the Phyllis Canal.

45. Nampa's proposed wastewater discharge to the Phyllis Canal has been approved by IDEQ under IDEQ standards pursuant to the *Reuse Permit.*

46. During its evaluation of alternative methods of meeting the requirements of the compliance schedule in its NPDES Permit, Nampa sought input from community members and stakeholders in the form of the Nampa Wastewater Advisory Group (NWAG). The alternatives explored are described in the excerpt of minutes of the Nampa City Council (agenda item #29, February 20, 2018) reproduced in Exhibit T. Those minutes document (1) NWAG "overwhelmingly favored" alternative #2.5 (which includes the Reuse Project) (Minutes, p. 43, Exhibit T, p. 45), (2) public comment was mixed (three appeared in support, two appeared in

opposition) (Minutes, p. 46, Exhibit T, p. 48), and (3) the City Council unanimously approved the wastewater facility plan based on alternative 2.5 (Minutes, p. 47, Exhibit T, p. 49).

47. Riverside commented to IDEQ that Pioneer had no water right to use the reuse water on land within Pioneer boundaries. (Exhibit Q). IDEQ responded to Riverside's comments, by stating that IDEQ does not regulate water rights or have the ability to respond to Riverside's comments (Exhibit R). IDEQ included a provision in the *Reuse Permit* that the permittee is not relieved of its duty to comply with the other state laws and rules. IDEQ advised Riverside that Nampa has been informed of this concern (see Exhibit R). The Parties agree that IDEQ has no authority to authorize diversion or beneficial use of water and that whether a water right is necessary or not is a matter for IDWR.

48. Riverside filed a *Petition to Initiate a Contested Case* with IDEQ on February 24, 2020 ("*IDEQ Petition*"), challenging certain aspects of the *Reuse Permit* issued to Nampa. On March 12 and 13, 2020, Riverside entered into a stipulation with Nampa and Pioneer to withdraw the *IDEQ Petition* to focus the party's resources on the issues related to diversion and use of water in this pending proceeding before IDWR. Nampa and Pioneer agreed that they are precluded from arguing that Riverside's withdrawal of the *IDEQ Petition* prevents Riverside from asserting in this proceeding that Pioneer is required to obtain a water right to divert and use the water supplied by Nampa to the Phyllis Canal under the Reuse Permit.

49. On March 7, 2018, Nampa and Pioneer entered into a *Reuse Agreement* whereby Nampa would seek a recycled water reuse permit from IDEQ authorizing Nampa to discharge up to 41 cfs of Class A recycled water to Pioneer's Phyllis Canal as supplemental irrigation water supply. The 41 cfs number in the *Reuse Agreement* is larger than the 31 cfs authorized under the *Reuse Permit*. Nampa and Pioneer assert that this reflects their longer-term water reuse goals

that extend beyond the 20-year timeframe of the *Reuse Permit*. A copy of the *Reuse Agreement* was submitted separately as Exhibit F. (It also appears as Appendix B to the *Application for Reuse Permit*, which was submitted separately as Exhibit J.)

50. On March 19, 2019, Nampa, with Pioneer's support, filed its reuse permit application package with IDEQ. A copy of the application is submitted separately as Exhibit J. IDEQ ultimately approved the application and issued *Reuse Permit No. M-255-01* to Nampa on January 21, 2020. The *Reuse Permit* expires on January 21, 2030.

51. The *Reuse Permit* authorizes Nampa to discharge to the Phyllis Canal up to 31 cfs of Class A Recycled Water from the Nampa WWTP between May 1 and September 30 each year, subject to obtaining other governmental approvals, if any are applicable.

52. Nampa intends to continue to discharge its WWTP effluent to Indian Creek during the non-irrigation season.

53. A map showing five alternative paths for discharge of wastewater from Nampa's WWTP to the Phyllis Canal (options 1A, 1B, 2A, 2B, and 3) is submitted separately as Exhibit C. (It is also set out as an attachment to the *Reuse Agreement*, a copy of which is submitted separately as Exhibit F.) Nampa has not determined which route to use to convey water to the Phyllis Canal from the WWTP.

54. Two maps showing the locations at which Pioneer delivers irrigation water to Nampa are submitted separately as Exhibit D and Exhibit E.

55. The area illustrated below those points include approximately 17,000 acres of municipal and agricultural irrigation uses, including a part of Nampa's Non-Potable System. See Exhibit H, p. 17.

56. Nampa's delivery of wastewater under the *Reuse Permit* is intended to benefit Nampa and Pioneer by offsetting in part declining Phyllis Canal sources upstream of Nampa (notably the declining Fivemile Feeder Canal inputs into the Phyllis Canal, caused by declining drain flows in Fivemile Drain). Though variable, availability and utility of Pioneer water right no. 63-21731 (76.6 cfs from Fivemile Creek Drain with a priority of June 1, 1918) used to supply the Fivemile Feeder Canal has steadily declined over time to the point where approximately 30-40 cfs remains a reliable flow during the latter half of the irrigation season over the last five irrigation seasons. Riverside does not have sufficient knowledge to confirm or deny these representations, but stipulates that it does not currently intend to challenge or to offer contrary evidence with respect to the facts set out in this paragraph.

57. Nampa and Pioneer assert that their undertaking under the *Reuse Permit* is also intended to enhance water delivery efficiency and reduce operational spills of water by linking and coordinating operations of Nampa's Eaglecrest and Moss Point pump stations with the Crestwood and Asbury Park pump stations, also owned, operated and maintained by Nampa as part of its Non-Potable System. The other two Non-Potable System pump stations served by the Phyllis Canal on or upstream of the McCarthy Lateral are the Horton and Orchard Heights pump stations. Nampa also owns and operates a Non-Potable System pump station on the Phyllis Canal just downstream of the Canal's crossing of the Jonah Drain (the Midway Park pump station). Riverside does not have sufficient knowledge to confirm or deny these assertions, but stipulates that it does not currently intend to challenge or to offer contrary evidence with respect to the facts set out in this paragraph.

58. Within approximately three miles downstream of Nampa's proposed WWTP discharge into the Phyllis Canal, Pioneer delivers irrigation water to six Non-Potable System

pump stations owned and operated by Nampa. In addition, Pioneer makes a number of deliveries to other Pioneer landowners within Nampa's area of city impact (older subdivisions using non-pressurized irrigation systems as well as individuals using water for residential or agricultural irrigation).

59. These deliveries downstream of the proposed WWTP discharge are located on the Phyllis Canal, the 15.0 Lateral, the Hatfield Lateral, the Stevens Lateral, the Stone Lateral, the McCarthy Lateral, and branches thereof. The 15.0 Lateral, located within a mile downstream of the proposed WWTP discharge point, diverts 32 cfs from the Phyllis Canal for use on approximately 1,600 acres of lands located within Pioneer's place of use, including delivery to two of Nampa's Non-Potable System pump stations (Eaglecrest and Moss Point). (This number appears in Table 7-2 of the Preliminary Technical Report submitted by Nampa as part of its Reuse Permit Application, see Exhibit J, page 61.) Pioneer makes other deliveries downstream of the proposed WWTP discharge that deliver water to municipal (urban/suburban) and agricultural users within Pioneer's place of use, including some within Nampa's area of city impact.

60. Pioneer delivers to eight laterals and headgate deliveries listed in Table 7-2 from the Phyllis Canal. (See Phyllis Canal Diversions and Inputs on page 7-8 of the Preliminary Technical Report submitted by Nampa as part of its Reuse Permit Application, reproduced in Exhibit J, p. 61.)

Respectfully submitted this 11th day of September, 2020.

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SOMACH SIMMONS & DUNN

Sarah A. Klahn

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HOLDEN KIDWELL HAHN & CRAPO, PLLC

Robert L. Harris

Attorneys for City of Idaho Falls

I HEREBY CERTIFY that on this 11th day of September, 2020, the foregoing was filed, served, and copied as shown below.

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IDAHO DEPARTMENT OF WATER RESOURCES
P.O. Box 83720
Boise, ID 83720-0098
Hand delivery or overnight mail:
322 East Front Street
Boise, ID 83702
Fax: (208) 287-6700

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **SUBMISSION OF EXHIBITS K-T**

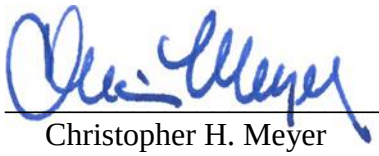
The City of Nampa and Pioneer Irrigation District, in cooperation and coordination with Riverside Irrigation District, Idaho Power Company, the Association of Idaho Cities, the Hayden Area Regional Sewer Board, and the Cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Pocatello, Post Falls, and Rupert, hereby submit true and correct copies of the documents identified below.

Respectfully submitted this 11th day of September, 2020.

SAWTOOTH LAW OFFICES, PLLC

Andrew J. Waldera
Attorneys for Pioneer Irrigation District

GIVENS PURSLEY LLP



Christopher H. Meyer
Michael P. Lawrence
Attorneys for City of Nampa

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DOCUMENT FILED:

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Christopher H. Meyer

Exhibit K **MAP SHOWING IRRIGATION DISTRICTS WITHIN NAMPA'S AREA OF CITY IMPACT**

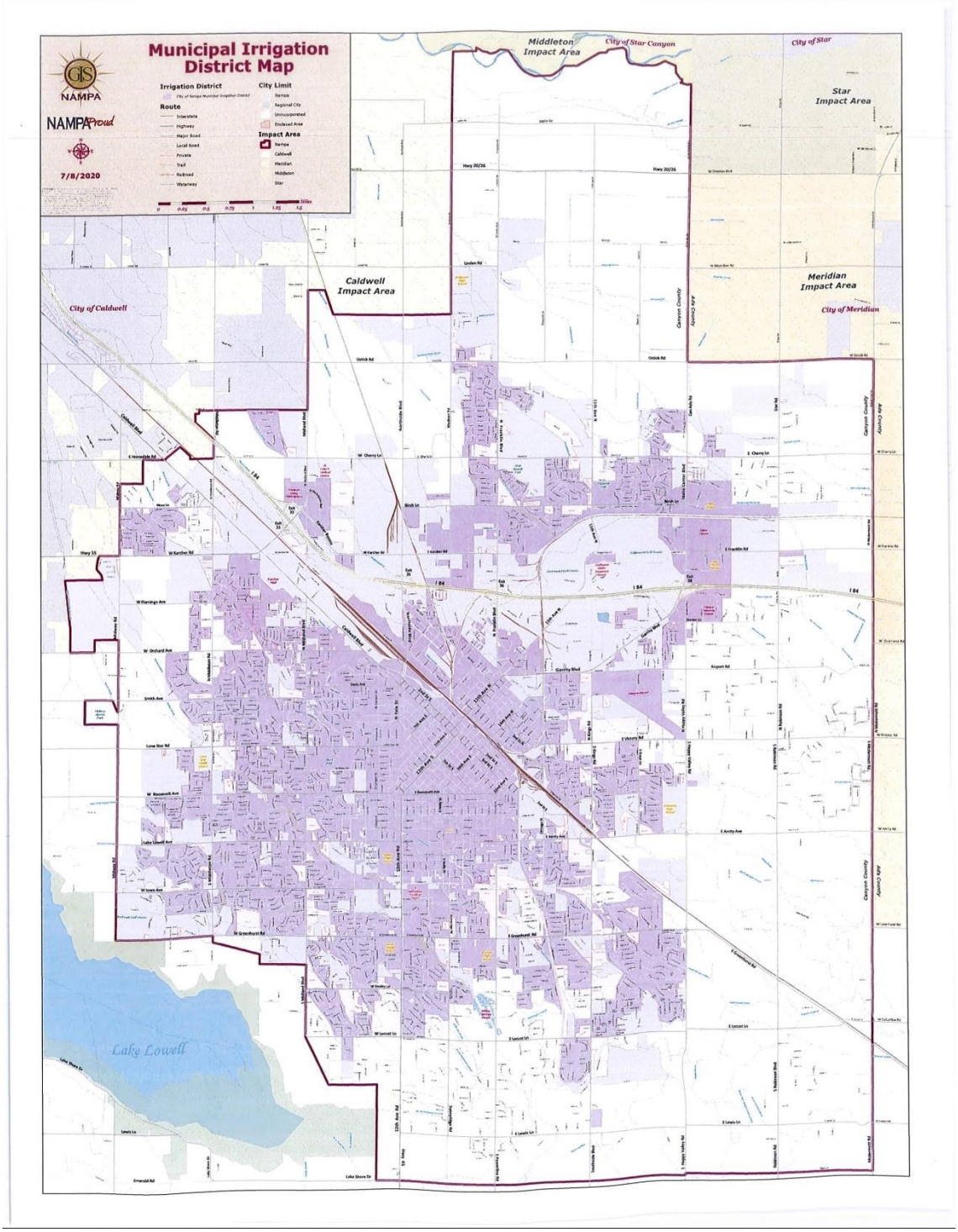

Exhibit L **CURRENT AGREEMENT BETWEEN PIONEER IRRIGATION DISTRICT AND CITY OF NAMPA FOR MUNICIPAL IRRIGATION SYSTEM (SEPT. 9, 1974)**

ELAM, BURKE, JEPPESEN, EVANS & BOYD
ATTORNEYS AT LAW
1010 BANK OF IDAHO BUILDING
P. O. BOX 1539
BOISE, IDAHO 83701

A G R E E M E N T

THIS AGREEMENT, Made and entered into this 9th day of September, 1974, by and between PIONEER IRRIGATION DISTRICT, a quasi municipal corporation, of Canyon and Ada Counties, State of Idaho, party of the first part, hereinafter referred to as District and CITY OF NAMPA in Canyon County, Idaho, party of the second part, hereinafter referred to as City, WITNESSETH:

WHEREAS, the City has established a municipal irrigation system under the provisions of Chapter 18 Title 50 of the Idaho Code (I. C. 50-1801 et seq.) and

WHEREAS, certain of the lands within the said system are also within the boundaries of the District, and

WHEREAS, the parties desire to contract as authorized by the statutes of the State of Idaho for distribution of water and collection and remission of irrigation district assessments;

NOW, THEREFORE, It is hereby mutually agreed that the District shall deliver to designated delivery points in the City hereinafter set forth, and the City assumes the duty of distribution of water from the irrigation works and systems of the District to the persons having the right to the use thereof in such City and served by said municipal irrigation system. The designated delivery point shall be at or near the junction of 8th Avenue and 5th Street North in said City, together with other small related delivery points along the side of the Phyllis Canal. The irrigation water for the irrigation of the property described in Exhibit A which is attached hereto and made a part hereof as if set forth in full herein, shall be in such quantities as may be required for the same so long as there is sufficient water available therefor; provided, that in times of shortage, the amount of irrigation water to be delivered to said lots shall not be less than the amount properly applicable or due to other lands within the District in the same general area under the Phyllis Canal.

The City shall receive the water at such delivery point and shall deliver the same to and upon all of the lots covered by the terms of this contract, and shall maintain and operate and make all necessary and proper improvements and repairs to and upon the ditches and other means of such distribution, and shall make and prescribe any and all proper rules and regulations in connection therewith.

It is further agreed that the expenses of distribution of said water under this agreement, including the improvement and repair of ditches, conduits or other means used in such distribution within the boundaries of the District shall be paid by the City.

It is further agreed that in view of the services to be rendered by said City in distributing the water to the lands covered by this Agreement, the amount to be levied or assessed each year by said District for operation and maintenance and the Anderson Ranch payment against the lots and lands covered by this Agreement, shall be the same amount levied for the operation and maintenance, and Anderson Ranch payment per acre on lands of said District not included in the amount levied by said City and by it paid to said District on or before March 1st of each year during the term of this Agreement as a toll in the same manner as other tolls levied by said District are paid.

It is further agreed that this Agreement shall not affect the making of such additional levies and assessments against lots included within this contract as may be required for the payment of bond and interest and other charges against the said lots as have heretofore or may hereafter be apportioned; that the City shall have no interest in redemptions for taxes or assessments levied by the District on said lots covered by this Agreement or in the proceeds of the property acquired by the District by tax sale, it being understood that the City is to accept the cash

ELAM, BURKE, JEPPESEN, EVANS & BOYD
ATTORNEYS AT LAW
1010 BANK OF IDAHO BUILDING
P. O. BOX 1259
BOISE, IDAHO 83701

collected by it in full of the amount due it under the terms of this Agreement.

IT IS MUTUALLY UNDERSTOOD AND AGREED That this Agreement shall become effective on the 9th day of September, 1974, and shall continue in force and effect until terminated by resolution of either party, which resolution must be adopted and notice given the other party prior to February 1st of the year in which such termination shall take effect.

The lands covered by this Agreement are described in Exhibit A attached hereto and by this reference made a part hereof as if set out in full.

This Agreement is entered into pursuant to resolutions of the respective parties hereto duly and regularly adopted authorizing the same.

PIONEER IRRIGATION DISTRICT

By Wayne Naught
Chairman

ATTEST:

Hazel A. Robinson
Secretary

CITY OF NAMPA

By Ernest E Starr
Mayor

ATTEST:

Charlene Lester
Secretary

ELAM, BURKE, JEPPESEN, EVANS & BOYD
ATTORNEYS AT LAW
1010 BANK OF IDAHO BUILDING
P. O. BOX 1559
BOISE, IDAHO 83701

STATE OF IDAHO)
) ss.
County of Canyon)

On this 9th day of September, 1974, before me, the undersigned, a Notary Public in and for said State, personally appeared Wayne Naugle and Hazel A. Robinson known to me to be the Chairman and Secretary respectively of Pioneer Irrigation District, and acknowledged to me that they executed the same on behalf of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Alice L. Moore
Notary Public for Idaho
Residing at ~~Caldwell~~ Nampa, Idaho

STATE OF IDAHO)
) ss.
County of Canyon)

On this 8th day of August, 1974, before me, the undersigned, a Notary Public in and for said State, personally appeared Ernest E. Starr and Charlene Baltzer known to me to be the Mayor and ~~Secretary~~ City Clerk respectively of the City of Nampa, and acknowledged to me that they executed the same on behalf of the City of Nampa.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Josephine Horn
Notary Public for Idaho
Residing at Nampa, Idaho
My Commission expires July 9, 1977

-4-

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EXHIBIT "A"

The lands covered by this contract are all those portions of Griffith and King Addition, Duffee's Addition and Young's Addition, which are within the limits of both City and District, described as follows:

Commencing at the intersection of the North line of Third Street North with the right of way of the Boise Branch of the Oregon Short Line Railroad Company; thence East to the Phyllis Canal; thence Southeast between Lots 8 and 9 and Lots 4 and 5, Block 131, Griffith & Kings Addition to Nampa; thence Southwest to the center line of Fifth Street North; thence Southeast to the center line of Eleventh Avenue; thence Southwest on Eleventh Avenue to a point opposite the line between Lots 10 and 11, Block 116, Griffith & King Addition; thence Southeast to alley of said block; thence Southwest fifty (50) feet; thence Southeast on a line between Lots 3 and 4, Block 116 and Lots 9 and 10 and 3 and 4, Block 117 to center line of Thirteenth Avenue; thence Northeast to center line of Fifth Street North; thence Southeast to center line of Fourteenth Avenue; thence Southwest to center line of Fourth Street North; thence Southeast to center line of Fifteenth Avenue; thence Southwest to center line of First Street North; thence Northwest to alley in Block 85 Duffee's Addition; thence Northeast to South corner of Lot 12 in said Block 85; thence Northwest to center line of Ninth Avenue; thence Northeast to center line of Second Street North; thence Northwest to center line of Eighth Avenue; thence Southwest to center line of First Street North; thence Northwest to O.S.L. RR right of way; thence North along said right of way to the place of beginning.

Containing 100 acres more or less.

Also:

A subdivision known as Lincoln Park Manor as now of record in the Canyon County Recorder's office, Canyon County, Idaho, consisting of 14.1 acres, more or less, and all within the Corporate limits of the City of Nampa and being in Section 21, Township 3 North, Range 2 West, Boise Meridian.

A subdivision known as West Park Subdivision as now of record in the Canyon County Recorder's office, consisting of 4.5 acres and lying within the Corporate limits of the City of Nampa, Canyon County, Idaho, in Section 20, Township 3 North, Range 2 West, Boise Meridian, Canyon County, Idaho.

Exhibit M **2019 BILLING FROM PIONEER IRRIGATION DISTRICT TO CITY OF NAMPA FOR 2,984.77 ACRES**

2402 Done 10/23/19 LC

Pioneer Irrigation District

FY19 5308070-5526 LD

P.O. BOX 426 • CALDWELL, IDAHO 83606
(208) 459-3617
www.pioneerirrigation.com

October 10, 2019

Nampa Municipal Irrigation District - City of Nampa
Attention: Accounts Payable
224 11th Avenue South
Nampa, ID 83651
Fax: 465-2248 & 468-5731

RE: 2019 Irrigation Assessments – Pioneer Account #7777

Please be advised that the Nampa Municipal Irrigation District is being assessed as follows:

2019 irrigation assessment on 100 acres at 2/3 of regular rate ($79.00 per acre x 2/3 = $52.67 per acre)	$5,267.00
2019 irrigation assessment on previous annexations of 2,804.4 acres at $79.00 per acre	$221,547.60

Annexations since 2018 billing

Ordinance #4403	Dated 9/17/18	0.95 acres
Ordinance #4417	Dated 2/19/19	79.42 acres
		80.37 acres

2019 irrigation assessment on current annexations of 80.37 acres at $79.00 per acre	$6,349.23

I HEREBY CERTIFY THE AMOUNT OF **$233,163.83** IS NOW DUE AND PAYABLE. If you have questions regarding this billing, please do not hesitate to call me.

Sincerely,

Amber O'Neal

Amber O'Neal
Secretary/Treasurer

100
2804.4
80.37
2,984.77

Exhibit N **2019 BILLING FROM BOISE KUNA IRRIGATION DISTRICT TO CITY OF NAMPA FOR 436.90 ACRES**

Boise-Kuna Irrigation District - Parcel Payment Information

Code: 480 B **Precinct:** 2

Customer: Nampa, City of

Contact / Address:
c/o Lyndsee Dunbar
24 1st S S
Nampa, ID 83651-0000

Subdiv:
Acres: 436.90 **County:** C
Camp: C-3 **County**
Rider: 9
Legal: See Comments
Sec.3,4,9 2N 2W
Sec.31,32,33 3N 2W

Comments: 0.33 Ac.(480) 10/3/95 for 1995 Fall. 39.78 Ac. (487 A), 80.66 Ac.(495 B) Ord# 2678, 10/20/97. 16.66 Ac. (480 D), 7.78 ac (490), 3.00 ac (485 A) Ord #2778 12/1/98. 20.79 Ac (494) Ord #2887, 3/7/00. De-Annex 65.15 ac Ord#2946, 9/5/00. 5.40 ac (480 C) Ord#3012. 9.80 ac (484), 10.04 ac (495 B) Ord#3014, 7/3/01. 1.33 ac (488 A) Ord#3032. (490) (489-1) Ord#3048. 8.35 Ac. 10/12/01, 4.28 Ac. 1.13 ac (491A) .69 ac (494 A3) .26 ac (494 A6) 1.24 ac (494 B1) 56 ac (494 B2) Ord #3116 6/4/02. 0 .63 ac (491 B) 0.67 ac (494 A1) Ord#3137 8/6/02. 14.78 Ac. Ord#3164 (495 B,Pt.) 10/7/02. 16.73 Ac Ord#3190 (Pt.495B) 1/7/03. 21.70 Ac Ord#3231 (495 B) 7/1/03. 1.90 ac Ord#3278 (495 D) 12/2/03. 1.91 Ac Ord#3363 (480A) 7/6/04. 18.4 Ac (481), 5.37 (514 A) Ord#3403 12/04. 16.35 ac (481) Ord#3616 9/5/06. 7.96 ac Ord #3646 (Pt 124 B) 11/20/06. 0.52 ac (125 D1) & 0.60 ac (125 D2) Ord#3716 6/18/07. 16.96 ac (120) & 16.76 (117) Ord#3742 10/15/07. 2.63 ac (514) Ord #3870 5/18/09. 9.72 ac (481) Ord #3904 2/3/10. 17.96 ac (124 B) Ord #3930 10/31/10. 24.82 ac (121) Ord #3962 4/18/11. Moved 15.29 ac back to 124 B to correct Ord #3930 transfer 7/1/13. 15.24 ac (pt 114-116) Ord #4125 7/17/14. 13.15 ac (pt 114-116) Ord #4184 7/15/15. 10.66 ac (pt 114-116) Ord #4226 2/29/16. 13.41 ac (pt 114-116) Ord #4328

Boise-Kuna Irrigation District - Parcel Payment Information

9/8/17. 33.22 ac (118), 23.77 ac (pt 112) Ord #4486 2.4.2020.

GL Code	Amount	Type	Date	Paid by	Season
2019.5	664.84	Bill	10/31/2019		D
2019.5	(664.84)	Credit	12/19/2019		D
2019.6	20.00	Bill	10/31/2019		D
2019.6	(20.00)	Credit	12/19/2019		D
2020.1	26,213.79	Bill	10/31/2019		S
2020.1	(26,213.79)	Credit	12/19/2019		S
2020.2	(7,218.29)	Credit	10/31/2019		S
2020.2	7,218.29	Credit	12/19/2019		S
Total	$0.00				

Exhibit O 2019 BILLING FROM NAMPA & MERIDIAN IRRIGATION DISTRICT TO CITY OF NAMPA FOR 4,077.93 ACRES

NAMPA & MERIDIAN IRRIGATION DISTRICT
1503 FIRST STREET SOUTH, NAMPA, ID 83651-4395
Assessment Number Report

Assessment #
5000 X - -

MailTo: CITY OF NAMPA - WATERWORKS
24 1ST ST S
NAMPA ID 83651-3707

Deeded_1: CITY OF NAMPA

Canyon County Parcel #:
This is a City Association

Legal Description:
NAMPA CITY INCLUSIONS PER CONTRACT

Status:	Active	Actual Acres:	4,077.93		
Roll:	Tax_Roll	District Land:	No		
Tax Group:	Regular	Urban Irrigation:			
TCCA:	No	Pending Segregation:	No		
LID:		Pending Exclusion:	No		
Bankruptcy:	No	Tax Deed:	No		
Delinquent:	No				

Tax Roll 2018

Assessment Expense:	16.75
District Drainage:	21,217.76
Ridenbaugh Maintenance:	154,103.97
Project Maintenance:	306,706.96
Urban Irrigation:	0.00

Project Operation & Maintenance

Project O&M 2019:	305,772.93
Excess Delivery 2018:	0.00

Unpaid Receivables:

Description	Tax	Penalty	Interest	Fees/Costs	Other	Total
(none)						

TOTAL DUE 11-Oct-2019 $0.00

Prepared: 25-Sep-2019 2:34 pm sla

Page 1 of 20

NAMPA & MERIDIAN IRRIGATION DISTRICT
1503 FIRST STREET SOUTH, NAMPA, ID 83651-4395
Assessment Number Report

Assessment #
5000 X - -

Paid Receivables:

Till Date	Pmt Amt	Description	Tax	Penalty	Interest	Fees/ Costs	Other	Total	Status
29-Nov-2018	482,045.44	Tax Roll 2018	482,045.44					482,045.44	Paid
06-Nov-2017	478,094.01	Tax Roll 2017	478,094.01					478,094.01	Paid
18-Nov-2016	471,761.17	Tax Roll 2016	471,761.17					471,761.17	Paid
28-Oct-2015	447,415.66	Tax Roll 2015	447,415.66					447,415.66	Paid
17-Nov-2014	152,028.13	Tax Roll 2014	152,028.13					152,028.13	Paid
21-Mar-2014	265,290.59	Project O&M 2014	265,290.59					265,290.59	Paid
05-Nov-2013	387,086.67	Tax Roll 2013	387,086.67					387,086.67	Paid
12-Dec-2012	122,246.19	Tax Roll 2012	122,246.19					122,246.19	Paid
22-Feb-2012	249,284.72	Project O&M 2012	249,284.72					249,284.72	Paid
12-Dec-2011	114,343.67	Tax Roll 2011	114,343.67					114,343.67	Paid
29-Mar-2011	249,105.02	Project O&M 2011	249,105.02					249,105.02	Paid
03-Nov-2010	113,160.53	Tax Roll 2010	113,160.53					113,160.53	Paid
23-Feb-2010	257,399.94	Project O&M 2010	257,399.94					257,399.94	Paid
17-Nov-2009	122,146.44	Tax Roll 2009	122,146.44					122,146.44	Paid
17-Feb-2009	236,542.28	Project O&M 2009	236,542.28					236,542.28	Paid
10-Nov-2008	102,238.85	Tax Roll 2008	102,238.85					102,238.85	Paid
02-Sep-2008	191,997.88	Project O&M 2008	191,997.88					191,997.88	Paid
29-Oct-2007	279,536.28	Tax Roll 2007	279,536.28					279,536.28	Paid
29-Nov-2006	85,233.06	Tax Roll 2006	85,233.06					85,233.06	Paid
07-Mar-2006	156,250.76	Project O&M 2006	156,250.76					156,250.76	Paid
29-Nov-2005	82,954.78	Tax Roll 2005	82,954.78					82,954.78	Paid
30-Mar-2005	142,205.82	Project O&M 2005	142,205.82					142,205.82	Paid
24-Nov-2004	67,344.78	Tax Roll 2004	67,344.78					67,344.78	Paid
21-Apr-2004	131,366.87	Project O&M 2004	131,366.87					131,366.87	Paid
17-Dec-2003	67,196.36	Tax Roll 2003	67,196.36					67,196.36	Paid
30-May-2003	32,847.76	Tax Roll 2002 2nd Half	32,847.76					32,847.76	Paid
25-Mar-2003	126,707.35	Project O&M 2003	126,707.35					126,707.35	Paid
20-Dec-2002	32,847.77	Tax Roll 2002 1st Half	32,847.77					32,847.77	Paid
25-Mar-2002	30,692.27	Tax Roll 2001 2nd Half	30,692.28					30,692.28	Paid
25-Mar-2002	99,688.57	Project O&M 2002	99,688.57					99,688.57	Paid
12-Dec-2001	30,692.30	Tax Roll 2001 1st Half	30,692.29					30,692.29	Paid
30-May-2001	30,832.21	Tax Roll 2000 2nd Half	30,832.21					30,832.21	Paid
27-Mar-2001	95,178.01	Project O&M 2001	95,178.01					95,178.01	Paid
14-Dec-2000	30,832.23	Tax Roll 2000 1st Half	30,832.23					30,832.23	Paid

Extended Project O&M/Excess:

Description	Tax
Project O&M 2018	305,236.00
Project O&M 2017	300,620.39
Project O&M 2016	297,717.60
Project O&M 2015	295,796.67
Project O&M 2013	258,386.53
Project O&M 2007	183,389.83

Water and Drainage Rights:

Ridenbaugh Miner's Inches:	1,740.34	Ridenbaugh Drainage Acres:	2,595.63	Ridenbaugh Acre Feet:	844.92
Ridenbaugh Acres:	2,594.24	Project Drainage Acres:	5,156.26	Project Acre Feet:	7,821.79
Project Miner's Inches:	3,227.37	Settlers Drainage Acres:		Arrowrock Acre Feet:	170.96
Project Acres:	5,154.01	New York Drainage Acres:			

Water Delivery:

Delivery Agent	Lateral	Tap	Rotate	RMI	RA	PMI	PA
NMID	BRAY	1988	No	176.53	252.27	2.94	4.69
NMID	CONY	1775	No	32.87	49.88	56.13	89.79
NMID	CONY	4512	No			1.04	1.66

Prepared: 25-Sep-2019 2:34 pm sla

Page 2 of 20

Exhibit P SPREADSHEET OF PIONEER IRRIGATION DISTRICT WATER RIGHTS

Exhibit 6 - List of Pioneer Irrigation District Water Rights									
Type	Basin	Sequence	Suffix	Basis	Priority Date	Div. Rate (cfs)	Source	Water Use	Owner
WR	63	161	BU	Decreed	5/1/1866	21.715	BOISE RIVER	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	224		Decreed	9/1/1890	200	BOISE RIVER	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	225		Decreed	4/1/1904	56.34	BOISE RIVER	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	294		Decreed	4/1/1905	306.56	BOISE RIVER	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	295		Decreed	4/1/1908	54.5	BOISE RIVER	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	371		Decreed	6/1/1884	53.1	BOISE RIVER	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	2114		Decreed	10/15/1909	8.64	INDIAN CREEK	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	2275		Decreed	9/8/1915	60	WILSON DRAIN	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	2276		Decreed	9/8/1915	43	MASON CREEK	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	2294		Decreed	4/3/1916	50	FIVEMILE CREEK	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	2529	A	Decreed	12/21/1936	87.1	GROUND WATER	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	2529	B	Decreed	12/21/1936	10	INDIAN CREEK	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	2891		Decreed	1/23/1952	10	WILSON DRAIN	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	5199		Decreed	10/15/1950	3.8	GROUND WATER	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	5200		Decreed	6/18/1958	7.56	GROUND WATER	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	5219		Decreed	8/1/1961	18	INDIAN CREEK	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	5237		Decreed	8/15/1929	16	INDIAN CREEK	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	5255		Decreed	5/24/1920	2.17	INDIAN CREEK	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	9109		Decreed	1/25/1978	5.04	GROUND WATER	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	10169		Decreed	8/11/1983	0.04	GROUND WATER	DOMESTIC	PIONEER IRRIGATION DISTRICT
WR	63	11622		License	1/17/1992	4.91	GROUND WATER	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	21706		Decreed	4/1/1961	0.1	BOISE RIVER	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	21713		Decreed	4/1/1913	15	PIPE GULCH DRAW CREEK	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	21714		Decreed	10/3/1963	0.04	GROUND WATER	DOMESTIC	PIONEER IRRIGATION DISTRICT
WR	63	21716		Decreed	3/7/1939	0.04	GROUND WATER	DOMESTIC	PIONEER IRRIGATION DISTRICT
WR	63	21731		Decreed	6/1/1918	76.6	FIVEMILE CREEK	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	21739		Decreed	5/1/1957	9.64	ELIJAH DRAIN	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	32496		Decreed	2/11/1977	0.44	GROUND WATER	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	32514		Decreed	5/1/1935	35	FIVE MILE CREEK	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	32515		Decreed	5/1/1935	53	MASON CREEK	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	32584		Decreed	10/15/1910	1.56	INDIAN CREEK	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	32832		Decreed	4/25/1977	1.2	GROUND WATER	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR	63	32834		Decreed	4/25/1977	0.6	GROUND WATER	IRRIGATION	PIONEER IRRIGATION DISTRICT
WR App	63	34644			11/29/2018	30	MASON CREEK	IRRIGATION	PIONEER IRRIGATION DISTRICT

Exhibit Q RIVERSIDE COMMENTS ON REUSE PERMIT

Barker Rosholt & Simpson LLP

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1010 W. Jefferson St. Suite 102
Boise, Idaho 83702
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November 27, 2019

Via Email: valerie.greear@deq.idaho.gov

Valerie Greear
Senior Water Quality Engineer
DEQ Boise Regional Office
1445 N. Orchard St.
Boise, ID 83706

Re: Comments and Objections to DEQ Reuse Permit M-25501 for the City of Nampa

Dear Ms. Greear,

This submission is made on behalf of Riverside Irrigation District, Ltd. with respect to the draft waste water reuse permit proposed to be issued to the City of Nampa. The Department stated it will accept public comment on this draft through November 29, 2019.

Riverside Irrigation District, Ltd. (Riverside) is an irrigation delivery entity formed under the laws of the State of Idaho. It delivers water to 10,000 acres of irrigated land west of Nampa, on the south side of the Boise River. Indian Creek is a primary source of water for Riverside. Riverside diverts from Indian Creek at the Riverside Canal west of the City of Caldwell. Riverside has the right to divert approximately 180 cfs of water from Indian Creek under Water Rights 63-2279 and 63-2374 with priority dates reaching back to 1915 and 1922. In recent years Riverside has invested significant amounts of money to automate its headgates and operate its system to maximize its ability to use its Indian Creek water rights.

Riverside is disturbed by the proposal from the City of Nampa and Pioneer Irrigation District (Pioneer) to gift Pioneer approximately 20 cfs of water, which water is currently returned to Indian Creek from the City of Nampa's outfall. As IDEQ Staff Analysis for the proposed reuse permit describes, Pioneer will take all of this 20 cfs of water during the irrigation season that otherwise would be released and discharged to Indian Creek to supplement the natural flow of Indian Creek. Pioneer then proposes to utilize this 20 cfs of water during the irrigation season on 17,000 acres of land within Pioneer's district boundaries to the north and west of the City of Nampa. The proposed reuse permit does not require any of the reuse water to be reused within the City of Nampa's municipal irrigation district, irrigation system or the City's service area. Rather all the water is to be discharged to the Phyllis Canal for use by Pioneer water users, as it

sees fit with no conditions and without regard whether the water users are within the City of Nampa delivery system.

Significantly, Pioneer does not have a water right to use any of this 20 cfs of water on any land within the Pioneer Irrigation District boundaries. In this reuse scheme, Pioneer is not recapturing its own waste water, but instead is attempting to capitalize on the City of Nampa's concern over phosphorous limitations that will in the future apply to the outfall from its waste water treatment plant into Indian Creek. Yet, under Idaho law, no person may "apply water to land" without having a valid water right to do so. Idaho Code § 42-201(2). Pioneer has no valid water right to use this water and has not made any application to obtain a water right to use this new source of water on Pioneer land.

Under IDAPA § 58.17.01.600.01.d the Department is required to account for legal considerations relative to land use and water rights. Nothing in the City's application, the proposed permit or the staff analysis even attempts to undertake any evaluation of water rights for Pioneer, the City or the impact to other water rights. Any reuse permit should be expressly conditioned to require the City and Pioneer to protect existing water rights diverted from Indian Creek, including Riverside's water rights including providing appropriate mitigation for injury. Riverside attempted to work with Pioneer to come up with such conditions, but Pioneer has refused to engage with Riverside to discuss any potential conditions on the use of the City of Nampa's waste water that would offer any protection to the Indian Creek water users. At the very least, the Department should condition approval of the reuse permit on the City and Pioneer obtaining approval of the water use from IDWR.

Neither the draft permit nor the staff analysis evaluates the impact of shifting water away from the discharge outfall at Indian Creek on the beneficial uses in Indian Creek resulting from the reduction by flows during the irrigation season. Nor does the draft permit or the staff analysis evaluate the impact on Riverside's or other water rights users who rely upon Indian Creek for their water source. Riverside is not the only user that relies on water from Indian Creek. A number of other water users do as well and could also be injured.

It is also important to understand the distinction between water distributed to Pioneer for Pioneer's use on over 17,000 acres, as described in the draft reuse permit and staff analysis, and any attempt by the City of Nampa to recapture water for its own use. The City is not recapturing its own waste water and putting it to use on its own lands. As a result, this proposed permit is not a true reuse permit at all, but instead is a disguised transfer of water from the City to Pioneer. Since this application is not truly a request by the City to reuse the water itself, IDEQ lacks the authority to grant a reuse permit as it is currently proposed. This transfer of water has not been authorized by the Department of Water Resources. If IDWR were to review this transfer, IDWR would be required to evaluate the impact on and injury to other water users, even junior users. from such a transfer. *See* Idaho Code 42-222. None of these analyses has been done by IDWR, IDEQ, the City or Pioneer.

The staff analysis asserts that there is some assurance that water discharged from the City of Nampa to the Phyllis Canal will not find its way back to jurisdictional waters. This is naïve at

best. Currently there are two spills directly to Indian Creek from the Phyllis Canal. The permit and staff analysis contend that the City and Pioneer will in the future place automation in the system to prevent those spills. But there is no analysis of the effectiveness of the automation that has yet to be installed, tested or evaluated for efficacy. Second, the application proposed permit and staff analysis recognized that there are spills and overflows in storm events from Pioneer's system into jurisdictional waters. Yet, those discharges are ignored for the purposes of determining impacts to jurisdictional waters.

Under IDEQ rules and guidance, a surface water body "includes but is not limited to rivers, streams, canals, ditches, lakes and ponds." (emphasis added) Discharges to surface waters may require an NPDES or IPDES permit. Yet, none is required under the terms of this reuse permit. For example, the City of Wilder has an NPDES permit for discharge to the Wilder drain, which is a source of water for Wilder Irrigation District canals. Jerome Cheese has an NPDES permit to discharge to the Northside Canal.

Nor does the draft permit analyze the effect of introduction of additional phosphorous through the Phyllis Canal to lands where the reuse water containing higher concentration of phosphorous could contaminate ground water. The staff analysis and the proposed reuse permit recognize that ground water is, in places, within five (5) feet of the surface. IDEQ reuse guidance requires the protection of surface and ground water from excessive phosphorous and requires control of that phosphorous. The proposed reuse permit allows land application to Pioneer's lands in areas where the water will percolate to shallow ground water and back to surface water. Riverside sees no effort to mitigate impacts to surface water from ground water interconnections that may be affected by the phosphorous in the water discharged to Phyllis Canal.

It also appears that nothing in the permit or in the staff analysis imposes standard permit conditions on Pioneer's use of the waste water. IDAPA § 58.01.17.500.03 requires the permittee to operate and maintain all structures, equipment or control and monitoring devises installed to achieve compliance with the permit and to provide the director of DEQ authority to access the facility and to inspect the records, the equipment and the operations. Since the Phyllis Canal and its distribution system is now proposed to be part of City of Nampa's recycled water or waste water treatment, those conditions must be imposed not simply on the City of Nampa (as the permittee), but also on Pioneer for its use of the Phyllis Canal and other distribution facilities, including the reinjection locations into Indian Creek. If the reuse water is pumped into the Phyllis Canal, any permit should require the City and Pioneer to provide the Director of DEQ to have the access to inspect all of the conveyance system and all the property where the recycled water is supplied. The Director should also have authority over any changes or alterations to the operations of the Pioneer's delivery system under DEQ's waste water and recycled water rules.

Riverside would appreciate receiving a response to its comments and hearing how this permit will be condition to protect existing water rights.

//

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP

Albert P. Barker

cc: Riverside Irrigation District

APB/aje

Exhibit R IDEQ'S RESPONSE TO RIVERSIDE'S COMMENTS

STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1445 North Orchard • Boise, Idaho 83706 • (208) 373-0550
www.deq.idaho.gov

Brad Little, Governor
John H. Tippets, Director

January 21, 2020

Mr. Albert Barker
Barker Rosholt & Simpson LLP
1010 W. Jefferson St. Ste 102
Boise ID 83702

Re: City of Nampa, Reuse Permit M-255-01
Draft Reuse Permit Public Comments, Response to Comments

Dear Mr. Barker:

Thank you for your comments regarding the City of Nampa Draft Reuse Permit M-255-01 submitted to the Idaho Department of Environmental Quality (DEQ) in a letter dated November 27, 2019. Responses to your comments are attached to this letter.

Should you have any questions regarding these responses, please contact me at (208) 373-0459, or via email at Valerie.Greear@deq.idaho.gov.

Sincerely,

Valerie A. Greear, P.E.
Water Quality Engineering Manager

Enclosure: Response to Comments on Draft Reuse Permit M-255-01

ec: Nate Runyan, P.E., Deputy Public Works Director, City of Nampa
Larry Waters, P.E., DEQ Wastewater Bureau Chief
Hannah Young, Deputy Attorney General
2019AGH1854

RECEIVED JAN 27 2020

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Response to Comments from the Barker Rosholt & Simpson LLP submitted on behalf of Riverside Irrigation District, Ltd. dated November 27, 2019 on Draft Reuse Permit M-255-01

1. **Comment:**

Riverside is disturbed by the proposal from the City of Nampa and Pioneer Irrigation District (Pioneer) to gift Pioneer approximately 20 cfs of water, which water is currently returned to Indian Creek from the City of Nampa's outfall. As IDEQ Staff Analysis for the proposed reuse permit describes, Pioneer will take all of this 20 cfs of water during the irrigation season that otherwise would be released and discharged to Indian Creek to supplement the natural flow of Indian Creek. Pioneer then proposes to utilize this 20 cfs of water during the irrigation season on 17,000 acres of land within Pioneer's district boundaries to the north and west of the City of Nampa. The proposed reuse permit does not require any of the reuse water to be reused within the City of Nampa's municipal irrigation district, irrigation system or the City's service area. Rather all the water is to be discharged to the Phyllis Canal for use by Pioneer water users, as it sees fit with no conditions and without regard whether the water users are within the City of Nampa delivery system.

Significantly, Pioneer does not have a water right to use any of this 20 cfs of water on any land within the Pioneer Irrigation District boundaries. In this reuse scheme, Pioneer is not recapturing its own waste water, but instead is attempting to capitalize on the City of Nampa's concern over phosphorous limitations that will in the future apply to the outfall from its waste water treatment plant into Indian Creek. Yet, under Idaho law, no person may "apply water to land" without having a valid water right to do so. Idaho Code § 42-201(2). Pioneer has no valid water right to use this water and has not made any application to obtain a water right to use this new source of water on Pioneer land.

Under IDAPA § 58.17.01.600.01 .d the Department is required to account for legal considerations relative to land use and water rights. Nothing in the City's application, the proposed permit or the staff analysis even attempts to undertake any evaluation of water rights for Pioneer, the City or the impact to other water rights. Any reuse permit should be expressly conditioned to require the City and Pioneer to protect existing water rights diverted from Indian Creek, including Riverside's water rights including providing appropriate mitigation for injury. Riverside attempted to work with Pioneer to come up with such conditions, but Pioneer has refused to engage with Riverside to discuss any potential conditions on the use of the City of Nampa's waste water that would offer any protection to the Indian Creek water users. At the very least, the Department should condition approval of the reuse permit on the City and Pioneer obtaining approval of the water use from IDWR.

Neither the draft permit nor the staff analysis evaluates the impact of shifting water away from the discharge outfall at Indian Creek on the beneficial uses in Indian Creek resulting from the reduction by flows during the irrigation season. Nor does the draft permit or the staff analysis evaluate the impact on Riverside's or other water rights users who rely upon Indian Creek for their water source. Riverside is not the only user that relies on water from Indian Creek. A number of other water users do as well and could also be injured.

It is also important to understand the distinction between water distributed to Pioneer for Pioneer's use on over 17,000 acres, as described in the draft reuse permit and staff analysis, and any attempt by the City of Nampa to recapture water for its own use. The City is not recapturing its own waste water and putting it to use on its own lands. As a result, this proposed permit is not a true reuse permit at all, but instead is a disguised transfer of water from the City to Pioneer. Since this application is not truly a request by the City to reuse the water itself, IDEQ lacks the authority to grant a reuse permit as it is currently proposed. This transfer of water has not been authorized by the Department of Water Resources. If IDWR were to review this transfer, IDWR would be required to evaluate the impact on and injury to other water users, even junior users, from such a transfer. See Idaho Code 42-222. None of these analyses has been done by IDWR, IDEQ, the City or Pioneer.

Response: Thank you for bringing this issue to our attention. DEQ does not regulate water rights, nor have the ability to provide a response to the issues raised in this comment. Section 10 of the reuse permit states "Compliance with this permit does not relieve the permittee from applicable requirements in other federal, state, and local laws, statutes, and rules." The City has been informed of this concern.

2. **Comment:**

The staff analysis asserts that there is some assurance that water discharged from the City of Nampa to the Phyllis Canal will not find its way back to jurisdictional waters. This is naive at best. Currently there are two spills directly to Indian Creek from the Phyllis Canal. The permit and staff analysis contend that the City and Pioneer will in the future place automation in the system to prevent those spills. But there is no analysis of the effectiveness of the automation that has yet to be installed, tested or evaluated for efficacy. Second, the application proposed permit and staff analysis recognized that there are spills and overflows in storm events from Pioneer's system into jurisdictional waters. Yet, those discharges are ignored for the purposes of determining impacts to jurisdictional waters.

Response: Compliance Activity CA-255-02 in Section 3 of the reuse permit requires that the City include in the Plan of Operation the procedures to eliminate the spill to Moses Drain. This is required prior to recycled water being discharged to the Phyllis Canal and will be subject to DEQ review and approval; the plan will be analyzed at that time. This section will include the details of how the system will work, how the system will communicate with the operators so that they can ensure the system is working, the maintenance required and emergency notifications if the system fails at any time.

DEQ recognizes that spills may occur, and there is a potential for recycled water to enter jurisdictional waterways from recycled water applications. In these rare occasions, these noncompliances must be reported to DEQ in accordance with the reporting requirements of IDAPA 58.01.17.500.06 and Section 7 of the reuse permit, along with a summary of events reported in the annual report required in Section 6 of the reuse permit.

3. **Comment:**
Under IDEQ rules and guidance, a surface water body "includes but is not limited to rivers, streams, canals, ditches, lakes and ponds." (emphasis added) Discharges to surface waters may require an NPDES or IPDES permit. Yet, none is required under the terms of this reuse permit. For example, the City of Wilder has an NPDES permit for discharge to the Wilder drain, which is a source of water for Wilder Irrigation District canals. Jerome Cheese has an NPDES permit to discharge to the Northside Canal.

Response: The City of Nampa submitted an application for a Reuse Permit, and therefore DEQ responded within the agency's authorities under the Recycled Water Rules. The City is required to comply with all requirements of any other applicable federal, state, and local laws, statutes, and rules.

Wilder has an NPDES permit issued by EPA. The NPDES permit issued by EPA to Jerome Cheese has been terminated.

4. **Comment:**
Nor does the draft permit analyze the effect of introduction of additional phosphorous through the Phyllis Canal to lands where the reuse water containing higher concentration of phosphorous could contaminate ground water. The staff analysis and the proposed reuse permit recognize that ground water is, in places, within five (5) feet of the surface. IDEQ reuse guidance requires the protection of surface and ground water from excessive phosphorous and requires control of that phosphorous. The proposed reuse permit allows land application to Pioneer's lands in areas where the water will percolate to shallow ground water and back to surface water. Riverside sees no effort to mitigate impacts to surface water from ground water interconnections that may be affected by the phosphorous in the water discharged to Phyllis Canal.

Response: The reuse permit limits phosphorus concentration in the discharge to 0.35 mg/L, which would be up to 54.2 pounds/day and is approximately the same concentration of phosphorus in the canal currently. Had DEQ attempted to do the analysis in accordance with the guidance as discussed in the comment, the limit would likely have been higher. In lieu of this analysis, DEQ included the concentration used to calculate the wintertime allocation for the city from the Lower Boise River TMDL: 2015 Total Phosphorus Addendum. This requirement is considered conservative, and was included in recognition that phosphorus is a non-point source watershed issue, not only when discharged directly to the impacted water body.

5. **Comment:**
It also appears that nothing in the permit or in the staff analysis imposes standard permit conditions on Pioneer's use of the waste water. IDAPA § 58.01.17.500.03 requires the permittee to operate and maintain all structures, equipment or control and monitoring devises installed to achieve compliance with the permit and to provide the director of DEQ authority to access the facility and to inspect the records, the equipment and the operations. Since the Phyllis Canal and its distribution system is now proposed to be part of City of Nampa's recycled water or waste water treatment, those conditions must be imposed not simply on the City of Nampa (as the permittee), but also on Pioneer for its use of the Phyllis Canal and other distribution facilities, including the reinjection locations into Indian Creek. If the reuse water is pumped into the Phyllis Canal, any permit should require the City and Pioneer to provide the Director of DEQ to have the access to inspect all of the conveyance system and all the property where the recycled water is supplied.

The Director should also have authority over any changes or alterations to the operations of the Pioneer's delivery system under DEQ's waste water and recycled water rules.

Response: For recycled water, the point at which the City will be required to comply with the terms and conditions of the permit is at the point of discharge. Therefore the City must maintain all structures and equipment up until that point, provide DEQ with access to inspect the system up until that point, and be subject to engineering review up until that point. This is commonly referred to as the "point of compliance", after which point the water is considered to be irrigation water and is no longer regulated by DEQ.

Many requirements of the Recycled Water Rules apply to most standard permitted scenarios, i.e. application of water to a single or several fields designated specifically for reuse, but Class A reuse does not necessarily fall into that scenario. Class A water compliance is considered "end of pipe," and compliance with the treatment and disinfection requirements to meet Class A recycled water must be met at that "point of compliance," after which point the water can be used with minimal further requirements.

Exhibit S **WASTEWATER RE-USE PARTNERSHIP: CITY OF NAMPA AND PIONEER IRRIGATION DISTRICT – DIFFERENT SOURCE BUT HARDLY REVOLUTIONARY (PRESENTATION BY ANDY WALDERA)**

2019 IWUA SUMMER WATER LAW AND RESOURCE ISSUES SEMINAR

Andy Waldera
Sawtooth Law Offices, PLLC

Wastewater Re-Use Partnership: City of Nampa and Pioneer Irrigation District—Different Source But Hardly Revolutionary

Partnership and collaboration between the City of Nampa and Pioneer Irrigation District is not new, and while Class A recycled wastewater (IDAPA 58.01.17) may be a new source of water, recycling and re-using wastewater within Pioneer's boundaries is hardly a new concept. Some estimate that surface water diverted for irrigation purposes in the Treasure Valley is recycled and re-used upwards of nine times over, and Pioneer is a major player in that field owing to its location in the valley.

Located largely in a topographic "bowl" spanning northwest Nampa and most of Caldwell, Pioneer's approximately 34,000 acres receive, manage, and re-use irrigation return flows (both surface and shallow groundwater) from upgradient irrigation entities including Settlers Irrigation District, Nampa & Meridian Irrigation District, and various Boise Project Board of Control entities. What was once a confounding nuisance (waterlogging of lands across nearly a third of the district), was plumbed (via construction of roughly 100-mile network of drains, drainage wells, and feeder canals) for opportunity beginning as early as 1913.

Each of Pioneer's three delivery canals (the Phyllis, Highline, and Lowline) rely on the input of drain water to meet patron irrigation demand. The Phyllis and Highline Canals use drain water from Fivemile and Fifteenmile Drains, respectively, to supplement live and storage flow diversions from the Boise River and Lowline Canal deliveries are comprised entirely of drain water diverted from Wilson Drain (which also serves as the source of water for Black Canyon Irrigation District's Notus Canal). While a pipeline leading to the Phyllis Canal from the Nampa WWTP may not be a feeder canal diversion from a typical "drain," it's not very different either. And, in many respects, Class A recycled wastewater is cleaner that that diverted from traditional agricultural drains (particularly in terms of sediment load). When Nampa approached Pioneer with its concept proposal, Pioneer immediately recognized value in the opportunity. Hopefully, the regulatory community does too.

Anticipated Benefits:

- Ever-present and reliable source of supplemental water supply, up to 41 cfs at build out;
- Passive, gravity-based flow from Pioneer's perspective (no pumping costs);
- Alternative source off-setting declining drain flow sources elsewhere at worst, storage water savings opportunity at best (declining drain flows are a considerable concern within

Pioneer's boundaries—in some locations drain flows have declined to the point where Pioneer cannot pump from them anymore);

- Practical plumbing solution—input of water downstream of lava rock canal channel choke point (which also increases upstream canal operations margin for safety);
- Facility automation and related efficiency opportunities (which also serve the purpose of addressing "tributary" concerns);
- Municipal pump station cross-connection and "regionalizing" opportunities; and
- Cleaner, less sediment laden source of water

Potential Concerns:

- Regulatory path and red tape (DEQ-based re-use permit is a must, no interest in NPDES program treatment);
- Capital expenditures (mitigated by city funding infrastructure construction);
- Cleaner water (perhaps less sediment laden, but what about other constituents);
- WWTP upsets (have seen other local dischargers fail to meet permit limits—mitigated by regular effluent testing, on-site WWTP storage capacity, and municipal corporation status);
- Seasonality (mitigated by general lack of off-season discharge/no interference with canal maintenance);
- Ability to cease discharge in emergency situations (mitigated by on-site WWTP storage capacity and ability to spill to Indian Creek if necessary);
- Increased O&M costs (primarily aquatic weed growth and treatment potential owing to higher temperature water and potential Phosphorus contents—mitigated by city chemical cost contribution willingness and effluent matching historic canal background Phosphorus levels);
- Indemnification from water quality exceedances and city solely responsible for NPDES permit compliance concerning its WWTP operations; and
- Public perception over recycled wastewater use (not revolutionary in either the irrigation or WWTP effluent settings, particularly in other states)

Exhibit T **MINUTES – NAMPA CITY COUNCIL (FEB. 20, 2018) (AGENDA ITEM #29 – NAMPA WASTEWATER TREATMENT PLANT FACILITY PLAN) (PAGES 1, 31-47)**

REGULAR COUNCIL
February 20, 2018

Mayor Kling called the meeting to order at 6:30 p.m.

Clerk made note that Councilmembers Skaug, Haverfield, Levi, Hogaboam, Bruner, and Rodriguez were present.

Mayor Kling presented a request to amend the agenda by adding Summary of publication for Item #24 - 1st Reading of Election Ordinance Calling a Special Municipal Bond Election for Phase II Upgrades of the Wastewater Improvements Project.

MOVED by Bruner and **SECONDED** by Hogaboam to **approve** the **amendment to the agenda** by adding Summary of publication for Item #24 - 1st Reading of Election Ordinance Calling a Special Municipal Bond Election for Phase II Upgrades of the Wastewater Improvements Project. Mayor Kling asked for a roll call vote with all Councilmembers present voting **YES**. The Mayor declared the

MOTION CARRIED

MOVED by Levi and **SECONDED** by Hogaboam to **approve** the **Consent Agenda with the above mentioned amendment as presented;** Regular Council Minutes of February 5, 2018**; Bicycle and Pedestrian Advisory Committee Minutes; Board of Appraisers Minutes; Airport Commission Minutes; Planning & Zoning Commission Minutes; Library Commission Minutes; IT Steering Committee Minutes; department reports, bills paid;** The City Council dispenses with the three (3) reading rule of Idaho Code § 50-902 for all ordinances; **final plat extensions**: 1) Request for First 1-Year Extension of Subdivision Final Plat Approval for Brookdale Estates Subdivision No. 5, Located Between E Cherry Ln and E Birch Ln, and 11th Ave N and Kensington Ave, in an RS-7 Zoning District for JUB Engineers, Representing Trilogy Development. Request to Extend 02/06/2017 Approval, Expiring 02/06/2018 to 02/06/2019; **final and preliminary plat approvals:** 1) Subdivision Short Plat Approval for Vineyard Suites on the Boulevard Subdivision at TBD W Corporate Lane and 707 Caldwell Blvd. and Conditional Use Permit for Senior Apartments at TBD W Corporate Lane. for New Beginnings Housing, LLC - Greg Urrutia; **Authorize Public Hearings**: 1) Annexation and Zoning to IL for Self-Storage at 908 W Karcher Rd. for Civil Site Works Representing Charles and Carmela Ham 2) Modification of Zoning Development Agreement between Needs Koch, LLC and the City of Nampa recorded 08/15/2007 as Inst. #2007056433 amending Bella Commons Phase 1 changing Lot 4, Block 1 from a Commercial Lot to a Multiple Family Residential Lot to Match The Existing Neighborhood; and, Zoning Map Amendment from BN-PUD to RMH-PUD for Summit Development Representing Conquest Properties, LLC; 3) Annexation and RS-6 Zoning for 13.96 acres, and BC for 3.59 Acres at 0 Amity Ave – Parcel R3179901000 for Patrick Colwell, T-O Engineers, Representing Aberdeen Springs Wind, LLC, Fred Cornforth; 4) Zoning Map Amendment from RMH to BC at 172, 174, 176 and 178 E Maine Ave. for Amber Steube Representing Magnolia Investments, LLC; **Authorize to Proceed with Bidding Process: 1)** Authorize the Engineering Division to Proceed with the Formal Bidding Process for the Birch Lift Station Pump Procurement and Pump Installation & Station Upgrade; **Authorization for execution of Contracts and Agreements**: 1) None; **Monthly Cash Report**: 1) None; **Resolutions:** 1) Disposal of Surplus Property for Waterworks; **License for 2017**: *Used Precious Metals* – **None License for 2018:** *Pawnbrokers* **None**; **Miscellaneous Items**: 1) None. Mayor

[Pages 2-30 of Minutes omitted]

separate design [exception] approval from the City Council. **5.** Temporary bollards shall be emplaced at the end of the proposed Lancaster Drive where the same is slated to link to the existing road section in Roosevelt Park Subdivision No. 4, named S Lancaster Drive. The bollards shall be used to deter civil construction contractor access across/through Roosevelt Park Subdivision. The bollards may be removed once the streets (with associated sidewalks, curbs and gutters) are fully constructed and approved by the City to allow for home construction contractors to access Meadowcrest through/from Roosevelt Park Subdivision roads as may be necessary. (Civil work construction traffic for the Development shall access the Property from S Middleton Road. **6.** The proposed Lot 7 of Block 2 shall be removed. Said lot may be emplaced elsewhere in Meadowcrest Subdivision, provided it is not located in the row of lots comprising Block 2 as shown on the approved Preliminary Plat. **7.** A six-foot (6') chain link fence (unless allowed otherwise by the City's Council) along the Orr Drain's southwestern easement edge shall be emplaced in conjunction with adjoining common area improvement(s). Said fencing shall comply with standards found in N.C.C. § 10-27- 6(J)(4).) with the staff recommendation and that the project is phased for **Meadowcrest Subdivision** at the Northeast Corner of Lake Lowell Ave. and So. Middleton Rd. for Hayden Homes Idaho LLC, **Tim Mokwa** and authorize the City Attorney to draw the appropriate Ordinance.

Councilmembers made comments on the request.

Mayor Kling made comments on the request.

The Mayor asked for a roll call vote with Councilmembers Levi, Hogaboam, Bruner, Skaug, Haverfield voting **YES**. Councilmember Rodriguez voting **NO**. The Mayor declared the

MOTION CARRIED

Item #29 - Mayor Kling opened a **public hearing** for **2017 Nampa Wastewater Treatment Plant Facility Plan**, which Contains Technical Components of the Treatment and Discharge Approach (Preferred Alternative).

Michael Fuss had Matt Gregg, Brown and Caldwell; Rosemary Curtin,Public Outreach RBCI; Shelby Smith, Brown and Caldwell; Dave Pergo, Brown and Caldwell; Eric Heringer, Piper Jaffray financial advisor; John Devitt, Skinner Fawset Bond Council; Brandon Coates, RBCI; introduced as the WWTP team.

Introduction

- City staff and the WPMT have been working for 18 months to develop Facility Plan
- Sought input from broad range of community members and stakeholders to inform the planning process

The time is now to make the next, best decision for Nampa.

Matt Gregg from Brown and Caldwell presented the following staff report:

Facility Plan Development Approach

Technical Memos

- TM T-45: Existing Asset Evaluation
- TM T-46: Flow and Load Projections
- TM T-47: Liquid Stream Alternatives BCE
- TM T-49: Capacity Assessment
- TM T-50: Existing Asset Investment Evaluation
- TM T-51: Biosolids End Use Alternatives BCE
- TM T-52: Capital Improvements Plan

NWAG Meetings

- NWAG #1 – January 26, 2017
  - Background information
  - Regulatory requirements (TM T-47)
- NWAG #2 – April 12, 2017
  - Facility Planning Approach (TM T-45, T-46, T-47, T-49)
  - Alternative analysis (TM T-47)
- NWAG #3 – June 14, 2017
  - Alternative analysis (TM T-47)
  - Repair & Replacement Needs (TM T-50)
- NWAG #4 – October 12, 2017
  - Preferred Alternative (TM T-47, T-51)
  - CIP and Delivery Schedule (TM T-52)

1 **Community Interests**
NWAG/IWG input, CSFs

2 **External Demands**
Regulatory, growth

3 **Asset Performance**
Condition, capacity

4 **Financial Capacity**
Rates, affordability

Community Interests: Critical Success Factors

1. Preserve our natural resources and our environment to promote a caring community where people live, work, play, worship, and raise their families
2. Provide a healthy, professional environment that empowers our employees to succeed
3. Maintain affordable wastewater service for rate payers through long-term, fiscally-sound decision-making
4. Stimulate economic development by efficient utilization of resources and providing sufficient utility capacity
5. Anticipate future regulatory requirements by considering economic ramifications to environmental action

External Drivers: Residential & Industrial Growth

- Nampa WWTP provides treatment for residential, commercial, and industrial wastewater
- Need to plan to provide capacity for expected growth within each sector
  – 2015 Population - 89,000
  – Projected 2040 Population - 154,000 (~70% growth)
- Allocating capacity to expansion within the industrial customer base to support economic development goals

External Drivers: Regulatory Requirements

PHOSPHORUS LIMITS

May 1 – September 30

100 µg/L (0.1 mg/L)

↓ 98%

October 1 – April 30

350 µg/L (0.35 mg/L)

↓ 94%

TEMPERATURE LIMITS

July – September

19 °C (66 °F)

↓ 5 °C

August – Instantaneous Maximum

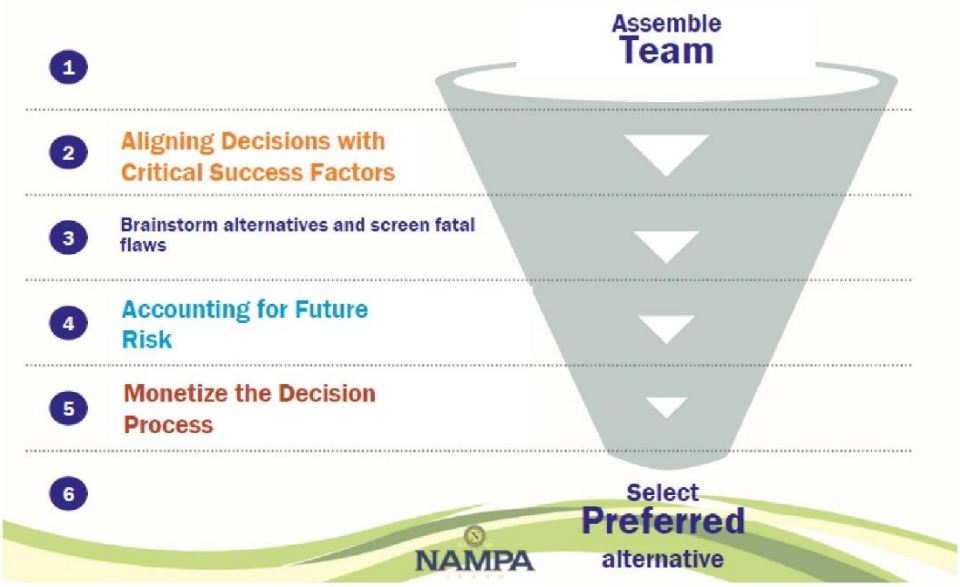
22.8 °C (73 °F)

Repair and Replacement Projects

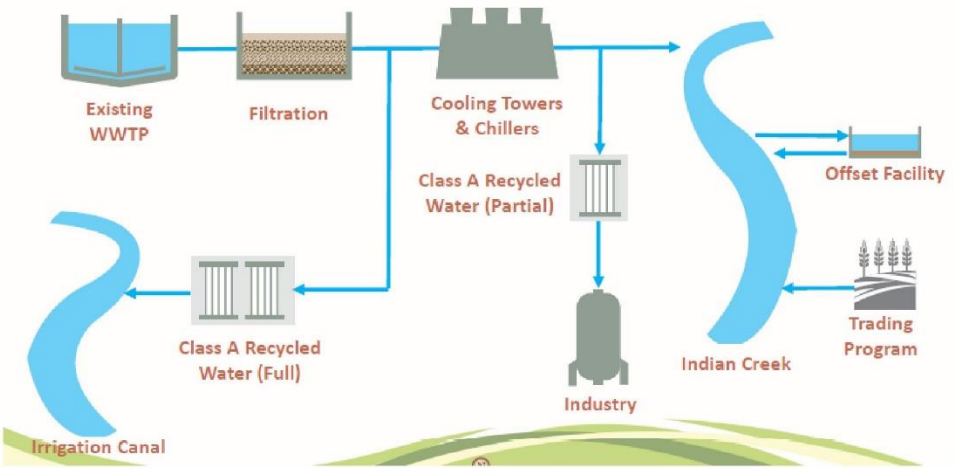
Total Repair and Replacement Costs = $13,2M
Alternatives Summary

Alternative 1 – Treat and Discharge
Alternative 2 – Treat and Discharge Class A Reuse to Industry
Alternative 2.5 – Treat and Discharge to Irrigation with Class A Industry Reuse
Alternative 3 – Treat and Discharge to Irrigation
Alternative 4 – Treat and Offset
Alternative 5 – Treat and Trade
Alternative 6 – Do Nothing More

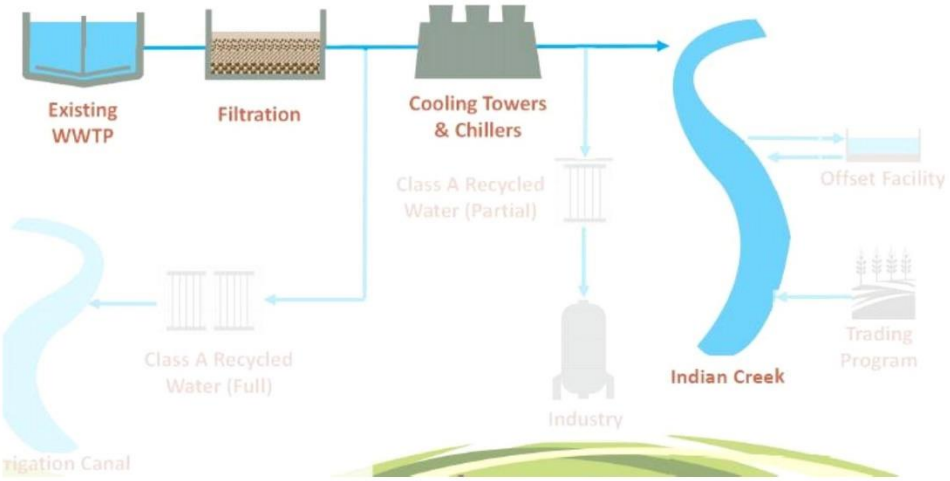
Evaluation Process: Business Case Evaluation



Alternatives Overview



Alternative #1: Treat and Discharge

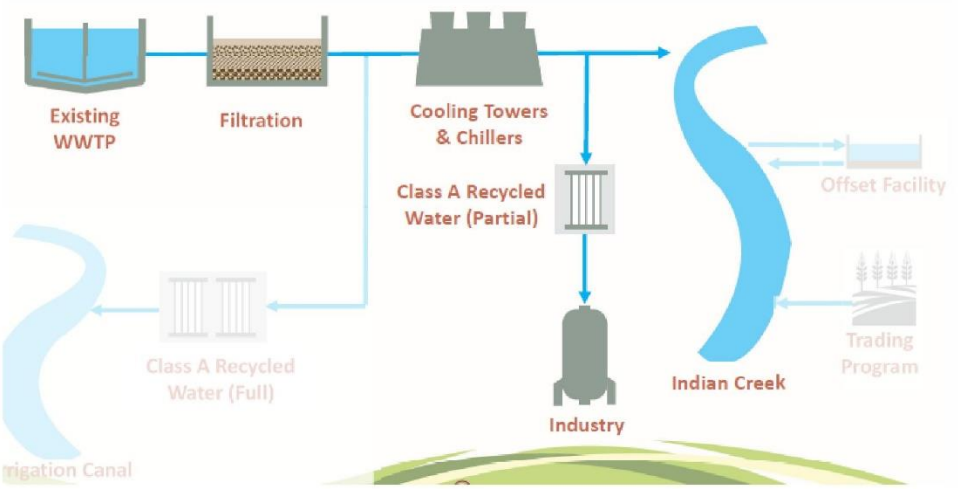


Capital Costs: $115.2 million
Operations & Maintenance Costs: $9.8 million annual average – Total costs from 2026-2040 = $141.8 million
Potential Fatal Flaws: None

Risks and Benefits:

Risks	Benefits
Permit Violations	Potential removal/reduction of temperature requirements
Year-Round TP Limits < 0.35 mg/L	
Regulation of Additional Constituents – Surface Water	
Water Quality Degradation	

Alternative #2: Treat and Discharge Class A



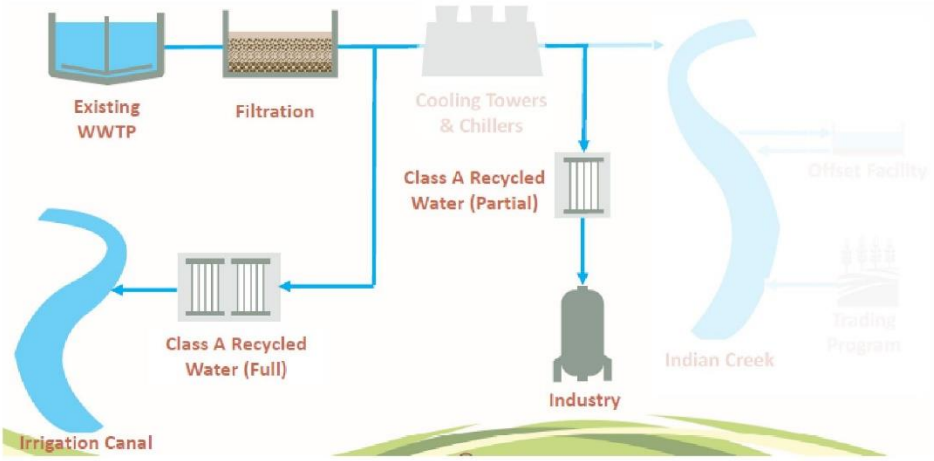
Capital Costs: $119.3 million
Operations & Maintenance Costs: $10.0 million annual average – Total costs from 2026-2040 = $146.2 million

Potential Fatal Flaws: None

Risks and Benefits:

Risks	Benefits
Permit Violations	***Economic Development Opportunity***
Year-Round TP Limits < 0.35 mg/L	***Additional Water Assets***
Regulation of Additional Constituents – Surface Water	Low cost funding availability
Water Quality Degradation	Potential removal/reduction of temperature requirements
Public Perception	
Water Rights	

Alternative #2.5: Irrigation & Industry Reuse



Councilmember Levi asked questions on alternative 2.5.

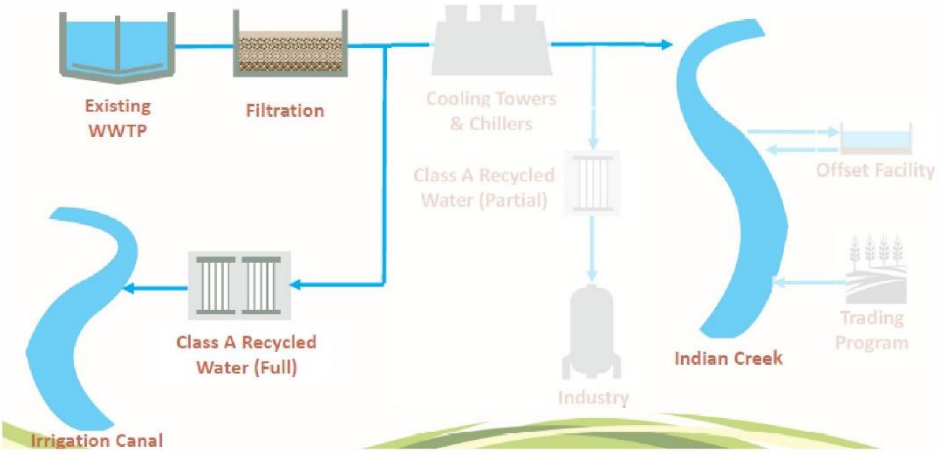
Capital Costs: $120.9 million
Operations & Maintenance Costs: $10.2 million annual average – Total costs from 2026-2040 = $149.3 million

Potential Fatal Flaws: Contract negotiations with irrigation company, regulatory agency permitting

Risks and Benefits:

Risks	Benefits
Permit Violations	***Economic Development Opportunity***
Year-Round TP limits < 0.35 mg/L	***Additional Water Assets***
Regulation of Additional Constituents – Surface Water	Low cost funding availability
Public Perception	
Water Rights	
Continued Contracting with Irrigation Company	
Regulation of Temperature in Irrigation Canals	

Alternative #3: Treat and Irrigation Discharge

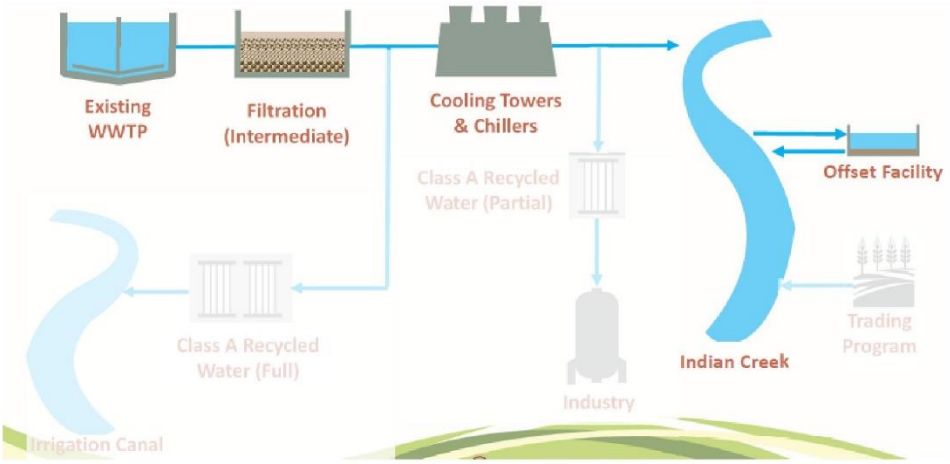


Capital Costs: $117.2 million
Operations & Maintenance Costs: $9.9 million annual average – Total costs from 2026-2040 = $145.6 million
Potential Fatal Flaws: Contract negotiations with irrigation company, regulatory agency permitting

Risks and Benefits:

Risks	Benefits
Permit Violations	Additional Water Assets
Year-Round TP limits < 0.35 mg/L	Low cost funding availability
Regulation of Additional Constituents – Surface Water	
Public Perception	
Water Rights	
Continued Contracting with Irrigation Company	
Regulation of Temperature in Irrigation Canals	

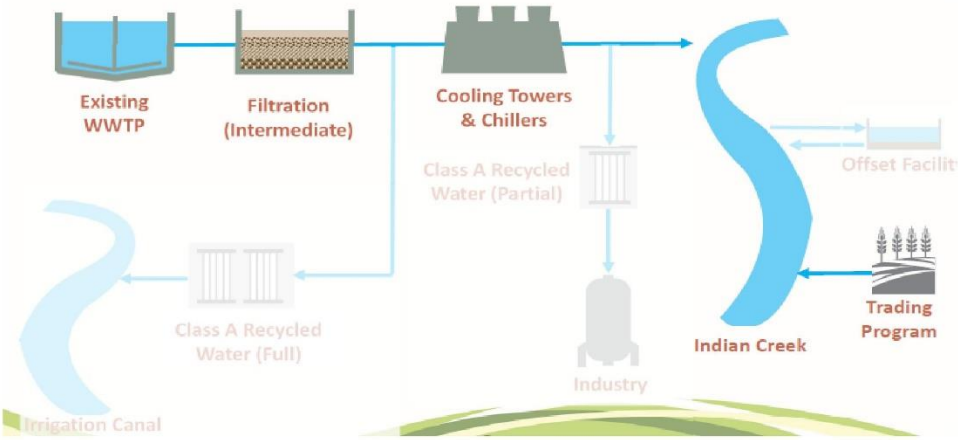
Alternative #4: Treat and Offset



Potential Fatal Flaws: Available land on Indian Creek

Risks and Benefits: N/A

Alternative #5: Treat an Trade



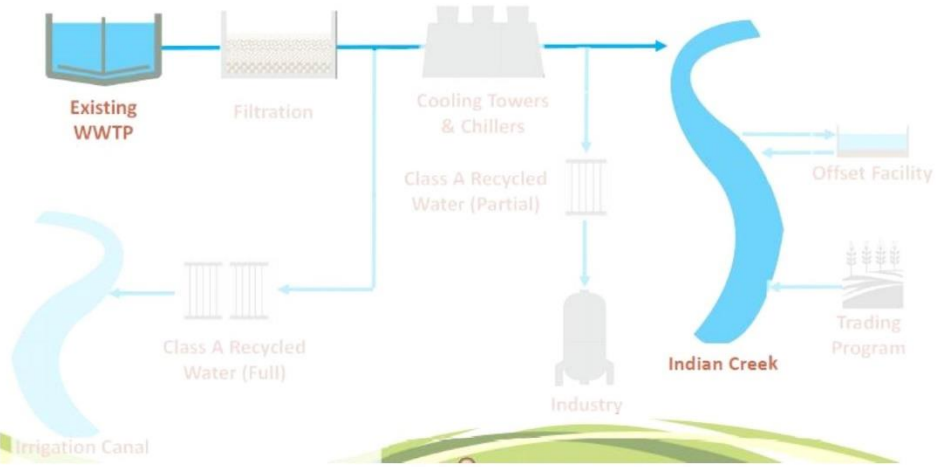
Capital Costs: $99.9 million
Operations & Maintenance Costs: $8.3 million annual average – Total costs from 2026-2040 = $118.6 million

Potential Fatal Flaws: None

Risks and Benefits:

Risks	Benefits
Permit Violations	***Net environmental benefit***
Year-Round TP Limits < 0.35 mg/L	Potential removal/reduction of temperature requirements
Regulation of Additional Constituents – Surface Water	
Water Quality Degradation	
Public Perception	
Trading Ratio Increases	
Credit Availability	

Alternative #6: Do Nothing More



Capital Costs: $0
Operations & Maintenance Costs: $0

Potential Fatal Flaws: None

Risks and Benefits:

Risks	Benefits
Daily Permit Violations (Phosphorus)	
Daily Permit Violations (Temperature)	
Public perception	
Regulation of Additional Constituents – Surface Water	
Legal Costs	

Comparing the Alternatives – 2040

Alternatives	Capital	O&M	Risks	Benefits	2040 Net Present Value
1	$115.2 M	$141.8 M	$41.0 M	$0.3 M	$391.4 M
2	$119.3 M	$146.2 M	$41.4 M	$16.0 M	$381.1 M
2.5	$120.9 M	$149.3 M	$41.6 M	$18.9 M	$382.2 M
3	$117.2 M	$145.6 M	$41.4 M	$1.2 M	$397.5 M
5	$99.9 M	$118.6 M	$92.2 M	$0.9 M	$408.6 M
6	$0	$0	$508.9 M	$0 M	$718.8 M

Evaluation Summary

- Capital and operational costs are similar
- Alternative 5 has the highest level of risk (aside from Do Nothing More) due to the

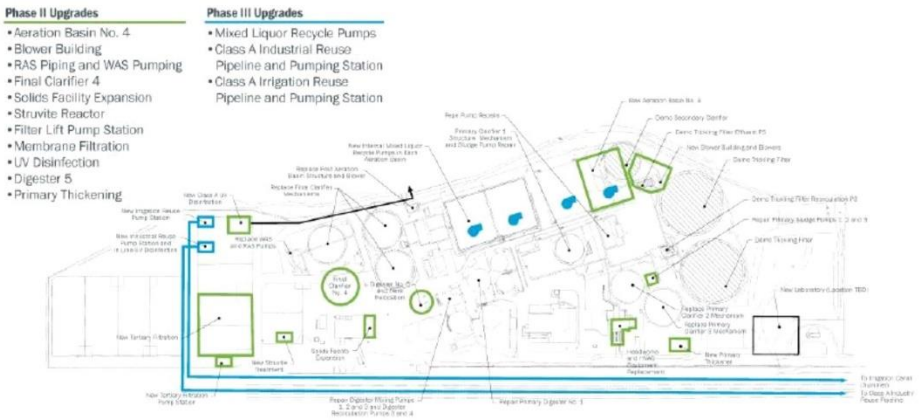
–Uncertainty in the trading framework
– Long-term viability of trading

- Both Alternatives 2 and 2.5 provide benefit of potential economic development
- Alternative 2.5 becomes more favorable as the value of water increases beyond the assumed values

NWAG/Industrial Working Group Feedback

- When asked to choose just one alternative, NWAG members overwhelmingly favored Alternative 2.5
- Alternatives 2 and 2.5 were ranked the highest on comment sheets
  – NWAG members saw value in reusing water and the benefits to industry and/or irrigation customers
  – Members indicated the need to consider the future and long-term growth
- IWG is interested in developing recycled water program and sees potential in industrial reuse
- Alternatives 5 and 6 were ranked the lowest due to concerns with the risks associated

Preferred Alternative: Nampa's Recycled Water Program

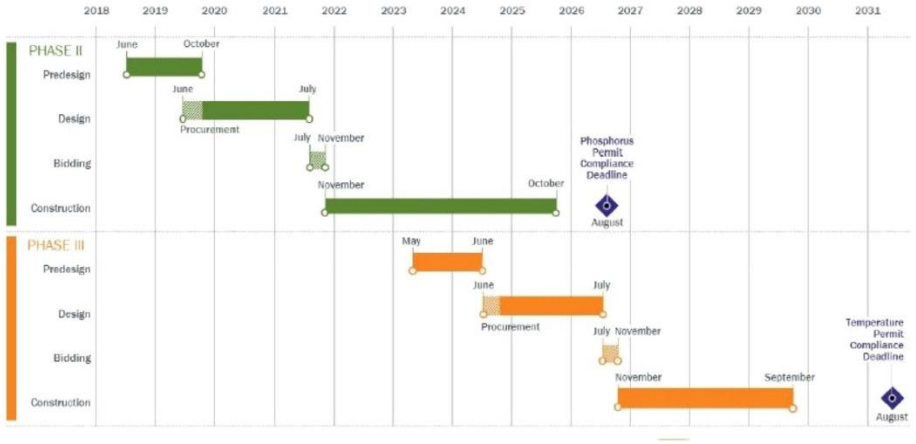


Capital Improvements Plan

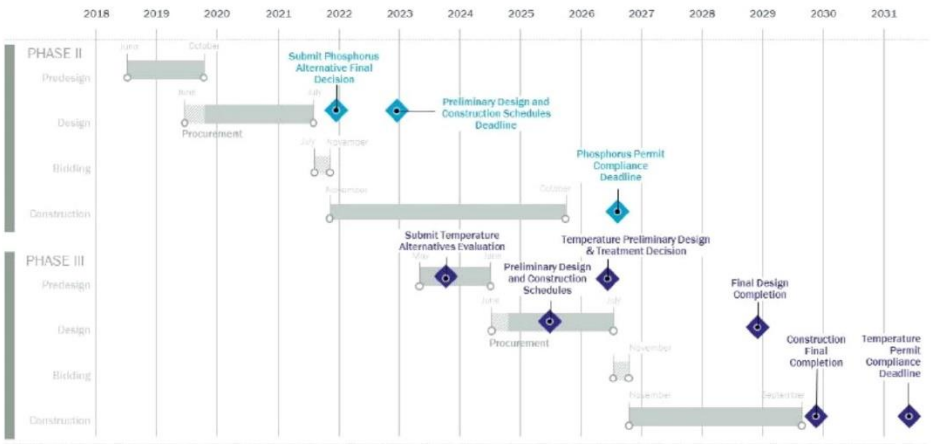
Project Component	Cost*
Phase II Upgrades	$108,957,000
Phase III Upgrades	$11,919,000
Repair and Replacement Projects	$13,223,000
Programmatic Contingency	$15,488,000
TOTAL	**$149,587,000**

**Costs are presented in 2017 dollars.*

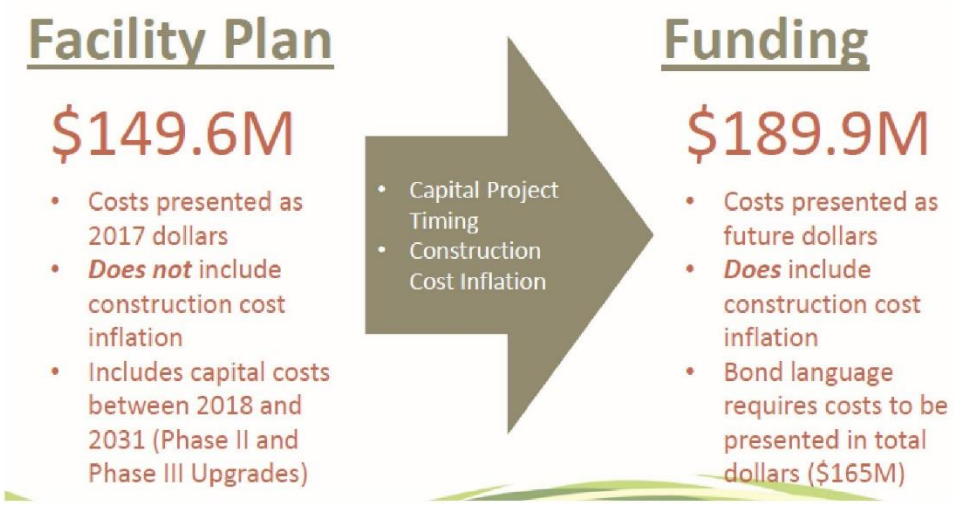
Capital Improvements Schedule



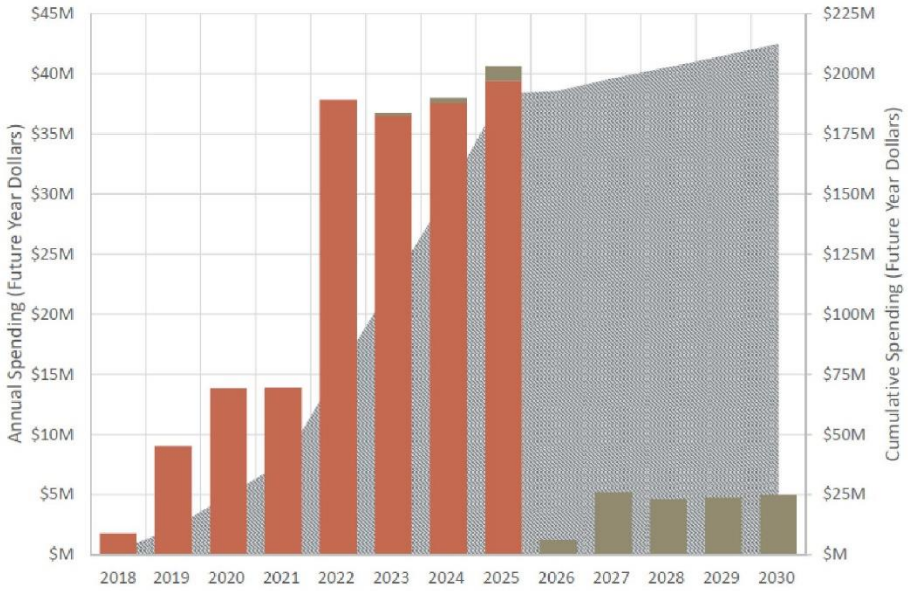
Capital Improvements Schedule



Understanding the Phase II Costs



Capital Improvement Plan Outlays



Facility Plan Review Timing

- December 8th – *Draft Facility Plan delivered to DEQ for technical review*
- January 18th - *DEQ Technical Review Comments Received*
- January 25th - *DEQ Technical Approval*
- January 29th – *Facility Plan available for public review*

Councilmembers asked questions of staff and the consultants.

Those appearing in favor of the request were: Charles Fuller, 116 South Locust Street; Chris Veloz, 721 5th Street South; Hubert Osborne, 4199 East Switzer Way; Paul Raymond 547 South Valley.

Those appearing in opposition to the request were: Klynn Miller, 619 Crocus Court; Eric Erickson, Amalgamated Sugar Company.

Councilmembers asked questions of Eric Erickson.

Mayor Kling asked some questions on the timing of the proposal.

Matt Gregg and Michael Fuss addressed the question that were asked in public testimony.

MOVED by Haverfield and **SECONDED** by Skaug to **close** the **public hearing**. Mayor Kling asked all in favor say aye with all Councilmembers present voting **AYE**. Mayor Kling declared the

MOTION CARRIED

Councilmembers had discussion and made comments on the request.

MOVED by Bruner and **SECONDED** by Skaug to **approve** the wastewater treatment facility plan which contains technical components of treatment and discharge based on the **alternative 2.5.** The Mayor asked for a roll call vote with all Councilmembers present voting **YES**. The Mayor declared the

MOTION CARRIED

Item #16 – The following Ordinance was read by title:

AN ORDINANCE DETERMINING THAT CERTAIN LANDS, COMMONLY KNOWN AS **411 S. HAPPY VALLEY ROAD**, COMPRISING APPROXIMATELY 6.85 ACRES, MORE OR LESS, LAY CONTIGUOUS TO THE CITY LIMITS OF THE CITY OF NAMPA, COUNTY OF CANYON, STATE OF IDAHO, AND THAT SAID LANDS SHOULD BE **ANNEXED** INTO THE CITY OF NAMPA, IDAHO, AS PART OF THE **BC (COMMUNITY BUSINESS) ZONE**; DECLARING SAID LANDS BY PROPER LEGAL DESCRIPTION AS DESCRIBED BELOW TO BE A PART OF THE CITY OF NAMPA, CANYON COUNTY, IDAHO; DIRECTING THE CITY ENGINEER AND PLANNING AND ZONING DIRECTOR TO ADD SAID PROPERTY TO THE OFFICIAL MAPS OF THE CITY OF NAMPA, IDAHO; REPEALING ALL ORDINANCES, RESOLUTIONS, ORDERS OR PARTS THEREOF IN CONFLICT HEREWITH; PROVIDING AN EFFECTIVE DATE; AND, DIRECTING THE CLERK OF THE CITY OF NAMPA TO FILE A CERTIFIED COPY OF THE ORDINANCE AND MAP OF THE AREA TO BE ANNEXED WITH CANYON COUNTY, STATE OF IDAHO, AND THE IDAHO STATE TAX COMMISSION, PURSUANT TO IDAHO CODE, SECTION 63-215. (Applicant Veronica Buxton and Samuel Wolfe)

The Mayor declared this the first reading of the Ordinance.

Mayor Kling presented a request to pass the preceding Ordinance under suspension of rules.

MOVED by Haverfield and **SECONDED** by Levi to **pass** the preceding **Ordinance** under suspension of rules. Mayor Kling asked for a roll call vote with all Councilmembers present voting **YES.** The Mayor declared the ordinance duly passed, numbered it **4361** and directed the Clerk to record it as required.

MOTION CARRIED

[Pages 48-58 of Minutes omitted]

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER REUSE PERMIT NO. M-225-01	Docket No. P-DR-2020-001 **AMENDED SCHEDULING ORDER**

BACKGROUND

On September 11, 2020, the Director of the Idaho Department of Water Resources held a continued prehearing conference in the above referenced matter to check on the status of the parties' stipulations. All parties were represented by video conference or phone except for the City of Idaho Falls. Based upon a request to amend the scheduling order, the Director amends the briefing schedule as set forth below.

AMENDED SCHEDULING ORDER

IT IS HEREBY ORDERED that the following amended schedule is ADOPTED:

October 2, 2020	Deadline for Petitioner Riverside to submit its opening brief.
October 30, 2020	Deadline for parties to submit response briefs to Riverside's opening brief.
November 20, 2020	Deadline for Riverside to reply to party response briefs.
December 11, 2020	Deadline for party sur-replies to Riverside's reply brief.

DATED this 11th day of September 2020.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of September 2020, I served a true and correct copy of the foregoing document on the following by the method(s) indicated:

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Kimberle English
Paralegal

BEFORE THE DEPARTMENT OF WATER RESO

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	)	Docket No. P-DR-2020-01

PETITIONER'S OPENING BRIEF

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Table of Contents

Table of Authorities

Cases

Statutes

Rules

COMES NOW, Riverside Irrigation District Ltd., by and through its attorneys, Barker Rosholt & Simpson LLP, and hereby files this Petitioner's Opening Brief in this matter pursuant to IDAPA 37.01.01.260 and the Director's Amended Scheduling Order.

BACKGROUND

The City of Nampa (Nampa) and Pioneer Irrigation District (Pioneer) have entered into an agreement that purports to authorize Nampa to discharge up to 41 cfs of effluent from its Waste Water Treatment Plant (WWTP) into Pioneer's Phyllis Canal (Reuse Permit). *See* Exhibit F, p. 2[1]. Pioneer is obligated to take this effluent for twenty-five years. *Id.* p.4, ¶ 2. Under the agreement Pioneer will handle, manage and convey the effluent as part of Pioneer's integrated operations. *Id.* p.4, ¶ 3. Neither party sought approval of the Department of Water Resources (IDWR) for the use of this water. Stipulation of Facts ¶ 35 (hereafter SOF).

Nampa filed an application with the Idaho Department of Environmental Quality (IDEQ) for a Reuse Permit to authorize the use of Nampa's water in Pioneer's canal system. IDEQ issued a Reuse Permit authorizing that use as finding that the use would comply with Idaho's water quality rules, but IDEQ recognized it had no authority over the water rights or water use. SOF ¶ 47; Exhibit R. Riverside Irrigation District, Ltd. (Riverside) filed a *Petition for Declaratory Ruling* (Riverside's Petition) on February 24, 2020, requesting a ruling from the Director that Pioneer cannot accept or divert water from Nampa under the Reuse Permit and put that water to beneficial use without a water right. Several municipal entities submitted Petitions to Intervene. Pioneer and Idaho Power also filed motions to intervene. The Director issued an Order Granting Motions to Intervene on June 11, 2020. Subsequently, the Director issued an Amended Scheduling Order setting a briefing schedule and, in compliance with that Order, Riverside now submits this Petitioner's Opening Brief.

[1] Citations to Exhibits refer to the page number of the Exhibit, not the internal page number where the Exhibit contains multiple documents.

INTRODUCTION

Fundamentally this case involves a situation where two water users have entered into a private agreement to allocate the use of waters of the State of Idaho between themselves without even seeking review or approval of the Director, even though the Director is charged with the administration and delivery of water in this State. Idaho Code § 42-602, § 42-1706. The Supreme Court has described the Director as having "broad powers to direct and control distribution of waters..." *In re SRBA (Basin-Wide Issue – 17)*, 157 Idaho 385, 393, 336 P. 3d 792, 800 (2014). The obligation to distribute water is a "clear legal duty." *Id.* Yet, Pioneer and Nampa would remove the Director from any decision regarding delivery of over 40 cfs of water in Water District 63.

Nampa and Pioneer describe this private agreement as a "win-win." No doubt both Nampa and Pioneer win. Nampa thinks it will save money. Pioneer thinks it will get more water. Nampa finds it easier to comply with its water quality obligations. Pioneer gets more water. This agreement allows for no consideration of how other water users are or may be affected by Nampa providing water to Pioneer. When two water users decide how to divide up the waters of the State without any supervision, there very likely will be losers – both other water users and the authority of the Director.

Nampa and Pioneer's Reuse Agreement, and IDEQ's subsequent Reuse Permit, purport to allow Nampa to change its point of discharge of effluent and, importantly here, deliver that water to a water user who has no water right to divert or use that water, resulting in injury to existing water right holders. This Reuse Agreement precludes analysis of injury to other affected water users and includes no procedures for any mitigating conditions, through either a new water right application or a transfer application for the existing water rights. The only state agency that

has reviewed and conditioned this action is IDEQ – an agency that admittedly has no jurisdiction over water rights or water use. Accordingly, Riverside's Petition asks the Director to issue a declaratory ruling that this private water distribution scheme must be reviewed under Idaho's water right review process for new or expanded uses. The actions contemplated under the Reuse Permit are not *de minimus* or insignificant. The Reuse Agreement contemplates reducing large amounts of water otherwise available to a senior water user's water right during irrigation season, and re-diverting that water to supplement or augment the irrigation water supply of another irrigation district that will then apply that "new source" of water to more than 17,000 acres of land, not previously irrigated from this source.

STATEMENT OF FACTS

A. Facts relevant to Riverside Irrigation District

Riverside is a duly organized and operating non-profit corporation with water rights authorizing irrigation up to 10,158 acres within its authorized water right place of use, located primarily west of Greenleaf, Idaho. SOF ¶ 5. Riverside's place of use is described by a general description in the manner set forth in Idaho Code § 42-219, using a digital boundary as defined in Idaho Code § 42-202B. SOF ¶ 5.

Indian Creek is a primary source of water for Riverside. SOF ¶ 31. During the irrigation season, Riverside typically diverts most, if not all, of the flow of Indian Creek into the Riverside Canal west of Caldwell and just above the mouth of Indian Creek. SOF ¶ 31 & Exhibit H, at 30. Riverside estimates that more than 50 percent of its water supply comes from Indian Creek. SOF ¶ 31. Riverside's water rights authorize it to divert approximately 180 cfs of water from Indian Creek, under Water Right Nos. 63-2279 and 63-2374. These rights have 1915 and 1922 priority dates. SOF ¶ 33.

Currently, Nampa discharges the effluent from its wastewater treatment plant to Indian Creek where the water is comingled with other waters of the State. SOF ¶ 30. The water in Indian Creek has historically been diverted and put to use by senior downstream water right holders, including Riverside. SOF ¶ 30. If Nampa discharges this water to the Phyllis Canal for use by Pioneer, that water will no longer be available in Indian Creek during the irrigation season (SOF ¶ 34), and Riverside will be harmed by the reduction in flow in Indian Creek.

B. Facts Relevant to Pioneer Irrigation District

Pioneer is a duly organized and operating irrigation district with water rights authorizing irrigation of up to 34,204.16 acres of land within its authorized water right place of use. SOF ¶ 1. Pioneer asserts that it has apportioned benefits under Idaho Code § 43-404 of one miner's inch (0.02 cfs) per acre equally to all the lands in the District. SOF ¶ 1. Pioneer's place of use is described by a general description in the manner set forth in Idaho Code § 42-219, using a digital boundary as defined in Idaho Code § 42-202B. SOF ¶ 1. The land served by Pioneer includes north and northwest Nampa and much of the City of Caldwell. SOF ¶ 2.

The sources of water for Pioneer's water rights include the Boise River, Indian Creek, Wilson Drain, Mason Creek Drain, Five Mile Creek Drain, Pipe Gulch Draw Creek/Drain, Elijah Drain, and certain specific groundwater wells. SOF ¶ 4 & Exhibit P. Pioneer does not have a water right to divert or put Nampa's effluent to use. SOF ¶ 35.

C. Facts Relevant to Nampa

1. <u>Nampa is a Municipality</u>

Nampa is a duly organized and operating Idaho municipal corporation with a population of approximately 100,000. SOF ¶ 6. Nampa is a "municipality" within the definition of Idaho Code § 42-202B(4) and is a "municipal water provider" within the meaning of Idaho Code § 42-

202B(5). SOF ¶ 7. Nampa owns and operates two separate municipal water delivery systems, one for potable water ("Potable System") and one for non-potable pressurized irrigation water ("Non-Potable System"). SOF ¶ 8. Nampa has established a municipal irrigation system under Idaho Code Title 50, Chapter 18, to deliver non-potable water. SOF ¶ 19. Nampa has entered into contracts with Pioneer, Nampa & Meridian Irrigation District and Boise-Kuna Irrigation District for delivery of irrigation district water to the municipal irrigation system. *Id.*

2. Nampa's Water Rights

Nampa's water rights are divided between water rights for its potable water system and other water rights for its non-potable pressurized irrigation water system. SOF ¶ 8. The water rights at issue here are Nampa's potable water rights, because those rights are the source of the effluent that Nampa proposes to deliver to Pioneer. SOF ¶ 23, 25.

The Stipulation of Facts makes clear how Nampa's water rights are decreed or licensed and how they should be administered by the Department. Table 1 lists 18 ground water rights associated with Nampa's potable water system. SOF ¶ 9. All of Nampa's potable water supply comes from ground water rights. *Id.* Each of the potable water rights are authorized for "municipal purposes" in accordance with Idaho Code § 42-202B(6). SOF ¶10. The place of use for each of these rights is Nampa's service area in accordance with Idaho Code § 42-202B(9). SOF ¶ 11. After pumping water from these wells, Nampa delivers potable water from these wells to its potable water customers. SOF ¶ 23. Nampa's potable water generates sewage that is collected from residents, businesses and institutions in Nampa by Nampa's sewage system. *Id.* That sewage, or "influent", is delivered to Nampa's Wastewater Treatment Plant (WWTP), and the treated water that is discharged from the WWTP is called "effluent." *Id.* This effluent, also known as wastewater, is what Nampa proposes to discharge to the Phyllis Canal.

Nine of Nampa's potable water rights were decreed in the SRBA. The other nine are licensed post-SRBA rights. As is true with all water rights in the State, all of Nampa's water rights are subject to the conditions of the water rights, either decree or license. SOF ¶ 12. *See also*, Idaho Code § 42-1411(2)(i)(conditions on water rights decrees).

The conditions on the water rights were not included verbatim in the Stipulation of Facts, but the water rights are public records of the Department of the type that the Director typically relies upon in contested case proceedings. *See* Documents Officially Noticed, *In The Matter of Accounting for Distribution of Water to the Federal Instream Reservoirs in Water District 63*, p.3 (August 19, 2015).

Nampa's potable water rights generally include one of two important conditions. One, the rights are for use in Nampa's potable water system (63-2779, 63-2781, 63-5258, 63-7567, 63-8324, 63-9180, 63-10212). These potable water rights do not authorize use of potable water in the non-potable system, or on Pioneer's land. As seen above, the effluent from Nampa's WWTP is sourced from the water rights for its potable water system. SOF ¶ 25.

The second condition on Nampa's potable water rights that is pertinent here is a condition precluding the use of the water from these rights for irrigation of land that has appurtenant surface water unless, and until, the surface water is not available. This condition appears on the licensed potable water rights. (*See* Water Right 63-12474, et al.) The condition reads:

> The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.

Water Right 63-12474. This same condition precluding the use of water when there are appurtenant and available water rights on the land also appears on the water rights for Nampa's

non-potable system. *See* Water Right 63- 2449, et al. When this condition appears on water rights it generally is intended to cover water use in the shoulder seasons or when the surface water supply is simply not available. Thus, this condition precludes the use of Nampa's potable water and non-potable water rights on lands of Pioneer, Nampa-Meridian and Boise-Kuna Irrigation Districts unless and until the irrigation districts turn water out of their canals and the surface water is no longer available for delivery by the irrigation districts. The Reuse Application clearly indicates that Nampa and Pioneer do not intend to limit the application of this potable water to the shoulder seasons, but intend to apply it throughout the entire irrigation season. Exhibit J, at 70.

3. Nampa's Proposed Discharge to the Phyllis Canal

At this time, the water used in the potable water system is collected, treated and discharged from Nampa's WWTP to Indian Creek upstream of Riverside's point of diversion on Indian Creek. SOF ¶ 27-28. Under current operations, Nampa discharges approximately 18.6 cfs (6,825 acre-feet) of water to Indian Creek during the 185-day irrigation season and 17.0 cfs (6,069 acre-feet) during the 180-day non-irrigation season. SOF ¶ 29.

Under the Reuse Agreement and Reuse Permit, Nampa intends to eliminate all of its WWTP wastewater discharge to Indian Creek during the irrigation season, while continuing to discharge to Indian Creek during the non-irrigation season. SOF ¶ 34. The Reuse Permit prohibits Pioneer from spilling water back to Indian Creek for water quality reasons. Exhibit G, at 16. To the extent otherwise allowed by Idaho law, Nampa's proposed wastewater discharge to the Phyllis Canal has been approved by IDEQ as meeting Idaho water quality standards. SOF ¶ 45.

In lieu of discharging to Indian Creek, Nampa proposes to discharge at a location on the

Phyllis Canal. SOF ¶ 53. While Nampa has not finalized the exact location of this point of discharge, the location is proposed to be about mid-way in Pioneer's district boundaries. SOF ¶ 53. Based on the proposed location there are approximately 17,000 acres of Pioneer's land downstream of the proposed point of discharge to the Phyllis Canal. SOF ¶ 55.

D. The Municipal Irrigation Agreements

Nampa operates a municipal irrigation system relying on the provisions of Chapter 18, Title 50 of the Idaho Code. SOF ¶ 19. These Code provisions allow Nampa to establish an irrigation system and deliver irrigation water. Idaho Code § 50-1801. A city like Nampa is also expressly authorized to enter into contracts with irrigation districts to act as the agent for the irrigation district to distribute water to lands within the irrigation district boundaries and the city's municipal irrigation system. Idaho Code § 50-1805.[2]

Nampa has entered into three contracts with irrigation districts to act as their "agent" for delivery of water. SOF ¶ 19. It has contracts with Pioneer, Nampa & Meridian and Boise-Kuna Irrigation Districts. SOF ¶ 19. The current contract with Pioneer is Exhibit L. This contract provides that Pioneer shall deliver water to certain points of delivery, and that the City will deliver water to the persons having the right to receive Pioneer's water through the City's municipal irrigation system. *See* Exhibit L, at 9; Idaho Code § 50-1805. Under the contract and Idaho law, Nampa is the agent of Pioneer for delivery of water to Pioneer's landowners. Nampa is to deliver water to these Pioneer landowners on equal footing with all other Pioneer landowners. Nampa collects assessments from Pioneer's landowners and remits those assessments to Pioneer. Exhibits

[2] Idaho Code § 50-1805A allows a city to pool the water rights for delivery, so that the city doesn't have to have separate delivery systems for each irrigation district's lands. However, the Act makes clear that the landowner of each district retains his or her status as a district landowner. Under Idaho Code § 50-1805 the landowner can demand delivery in accordance with the water rights appurtenant to his or her land (i.e. the district's water rights). When delivering district water the City is the "agent" of the District, Idaho Code § 50-1805.

L & M. Nampa has similar agreements with Nampa & Meridian and Boise-Kuna. Exhibits N & O. The persons receiving Pioneer water from Nampa's municipal irrigation system remain Pioneer landowners, and the Nampa-Meridian and Boise-Kuna landowner recipients remain landowners of their respective districts. The persons receiving a water supply from Nampa's non-potable system who are not Pioneer landowners are not transformed by Chapter 50, Title 18, or the contracts, into Pioneer landowners, entitled to Pioneer deliveries.

E. The Reuse Agreement and Reuse Permit

The effluent limitations for Nampa's wastewater are currently governed by an NPDES permit issued by EPA under the Clean Water Act because Nampa discharges to Indian Creek. SOF ¶ 36, 41. The primary constituents of concern are total phosphorus and temperature. SOF ¶ 36. A key motivating factor for Nampa's change in discharge to the Phyllis Canal is that IDEQ's water quality standards for manmade waterbodies are more easily attainable than the water quality standards for Indian Creek. SOF ¶ 41.

On March 7, 2018, Nampa and Pioneer entered into a Reuse Agreement whereby Nampa would seek a recycled water reuse permit from IDEQ authorizing Nampa to discharge up to 41 cfs of Class A recycled water to Pioneer's Phyllis Canal as supplemental irrigation water supply. Exhibit F, at 15. The Reuse Agreement expressly memorializes Pioneer's desire "to seasonally receive Recycled Water from the City as a supplemental source of irrigation water supply…" *Id.*, (emphasis added).

The Reuse Agreement authorizes discharge to the Phyllis Canal and use of water by Pioneer's landowners of 41 cfs, larger than the 31 cfs ultimately authorized under the Reuse Permit. Nampa and Pioneer assert that this larger use by Pioneer reflects their longer-term water reuse goals that extend beyond the 25-year time frame of the Reuse Permit. SOF ¶ 49; Exhibit F.

A pre-application conference was held with IDEQ on August 3, 2018 and a draft permit application was received by DEQ on November 5, 2018. Exhibit H, at 10. IDEQ and Nampa met to go over IDEQ's comments on the draft permit application. *Id.* Nampa's formal application, including Brown & Caldwell's Preliminary Technical Report (PTR) was submitted March 21, 2019. Exhibit J. IDEQ staff prepared a formal written analyses of Nampa's application on October 10, 2019. Exhibit H. This report summarized Nampa's proposal and its environmental impacts. *Id.* The draft permit was thereafter released for public comment. Exhibit H, at 10.

During the comment period for the draft permit, Riverside commented to IDEQ that Pioneer had no water right to use the reuse water on land within Pioneer boundaries. SOF ¶ 47; Exhibit Q. IDEQ responded to Riverside's comments by stating that IDEQ does not regulate water rights or have the ability to respond to Riverside's comments concerning water use. SOF ¶ 47; Exhibit R, at 26. IDEQ included a provision in the Reuse Permit acknowledging that Nampa as the permittee is not relieved of its duty to comply with the other state laws and rules. SOF ¶ 47. IDEQ advised Riverside that Nampa has been informed of this concern. Exhibit R, at 26. Pioneer, Nampa and Riverside agree that IDEQ has no authority to authorize diversion or beneficial use of water and that whether a water right is necessary or not is a matter for IDWR. SOF ¶ 47. As a matter of Idaho law, IDEQ has no right or authority to "supersede, abrogate, injure or create rights to store or divert water and apply water to beneficial use…" Idaho Code § 39-104(4).

On January 21, 2020, IDEQ issued Reuse Permit No. M-255-01. The Permit authorizes the Nampa to construct, install, and operate a reuse facility. Under the Reuse Agreement and Reuse Permit, Nampa intends to divert and deliver water to Pioneer through a gift of 31-41cfs of water to Pioneer's Phyllis Canal. In turn, Pioneer intends to use the water supplied to it under this Reuse Permit to deliver water to Pioneer for Pioneer's landowners to apply to beneficial use. See *U.S. v.*

Pioneer Irrigation District, 144 Idaho 106, 110, 157 P.3d 600, 604 (2007)(irrigators of district put the water to beneficial use).

The primary constituents of concern in Nampa's wastewater are total phosphorus and temperature. It is important to recognize the pollutants of concern, because those pollutants drove the analyses of how the water will be used and spread under the Reuse Permit. With the change in discharge, temperature will no longer be an issue for Nampa because the designated use of the Phyllis Canal, agricultural water supply, does not have a temperature criterion. SOF ¶ 41. Total phosphorus, on the other hand, is still a constituent of concern that must be addressed in Nampa's wastewater discharge, whether to Indian Creek or the Phyllis Canal, but compliance for Clean Water Act purposes is more easily attained through widespread land application (Reuse Permit) than through discharge to Indian Creek.

The Reuse Permit clearly intends that Nampa's effluent will be spread throughout Pioneer's district lands, downstream of the point of discharge in the Phyllis Canal, and not only to land owned by Nampa or Nampa customers. IDEQ's Staff Analysis for "Constituent Loading" relating to total phosphorus, analyzes the concentration of phosphorus in the discharge, the design flow of the 31 cfs discharge and the mixing of that discharge into the 200 cfs of water in the Phyllis Canal. *Exhibit H*, at 37. IDEQ's analysis also factors in "total acreage" and the fact that "nutrient needs of the crops are greater than that provided by the additional nutrient supplied by the recycled water." *Id.*, at 38. IDEQ's analysis echoes Nampa's own Preliminary Technical Report's finding that "Considering the end of the recycled water discharge pipe as the point of compliance and the approximately 17,000 irrigated acres of Pioneer service area downstream from the discharge point, constituent or hydraulic loading is not anticipated to exceed agronomic uptake rates of crops in the Pioneer service

area." Exhibit J, at 71. IDEQ's area of analysis shown on Figure 3 to the Staff Analysis. Exhibit H, at 18. (copy attached hereto as Attachment A)

Other examples demonstrate that IDEQ relied on widespread (i.e., 17,000 acres) application of the wastewater, including the Reuse Permit requirement for education regarding fertilizer application to accommodate the increase in nutrients supplied by the wastewater. "Growers of crops and turf grass will be used to providing nutrient needs via fertilizer, so the City and Pioneer will need to educate the public of the benefit of this additional nutrient being provided in the water so the growers can account for this prior to adding fertilizer." Exhibit H, at 39. IDEQ also analyzed the hydrogeology in the area of the Reuse Application, and determined "Nutrient loading from irrigation with recycled water… shows that nutrient loading will be low and crop uptake of those nutrients will exceed application, so ground water impacts are not expected." Exhibit H, at 20. IDEQ's analysis of the Phyllis Canal notes" Under typical operation the demand for water is higher than the water volume available for deliver [sic] by the Phyllis Canal, and the deficiency is typically made up from ground water pumping and irrigation rotation." Exhibit H, at 31. The extent to which the recycled water is to be land applied led IDEQ to conclude "The City and Pioneer have sufficiently demonstrated in the [preliminary technical report] that the recycled water discharged to the Phyllis Canal will not return to jurisdictional waters of the state" Exhibit H, at 32. IDEQ's Permit does not require soil monitoring because "Soil monitoring requirements are not recommended for this widespread Class A recycled water use." Exhibit H, at 48 (emphasis added).

The reality is that IDEQ issued the Reuse Permit based on the premise that Nampa's wastewater will be delivered and applied to 17,000 acres throughout Pioneer's district boundaries below the point of discharge on the Phyllis Canal. IDEQ would likely not have been able to issue the Reuse Permit for wastewater application to land if the land area to which the

effluent is applied was not sufficiently large enough to properly process the constituents of concern in the wastewater if discharged into waters of the state or seep into the ground water.

IDEQ's Reuse Permit does not require any of the reuse water to be reused solely by Nampa itself; rather, IDEQ's analysis states the wastewater will used "for irrigation by the users of [the Phyllis Canal's] network. Exhibit H, at 9. Under IDEQ's Recycled Water Rules, when evaluating an application for a reuse permit, "[s]pecific conditions shall be established in consideration of characteristics specific to a facility." IDAPA 58.01.17.600.01. Such characteristics include "[l]egal considerations relative to land use and water rights." IDAPA 58.01.17.600.01.d.

While IDEQ did not expressly require Nampa or Pioneer to obtain a water right for the use authorized in the Reuse Permit by Pioneer, the Reuse Permit does require Nampa to comply with "all other applicable federal, state, and local laws, statutes, and rules." SOF ¶47. IDEQ's response to Riverside's comments admitted that IDEQ did not believe it had authority to determine whether Nampa or any other entity was required to obtain a water right or not. Exhibit R, at 26. That is now the question for the Director in this proceeding.

ARGUMENT

I. A Water Right is Required for the Diversion and Use of Water Under Idaho Law

The right to divert and use water in Idaho predates statehood and the Idaho Constitution. "As early as 1881 a statutory procedure for appropriating water was adopted, providing that a person intending to appropriate water should post a notice at the point of diversion and record the same." *Fremont-Madison Irr. Dist. v. Idaho Ground Water Appropriators*, 129 Idaho 454, 456, 926 P.2d 1301, 1303 (1996) (referring to *Hutchins, The Idaho Law of Water Rights*, 5 Idaho L.Rev. 1 (1968). "Diversion is a prerequisite to appropriation of water, along with the application of such water to a beneficial use," *Hidden Springs Trout Ranch, Inc. v. Hagerman Water Users,*

Inc., 101 Idaho 677, 679, 619 P.2d 1130, 1132 (1980).

Idaho Code is clear that "[n]o person shall use the public waters of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse **or** apply water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists." Idaho Code § 42-201(2)(emphasis added). Idaho § Code 42-201(2) is not limited only to water withdrawn from a "natural watercourse" as Nampa asserts. The disjunctive use of the word "or" in this code section extends this requirement to any application of water to land. "The word 'or' ... is '[a] disjunctive particle used to express an alternative or to give a choice of one among two or more things." *City of Blackfoot v. Spackman*, 162 Idaho 302, 307, 396 P.3d 1184, 1189 (2017) (quoting *Markel Int'l Ins. Co., Ltd. v. Erekson*, 153 Idaho 107, 110, 279 P.3d 93, 96 (2012).

A water right is also required for the diversion of groundwater. Idaho Code § 42-230 defines groundwater as "all water under the surface of the ground whatever may be the geological structure in which it is standing or moving." Idaho Code § 42-230 (2003). "Ground water may be appropriated under either a constitutional method or by statutory permit, depending upon the date of beneficial use and diversion." *A & B Irrigation Dist. v. Aberdeen-Am. Falls Ground Water Dist.*, 141 Idaho 746, 750, 118 P.3d 78, 82 (2005) (citing *R.T. Nahas Co. v. Hulet*, 114 Idaho 23, 26, 752 P.2d 625, 628 (Ct.App.1988)). Thus, under Idaho Code and caselaw, it is clear that a water right is required in order to apply water to land, regardless of the source of that water.

Nampa and Pioneer attempt to evade this bedrock principle of Idaho water law by characterizing the proposed new diversion of effluent for beneficial use in the Phyllis Canal as "directing" Nampa's wastewater. *See Nampa's Answer to Petition*, at 4, and "Nampa's

redirection of wastewater for subsequent irrigation reuse…" *Pioneer's Petition to Intervene*, at 2. Not only is the proposed discharge in fact a new diversion and a new source for Pioneer, under the Reuse Permit, Pioneer intends to "reuse the city's wastewater for irrigation purposes." *Id.* In other words, Pioneer expects to divert the water and apply it to beneficial use. Yet, Pioneer admits it "does not hold a water right, nor has it sought a water, that expressly authorizes it to accept wastewater from Nampa pursuant to its Reuse Agreement with Nampa." SOF ¶ 35.

Pioneer describes itself as a mere "recipient of the Class A recycled wastewater…" *Pioneer's Petition to Intervene*. at 4 (emphasis added). Yet Pioneer admits it will "benefit through the wastewater input operationally" *Id.* at 5, and that the "wastewater will also serve as a robust and reliable source of water offsetting and mitigating declining drain water sources Pioneer uses to supplement Phyllis Canal flows…" *Id. See also* Exhibit S "Class A recycled wastewater (IDAPA 58.01.17) may be a new source of water…." (emphasis added). Despite Pioneer's admissions to receipt of a beneficial, robust and reliable new source of water, Pioneer maintains it does not need a water right to take delivery of the water and apply it throughout its boundaries. Pioneer knows it needs a water right to appropriate wastewater. Many of its current water rights are for wastewater from drains, as explained in Exhibit S ("Phyllis and Highline Canals use drain water from Fivemile and Fifteenmile Drains, respectively, to supplement live and storage flows….) Exhibit S, at 29 of 50. Pioneer is currently applying for new drain wastewater rights from Mason Creek. *See* Application for water right 63-34644. Pioneer further agrees that a pipeline from Nampa's WWTP "is not very different" from a feeder canal collecting drain water. Exhibit S, at 29 of 50.

Pioneer acknowledges that "Riverside believes that Nampa's redirection of wastewater for subsequent irrigation reuse absent a new water right (or water rights) constitutes an illegal

diversion and use of water." Petition to Intervene. *Id.* at 2. Yet rather than explain why this diversion and application to beneficial use does not require a water right, Pioneer instead explains that Nampa will save money by changing its point of discharge. Whether Nampa saves money or not, that fact does not exempt Pioneer or Nampa from complying with Idaho water law.

The alternative to requiring Pioneer to apply for a new water right as a predicate for Pioneer to apply the water to beneficial use is to require a transfer of Nampa's potable ground water rights. Water transfers in Idaho are governed by Idaho Code § 42-222. *Barron v. Idaho Dep't of Water Res.*, 135 Idaho 414, 417, 18 P.3d 219, 222 (2001). Under the Reuse Permit the place, period and nature of use for Nampa's ground water and resulting effluent will change. Idaho Code § 42- 222 requires a water right transfer because "any person who desires to change the point of diversion or the place, period, or nature of use of the water must apply to the IDWR for approval." *Barron v. Idaho Dep't of Water Res.*, 135 Idaho 414, 417, 18 P.3d 219, 222 (2001)(referencing I.C. § 42–222(1)). In *Barron*, the Idaho Supreme Court remarked:

> In determining whether or not to approve the transfer, the director is instructed to "examine all the evidence and available information," including the watermaster's recommendation, and to approve the change in whole or in part if "no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and [the change] is the local public interest...."

Barron v. Idaho Dep't of Water Res., 135 Idaho 414, 417, 18 P.3d 219, 222 (2001) (quoting Idaho Code § 42–222(1))(emphasis added). See also *Jenkins v. State Dept. of Water Resources* "[t]he director is statutorily required to examine all evidence of whether the proposed transfer will injure other water rights...." *Jenkins v. State Dept. of Water Resources*, 103 Idaho 384, 387, 647 P.2d 1256, 1259 (1982).

II. The Nature and Source of the Water

Determining whether a new water right application or a transfer application is needed here requires an examination of the water rights and then to identify the source of the water proposed to be delivered to Pioneer.

A. Nampa's Effluent Water Rights are for Municipal Use Only

Beneficial uses must be identified under the purpose of use element of a water right. Idaho Code §§ 42-1411(2)(f), -1412(6); *City of Blackfoot v. Spackman*, 162 Idaho 302, 310, 396 P.3d 1184, 1192 (2017). The water rights for Nampa's effluent are designated for use in Nampa's potable water system and cannot be subsequently applied to Pioneer's land as irrigation water without either a new water right for the beneficial use of irrigation, or an amendment to the existing water rights, accomplished through a transfer. "The sole mechanism for altering, adding, or subtracting from a judicially decreed purpose of use element is through an application for transfer." I.C. § 42-222(1); *City of Blackfoot v. Spackman*, 162 Idaho 302, 310, 396 P.3d 1184, 1192 (2017). Idaho Code § 42-222 applies to <u>any</u> person seeking to change on element of the water right. It applies equally to licensed water rights. *City of Pocatello v. Idaho*, 152 Idaho 830, 839, 275 P.3d 845, 854 (2012).

Nampa and Pioneer appear bent on transforming Nampa's potable water rights into Pioneer's irrigation water rights without undergoing <u>any</u> input or analysis from IDWR. *See*, e.g., Brown and Caldwell Preliminary Technical Report "The City is seeking a recycled water reuse permit from the Idaho Department of Environmental Quality authorizing discharge of Class A recycled water from the Nampa WWTP <u>as agricultural and municipal irrigation supply augmentation water to the Phyllis Canal</u>." Exhibit J, at 38. And "Once the water enters the canal

it is considered irrigation water and is managed by Pioneer Irrigation District for use downstream from the discharge point." *Id.*

In *City of Blackfoot v. Spackman*, the City applied for a groundwater right (27-12261) and proposed to offset the injury resulting from the appropriation with mitigation credit from an existing surface water right (01-181C) through groundwater recharge from seepage. The purpose of use for water right 01-181C allowed for "Irrigation Storage, Irrigation from Storage, Diversion to Storage, Recreation Storage and Irrigation." *City of Blackfoot v. Spackman*, 162 Idaho 302, 305, 396 P.3d 1184, 1187 (2017). The Court ruled that the City of Blackfoot could not change the purpose of use of the water right 01-181C to "recharge" without filing a transfer, stating "Uses must be identified under the purpose of use element of a water right. *Id.* at 310, 396 P. 3d at1192 (citing Idaho Code §§ 42-1411(2)(f) – 1412(6). The same logic applies here – Nampa and Pioneer cannot change the purpose of use from Nampa's potable water system to irrigation of Pioneer lands in contravention of the purpose of use language in the potable water rights, decrees and licenses.

The "Director's Report constitutes prima facie evidence of the nature and extent of water rights acquired under state law. Idaho Code § 42–1411(4)(2003)." *A & B Irrigation Dist. v. Aberdeen-Am. Falls Ground Water Dist.*, 141 Idaho 746, 750, 118 P.3d 78, 82 (2005). By statute, a "decree entered in a general adjudication shall be conclusive as to the nature and extent of all water rights in the adjudicated water system." Idaho Code § 42-1420(1); *City of Blackfoot v. Spackman*, 162 Idaho 302, 308, 396 P.3d 1184, 1190 (2017). Outside of the adjudication, changes to water rights must be obtained under Idaho Code § 42-222 proceedings. *City of Pocatello v. Idaho*, 152 Idaho 830, 839, 275 P.3d 848, 854 (2012).

Whatever agreement may exist between Nampa and Pioneer cannot alter nature of the water rights. "A private settlement agreement cannot define, add, or subtract from the elements of a validly adjudicated water right; it can only limit, condition, or clarify the administration of the right as between the private parties to the agreement." *City of Blackfoot v. Spackman*, 162 Idaho 302, 308–09, 396 P.3d 1184, 1190–91 (2017). Adjudicated water rights, such as the water rights held by Nampa and Pioneer, are a "judicially decreed property right" that is "binding on the IDWR." *Id.*, at 309, 1191. The Director "has a clear legal duty to distribute water according to decreed water rights." *Id.* (internal quotations omitted). As the Idaho Supreme Court held in *City of Blackfoot*, "[t]o allow the Settlement Agreement to enlarge or otherwise alter the clearly decreed elements of [a water right], would allow private parties to alter a judicial decree. Such a result is simply untenable." *Id.*

In sum, Nampa and Pioneer cannot "redirect" Nampa's effluent water to lands within Pioneer's irrigation district boundary under the currently decreed water rights. Idaho law is clear that their proposed action requires either a new water right or a transfer.

B. The Source of Nampa's Effluent is Groundwater

The Stipulation of Facts and the discussion of Nampa's water rights in Section C, 2 of the Statement of Facts above establish beyond doubt that the source of Nampa's water is ground water and that Nampa's WWTP treats and discharges ground water. That fact then leads to the question – what is the source of the water that Nampa intends to discharge to Pioneer's Phyllis Canal? Is that water still ground water, subject to the conditions on the ground water rights? Or is it wastewater? Important in that determination is that Nampa proposes to eliminate the discharge to Indian Creek, a natural waterway and water of the State. SOF ¶ 34. Instead Nampa

intends to discharge that effluent to Pioneer's Phyllis canal, which both Nampa and Pioneer contend is an artificial conveyance, belonging to Pioneer, not Nampa.

The answer to these questions is found in a decision of the Idaho Supreme Court which examined a similar set of facts and circumstances. *A&B Irrigation District v. Aberdeen-American Falls Ground Water District*, 141 Idaho 746, 118 P.3d 78 (2005). This *A&B* case involved the B unit of the District, which is irrigated from groundwater pumped from the Eastern Snake River Plain Aquifer. A&B collected the run-off from the B unit irrigation in ponds or drains and began using the collected water on an additional 2,363.1 acres. The use of this water was subject to SRBA claims. IDWR determined that the use was an enlargement and recommended subordination under Idaho Code § 42-1426, the Expansion Statute. This recommendation was upheld by the special master and the SRBA court. A&B appealed.

A&B argued that the excess water from irrigation of Unit B was wastewater that comingled with other natural sources, such as precipitation. As a result, A&B claimed the right to recapture this water because it had been transformed into waste or drain water.

The Supreme Court carefully analyzed the water so collected to determine the true source of that water. The Court first noted that it had previously recognized the right to appropriate drain, waste and seepage waters. *A&B*, 141 Idaho at 750, 118 P.3d at 82. The Court acknowledged that it was possible to view the water collected as waste or drain water. *Id.* at 751, 118 P.3d at 83. The Court then held that, if A&B wanted to treat the water as drain or waste water, rather than ground water, A&B would have to apply for a new water right. *Id* at 752, 118 P.3d at 84. Under the Court's determination in *A&B*, if Pioneer, the entity putting the water to use, wants to treat the effluent as drain or waste water, Pioneer would be required to seek "a new water right for this water source prior to any further use" on Pioneer's lands. *Id.*

Significantly for this proceeding, the Supreme Court did not rest its analysis there. The Court next examined what the consequences would be if the water from the Unit B use was classified as drain or wastewater. The Court concluded that such use would be an expansion of A&B's ground water right requiring subordination to other, junior users. *Id.* It is a rare circumstance where expansion of use does not cause injury. *Id.* The Court quoted the seminal observation from *Jenkins v. Idaho Dept. of Water Resources*, that "priority in time is an essential part of western water law and to diminish one's priority works an undeniable injury to that water right holder." *Jenkins v. Idaho Dept. of Water Resources*, 103 Idaho 384, 388, 647 P. 2d 1256, 1260 (1982). Hence, the Court held that any use of the water collected from Unit B, if treated as ground water, would have to be subordinated to other water rights or that "full mitigation of injury" takes place. *A&B*, 141 Idaho at 753, 118 P.3d at 85.

Finally, in *A&B* the Court "rejects" the logic in *Jensen v. Boise-Kuna Irrigation Dist.,* 75 Idaho 133, 269 P. 2d 755 (1954), to the extent that *Jensen* would allow treatment of the drain or wastewater as an independent source from its original source. In this case the original source of the effluent is indisputably ground water. The Court in *A&B* held that the collected water there, because it is originated as ground water, remained ground water and use of the water had to be treated subject to the law applicable to enlargements. *A&B*, 141 Idaho at 753, 118 P.3d at 85. The same result obtains here.

A&B compels certain conclusions in this proceeding with respect to the scheme that Nampa and Pioneer have agreed upon to use the effluent from Nampa's WWTP in Pioneer's Phyllis Canal. First, the effluent remains ground water. The effluent will no longer be discharged to a creek for diversion, appropriation and beneficial use by other users, as is currently the circumstance with Nampa's discharge to Indian Creek. Instead Nampa proposes to

supply that ground water to Pioneer for use on 17,000 acres to offset Pioneer's declining supply. SOF ¶ 55-56. Because the effluent remains ground water, it is subject to the law of enlargements and the protection of existing water users. *A&B*, 141 Idaho at 753, 118 P.3d at 85.

It is also worth noting the Reuse Agreement contemplates an increase in Nampa's discharge, up to 41 cfs, to accommodate future growth. SOF ¶49. If Nampa and Pioneer plan to apply that additional water to land outside of Nampa's service area, i.e., on Pioneer's land, the Reuse Permit would potentially violate Idaho Code. "When a water right or a portion thereof to be changed is held by a municipal provider for municipal purposes, as defined in section 42-202B, Idaho Code, that portion of the right held for reasonably anticipated future needs at the time of the change shall not be changed to a place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use." Idaho Code § 42-222.

C. The Right to Divert Water is Limited to the Source Described in the Water Right

In *Rangen, Inc. v. Idaho Dep't of Water Res.*, 159 Idaho 798, 804, 367 P.3d 193, 199 (2016), Rangen disputed the Director's conclusion that it was only allowed to divert from the mouth of the Martin-Curren Tunnel rather than what Rangen contended was a larger historical diversion. The Supreme Court began in stating: "By statute, "decree[s] entered in a general adjudication shall be conclusive as to the nature and extent of all water rights in the adjudicated water system." *Rangen, Inc. v. Idaho Dep't of Water Res.*, 159 Idaho 798, 805, 367 P.3d 193, 200 (2016) (quoting Idaho Code § 42–1420(1)). The Court quoted the Director's determination that:

> Rangen's SRBA decrees do not identify Billingsley Creek as a source of water and do not include a point of diversion in the SWSWNW Sec. 32, T7S, R14E.... Administration must comport with the unambiguous terms of the SRBA decrees. Because the SRBA decrees identify the source of the water as the Curren Tunnel, Rangen is limited to only that water discharging from the Curren Tunnel. Because the SRBA decrees list the point of diversion as SESWNW Sec. 32, T7S, R14E, Rangen is restricted to diverting water that emits from the Curren Tunnel in that 10–acre tract.

Rangen, Inc. v. Idaho Dep't of Water Res., 159 Idaho at 806, 367 P.3d at 201. The Supreme Court agreed with the District Court's findings that any dispute Rangen had with its point of diversion should have been resolved in the SRBA. Further, the Supreme Court agreed that "[a]ny interpretation of Rangen's partial decrees that is inconsistent with their plain language would necessarily impact the certainty and finality of SRBA judgments and, therefore, requests for such interpretations needed to be made in the SRBA itself." *Rangen, Inc. v. Idaho Dep't of Water Res.*, 159 Idaho at 806, 367 P.3d at 201. As a result, the Court affirmed the District Court's holding that Rangen's decrees limited its diversion to the Martin-Curren Tunnel, and further, within the decreed ten-acre tract. *Id.*

The *Rangen* decision is insightful as to the limitations on the "source" of a water right. Applying *Rangen* to this matter, it is clear that Pioneer and Nampa cannot deliver Nampa's effluent water that is sourced from ground water to Pioneer's Phyllis Canal under Pioneer's current water right decrees because Pioneer does not have either the Nampa WWTP or Nampa's wells identified as the source on any of Pioneer's water rights.

III. The Result of the Proposed Reuse Permit is an Illegal Expansion or Enlargement of the Water Right that will Injure Riverside

In changing the point of discharge for Nampa's WWTP from Indian Creek to the Phyllis Canal, Nampa and Pioneer will effectively create a new point of diversion on the Phyllis Canal and will significantly increase the volume of water delivered to and by the canal to Pioneer's landowners.

"An increase in the volume of water diverted is an enlargement and is not allowed under Idaho Code § 42–1425. However, a water user may seek an enlargement under Idaho Code § 42–1426, subject to the limitations set forth in Idaho Code § 1426. *Fremont-Madison Irr. Dist. Supra*, at 129 Idaho 454, 458, 926 P.2d 1301, 1305 (1996). Those limitations are (1.) No increase

in the rate of diversion authorized under the original water right, and (2.) That the enlargement will not injure existing water users. *Id.*, at 460, 1307; Idaho Code § 42-1426(2). These limitations "protect other water users from injury to their rights resulting from a recognition of the transfers that are memorialized in the adjudication." *Id.*, at 458, 1305.

A. Enlargement of Water Right

An enlargement "may include such events as an increase in the number of acres irrigated, an increase in the rate of diversion or duration of diversion." *Fremont-Madison*, 129 Idaho 454, 458, 926 P.2d 1301, 1305. "If a water user seeks an enlargement in the adjudication the request must be pursuant to Section 42–1426 of the Idaho Code which allows the 'enlargement' of existing water rights under certain conditions, unlike proceedings under section 42–1425 which do not allow an enlargement." *Fremont-Madison*, 129 Idaho at 458–59, 926 P.2d at 1305-1306.

The new diversion to the Phyllis Canal in the Reuse Agreement and Reuse Permit clearly seeks to supply a new water source to and increase the rate of diversion into the Phyllis Canal, by as much as 41 cfs. SOF ¶ 49. This proposed action is contrary to Idaho law. As explained by the Court in *Fremont-Madison,* "Section 42–1426 of the Idaho Code does not proscribe enlargements that include an increase in the volume of water diverted, so long as the enlargement does not exceed the rate of diversion originally authorized or injure water rights existing on the date of the enlarged use." *Fremont-Madison*, 129 Idaho at 460, 926 P.2d at 1307. The application of Nampa's wastewater to Pioneer's land, as contemplated in the Reuse Permit, will result in an enlargement of Nampa's ground water rights to cover 17,000 acres of supplemental water for Pioneer Irrigation District.

B. Injury to Riverside

The limitations imposed by Idaho Code § 42-1425 and 42-1426 and at issue in *Fremont-Madison* speak to the very issue raised by Riverside in this proceeding – injury to Riverside's existing water rights due to the transfer and enlargement of Nampa's water rights under the Reuse Permit, without Pioneer having to go through IDWR's administrative process to analyze potential injury and craft protections for existing water users. As memorialized in the Statement of Facts, during irrigation season when Nampa and Pioneer propose to "redirect" the WWTP discharge from Indian Creek, Riverside currently diverts most, if not all, of the flow of Indian Creek into its canal for delivery of water to members of Riverside Irrigation District. SOF ¶ 31. Riverside has a right to divert approximately 180 cfs of water from Indian Creek. SOF ¶ 33.

The Reuse Agreement and Reuse Permit contemplate a reduction in discharge to Indian Creek ranging up to 41 cfs, a significant reduction to Indian Creek during irrigation season that will most certainly injure Riverside's downstream water rights. Under Idaho Code § 42-1425 and *Fremont-Madison,* Idaho law requires that before this transfer can occur analysis must be made of the injury to other users, like Riverside and mitigation considered.

IV. Pioneer can Only Deliver Water to Pioneer's Irrigation District Landowners

As the Idaho Supreme Court held, and as expressly provided by Idaho Code § 43–316, "the title to all property acquired by an irrigation district, including its water rights, is vested in the district and held by the district in trust for, and dedicated and set apart to, the uses and purposes set forth in the law." *Jensen v. Boise-Kuna Irr. Dist.*, 75 Idaho 133, 141, 269 P.2d 755, 760 (1954), citing *Yaden v. Gem Irr. Dist.*, 37 Idaho 300, 216 P. 250; *Colburn v. Wilson*, 23 Idaho 337, 130 P. 381. It therefore follows:

> … that any water owned by the district and thus dedicated to the irrigation of lands within the district, cannot be supplied to lands outside the district so long as it is needed for the

> proper irrigation of lands within the district. The officers of the district have no power to contract for the delivery or supplying of such water for use outside the district. Any contract attempting to create or impose an obligation on the district to supply or make available any such water for any such purpose is ultra vires and void.

Jensen v. Boise-Kuna Irr. Dist., 75 Idaho 133, 141, 269 P.2d 755, 760 (1954).

Nampa and Pioneer, in their private reuse agreements leading to the Reuse Permit, set up a contractual relationship relating to the discharge and delivery of water to Nampa's irrigation system and Nampa's non-potable delivery. Under *Jensen*, Pioneer cannot deliver water outside the District, but only to Pioneer landowners. As noted above in Brown and Caldwell's Preliminary Technical Report and IDEQ's Staff Analysis, Pioneer is in fact intending to deliver this water to Pioneer's landowners and must do so to comply with Brown & Caldwell's and IDEQ's analysis of the necessary land area to absorb the pollutants in the effluent. Since Pioneer can only deliver to Pioneer's customers, this arrangement is not a circumstance where Nampa is merely reusing its own water.

V. Idaho Code 42 § 201(8) Does not Apply to Pioneer

Nampa and Pioneer invoke Idaho Code 42 § 201(8) as a carveout that exempts Pioneer from complying with the requirement of Idaho Code 42 § 201(2) requiring a water right for the application of water to land. Under the Reuse Agreement and Reuse Permit, Pioneer will convey the discharged effluent in its canal to lands within its irrigation district boundaries. Idaho Code 42 § 201(8) applies solely to municipalities, and any exemption Nampa may have claimed under subsection (8) evaporates upon discharge to the Phyllis Canal for delivery and use by Pioneer.

The legislative history supports this narrow application. In testimony before the Idaho House Resources and Conservation Committee, Lindley Kirkpatrick, City of McCall, testified that the bill "will clarify that cities and sewer districts are not required to obtain a water right for distribution of waste water on land." *House Resources & Conservation Committee Minutes*,

March 5, 2012 at 6 (emphasis added). He further testified that IDWR "has assured the city they can reuse waste water when they have a municipal water right" and that "the bill is crafted narrowly." *Id.* (emphasis added).

No language in Idaho Code § 42-201(8) can be read to apply to Pioneer. The statute explains that the exception is for "a municipality or municipal provider as defined in section 42-202B, Idaho Code, a sewer district as defined in section 42-3202, Idaho Code, or a regional public entity operating a publicly owned treatment works…" Idaho Code § 42-201(8). None of the definitions relating to municipality or municipal use in Idaho Code § 42-202B can be read to apply to Pioneer:

> (4) "Municipality" means a city incorporated under section 50-102, Idaho Code, a county, or the state of Idaho acting through a department or institution.
>
> (5) "Municipal provider" means:
> (a) A municipality that provides water for municipal purposes to its residents and other users within its service area;
> (b) Any corporation or association holding a franchise to supply water for municipal purposes, or a political subdivision of the state of Idaho authorized to supply water for municipal purposes, and which does supply water, for municipal purposes to users within its service area; or
> (c) A corporation or association which supplies water for municipal purposes through a water system regulated by the state of Idaho as a "public water supply" as described in section 39-103(12), Idaho Code.
>
> (6) "Municipal purposes" refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a municipal provider.

Idaho Code § 42-202B(4)-(6) (emphasis added). Pioneer also does not qualify under the definition of "sewer district":

> A sewer district is one to provide for sewage disposal and for that purpose any such district shall have power to extend its sewer lines to an appropriate outlet.

> A district may be created for a combination of water and sewer purposes, or either of said purposes. A district may be entirely within or entirely without, or partly within and partly without one (1) or more municipalities or counties, and the district may consist of noncontiguous tracts or parcels of property.

Idaho Code § 42- 3202 (emphasis added).

Pioneer is an irrigation district, not a municipality. "Irrigation districts are creatures of the statutes. They are quasi public or municipal corporations, and as such have only such power as is given to them by statute, or such as is necessarily implied." *Jensen v. Boise-Kuna Irr. Dist.*, 75 Idaho at 139, 269 P.2d at 758 (1954). The "municipal" nature of an irrigation district is not to be confused with the definition of "municipal" above. Rather, "the irrigation district is a quasi municipal corporation organized for the specific purpose of providing ways and means of irrigating lands within the district and maintaining an irrigation system for that purpose." *Colburn v. Wilson*, 23 Idaho 337, 130 P. 381, 381–82 (1913) (emphasis added) (citing *Pioneer Irrigation Dist. v. Walker*, 20 Idaho, 605, 119 Pac. 304; *City of Nampa v. Nampa & Meridian Irri. Dist.*, 19 Idaho, 779, 115 Pac. 979; *Merchants' Nat. Bank v. Escondido Irri. Dist.*, 144 Cal. 329, 77 Pac. 937.).

Furthermore, if Nampa, operating under the Idaho Code § 42-201(8) exemption, sought to deliver its wastewater through Pioneer's irrigation system, it would also run afoul of the law. "A contract by the board of directors of such a district, giving to others the management or control of any part of the system, and taking that management and control out of the hands of the district board, would be ultra vires and void." *Colburn v. Wilson*, 23 Idaho 337, 130 P. 381, 382 (1913).

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VI. Application of Idaho Code § 42-201(8) to Preclude IDWR's review of the Water Use Agreement Here Would Unconstitutionally Injure Riverside's Water Rights in Violation of Article XV, § 3 of the Idaho Constitution

Nampa and Pioneer's reuse proposal requires the application of Nampa's ground water rights on Pioneer land, resulting in both an expansion of the decreed and licensed rights and a transfer of the place of use. Extending the exemption in Idaho Code § 42-202(8) to allow expansion of the water rights to allow Pioneer to apply the water to its land without an injury analysis under 42-222 transfer would render Idaho Code § 42-202(8) unconstitutional *as applied.* See *American Falls Reservoir Dist. No. 2 v. IDWR*, 143 Idaho 862, 870, 154 P.3d 433, 441 (2007)(party need only show that the statute as applied to the party's conduct is unconstitutional to sustain an as applied challenge.)

Article XV, § 3 of the Idaho Constitution protects existing water rights by providing "[t]he right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied…" and that the "[p]riority of appropriations shall give the better right as between those using the water." If the Director determines that Idaho Code § 42-202(8) applies, and grants Pioneer an exemption under the municipal carveout, Riverside's existing water rights will most certainly be injured, in violation of the Idaho Constitution.

Any review of the constitutionality of Idaho water statutes should begin with Judge Hurlbutt's SRBA decision in Basin Wide Issue No. 1, Subcase No. 91-00001. Attachment B. At issue there was the constitutionality of the presumption statute Idaho Code § 42-1416 and the accomplished transfer statute Idaho Code § 42-1416A. The presumption statute purported to establish the validity of certain current water practices and to conform the decree to those practices. The accomplished transfer statute attempted to approve prior changes in points of diversion, place of use, period of use or nature of use. Judge Hurlbutt held these statutes void for

vagueness in large part because it was unclear if the statutes adequately incorporated the substantive criteria of Idaho Code § 4-222 regarding protection from injury, enlargement and the other statutory factors. *Memorandum Decision and Order in Basin-Wide Issue No. 1.*, pp.18, 12 Subcase No. 91-00001 (February 4, 1994).

The Supreme Court detailed the history of the constitutionality of Idaho Code §§ 1416 and 1416A in the *Freemont-Madison* decision.

> Expansion of the use after acquisition of a valid unadjudicated water right in violation of the mandatory permit requirements shall be presumed to be valid and to have created a water right with a priority date as of the completion of the expansion, in the absence of injury to other appropriators." Idaho Code § 42–1416(2) (repealed 1994). Section 42–1416 of the Idaho Code was an attempt to provide "amnesty" for illegal expansions. Four years later the legislature enacted an accomplished transfer statute, Idaho Code § 42–1416A, which permitted users who had undertaken transfers of water rights without compliance with the statutory provisions of Idaho Code § 42–222 to have the transfer confirmed in the course of the general SRBA adjudication. Idaho Code § 42–1416A (repealed 1994).
>
> On February 4, 1994, the district court declared the "presumption" statute, Idaho Code § 42–1416, and the "accomplished transfer" statute, Idaho Code § 42–1416A, unconstitutional. In response the legislature repealed Idaho Code §§ 42–1416 and 42–1416A and enacted the "amnesty statutes" at issue in this case.

Fremont-Madison Irr. Dist. v. Idaho Ground Water Appropriators, Inc., 129 Idaho 454, 456-7, 926 P.2d 1301, 1303-4 (1996). The replacement "amnesty statutes", Idaho Code 42-1425 and Idaho Code 42-1426, were designed to protect the "water uses originally intended to be protected by the 'presumption' and 'accomplished transfer' statute and 'significant investments by water users and tax base for local governments by helping to maintain status quo water uses.'" *Id* at 457, 9268 P.2d 1304.

The Idaho Supreme Court's constitutional analysis in *Fremont-Madison* is instructive here. At issue in *Freemont-Madison* was the constitutionality of the "amnesty statutes" Idaho Code § 42-1425 and Idaho Code § 42-1426, that had been enacted to replace Idaho Code §§ 42-

1416 and 42-1416A. Specifically the question was whether "the application of either statue would result in injury to the priority of any other validly established junior water rights." *In Re SRBA* Subcase No. 75-10117 ("Lemhi Gold Trust LLC) *Memorandum Decision and Order on Challenge*, at 8 (included here as Attachment B. These statutes allowed the SRBA court to enlarge water rights beyond their initial uses and to decree accomplished transfers under certain conditions.

In *Fremont-Madison*, the Court held that both amnesty statutes were constitutional because they required an injury analysis to be conducted to determine injury to other water rights before granting the amnesty provided in their respective provisions. "Proceeding under section 42–1425 a water user cannot obtain a transfer that constitutes either an enlargement of the water right or otherwise injures water rights existing on the date of the change. Section 42–1425 of the Idaho Code is constitutional as written." *Id.*, at 458, 1305 (emphasis added); "Section 42–1426 of the Idaho Code is constitutional as written because it provides that an enlargement cannot be allowed that would injure a junior appropriator." *Id.*, at 460–61, 1307–08 (emphasis added). Therefore, here, Idaho Code § 42-202(8) would be constitutional as applied to the Reuse Agreement, only if it can be read to preclude enlargements that would injure other water users.

Judge Wildman employed the constitutionality analysis in *Fremont-Madison* to reach the conclusion that another Idaho statute, Idaho Code 42-223(11), was unconstitutional because "[u]nlike the statutes analyzed in *Fremont-Madison*, Idaho Code § 42-223(11) contains no express protections to prevent injury to other validly established water rights." *Lemhi Gold*, at 9. The statute at issue in *Lemhi Gold*, Idaho Code § 42-223(11), would allow resumption of a water right subject to statutory forfeiture to resume use under that right subject to certain requirements. Judge Wildman found that "the express terms of the statute, as applied to the above-captioned

claim, would injure Rabe's water rights by diminishing their priority in violation of Article XV, Section 3 of the Idaho Constitution." *Id.*

Judge Wildman's analysis of Idaho Code § 42-223(11) could lead the conclusion here that Idaho Code § 42-201(8) is unconstitutional on its face, because the statute does not contain an express requirement to account for injury to existing water rights. However, Riverside does not believe it is necessary to go that far, if the Director holds that Pioneer and Nampa must subject this Reuse Agreement to an injury analysis under the lens of a water right proceeding to ensure protection of existing water rights.

Without such a proceeding, the same logic that led Judge Wildman to find Idaho Code 42-223(11) unconstitutional in *Lemhi Gold* applies here. Idaho Code §42-201(8), as Nampa and Pioneer would have it applied here, does not take into account injury to existing water rights before allowing municipalities to change the nature of use of their water rights. Nampa's proposal to discontinue discharge of large quantities of water to Indian Creek during irrigation season upstream of Riverside's diversion of that same water and to divert that water to another user who has no water right to use that water will cause injury to Riverside. Idaho Code §42-201(8)'s failure to address potential injury to existing water rights renders its application in this matter unconstitutional.

Riverside need not prove injury-in-fact before raising this concern. In the *City of Pocatello v. Idaho*, the Idaho Supreme Court affirmed the district court's decision that approved IDWR's conditioning of water rights to avoid injury to other water rights. *City of Pocatello v. Idaho*, 152 Idaho 830, 834, 152 P.3d 845, 850 (2012). The City argued that there had to be proof of actual injury before a condition could be included. The Supreme Court stated that Pocatello was "wrong". *Id.* at 835, 152 P.3d at 851. The Court relied on the district court's analysis that:

> … injury to an existing water right is not limited to the circumstance where immediate physical interference occurs between water rights as of the date of the change. Injury also includes the diminished effect on the priority dates of existing water rights in anticipation of there being insufficient water to satisfy all rights on a source (or in this case a discrete region of the aquifer) and priority administration is sought. Even though the priority administration may occur at some point in the future, injury to the priority date occurs at the time the accomplished transfer is approved.

City of Pocatello v. Idaho, 152 Idaho 830, 834, 152 P.3d 845, 850 (2012).

CONCLUSION

Water is a precious resource. Livelihoods depend on a reliable supply. When two large entities come together and agree between themselves how to apportion this precious resource between themselves how to apportion this precious resource between them, other water uses stand to be injured. Here Nampa and Pioneer have given no thought to other water users, no thought to injury and no thought to the priority doctrine. Their thoughts are directed towards saving money and acquiring new sources of water. While laudable goals, these goals do not give Nampa and Pioneer *carte blanche* to decide when and how water is used in this State.

To the contrary, the primary responsibility for distribution of water in this State was placed on the shoulders of the State engineer (now the Director). *In re SRBA (Basin-Wide Issue 17),* 157 Idaho 385, 394, 336 P.3d 792, 801 (2104). The Director is required to exercise his specialized expertise to follow the law and distribute water in accordance with the prior appropriation doctrine. Id at 393, 336 P.3d at 800. Nampa and Pioneer's private agreement contemplates no such constraints.

The proper forum to determine whether the Nampa-Pioneer Agreement complies with the Idaho Constitution, Article XV, § 3, Idaho water law, including Idaho Code §§ 42-202(2) and 42-222, and with the terms and conditions of the parties' existing water rights is through either an application for a new water right for this new source of water or through a transfer proceeding

under Idaho Code § 42-222. To hold otherwise is to abrogate the Constitution, Title 42 and the water rights. Without an administrative proceeding to evaluate appropriate conditions to prevent or mitigate injury, Nampa and Pioneer will have successfully usurped the authority of the Director.

Accordingly, Riverside requests that the Director issue an order providing that Nampa and Pioneer shall not implement the contemplated delivery of water to Pioneer with having obtained the necessary approval of a water right or transfer.

DATED this 2nd day of October 2020.

BARKER, ROSHOLT & SIMPSON LLP

Albert P. Barker
Sarah W. Higer
Attorneys for Riverside Irrigation District Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of October, 2020, I caused to be served a true and correct copy of the foregoing **Petitioner's Brief** by the method indicated below, and addressed to each of the following:

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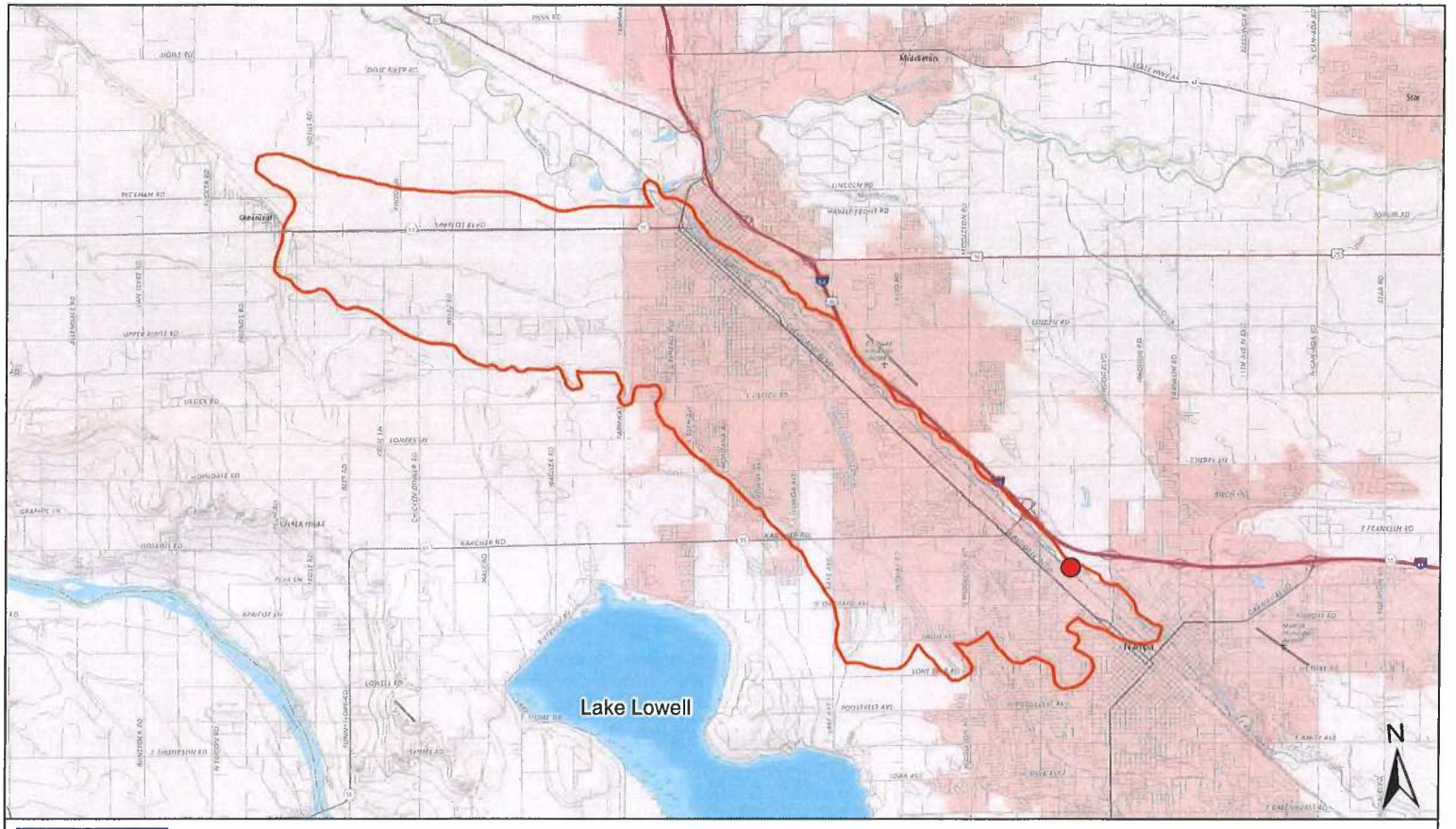
EXHIBIT A



Brown AND Caldwell

Figure 3. Topographic map: Area of Analysis

Client: City of Nampa

Date: 2-25-2019

Path: \\cboi01\hcbolp01\Projects_Nampa, City of_Nampa WW Program\230 DEQ Negotiations\620 Reuse Permit Application\Permit Application\Application Figures\Maps.mxd

EXHIBIT B

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA Case No. 39576	**Case No. 91-00001** **MEMORANDUM DECISION AND ORDER ON BASIN-WIDE ISSUE NO. 1, CONSTITUTIONALITY OF I.C. § 42-1416 AND I.C. § 42-1416A, AS WRITTEN**

Basin-Wide Issue No. 1 is designated as follows:
A. The constitutionality of I.C. § 42-1416, as written and
B. The constitutionality of I.C. § 42-1416A, as written.
HELD: I.C. § 42-1416 and I.C. § 42-1416A are declared unconstitutional, as written.

David J. Barber, Deputy Attorney General, for the State of Idaho.

K. Jack Haugrud and Daria Zane, United States Attorneys, Department of Justice, for the United States.

William R. Hollifield, Hollifield & Tolman, for Big Lost River Water Users Association.

Laird J. Lucas, Attorney, for Land and Water Fund of the Rockies.

Jeffrey C. Fereday, Givens, Pursley & Huntley, for Busch Agricultural Resources, Inc. and Boise Water Corporation.

William F. Ringert, Ringert Clark, for Nampa & Meridian Irrigation District, Grindstone Butte Mutual Canal Company, Rim View Trout Company and Others.

Setting Hearing (May 4, 1993).) Notice of the order was also served on the Court's Certificate of Mailing.[1] Following submission and review of the proposed statements of basin-wide issue(s), the ***Notice of Intent to Designate Basin Wide Issue No. 1*** issued and hearing was set. (In Re SRBA, Twin Falls County Case 39576, Subcase 91-00001, ***Notice of Intent to Designate Basin-Wide Issue No. 1: Constitutionality of I.C. § 42-1416 and I.C. § 42-1416A*** (May 28, 1993) (***Notice of Intent***).)

The ***Notice of Intent*** framed the issues as the constitutionality of I.C. §§ 42-1416 and 42-1416A, as written. It invited any party to the adjudication to respond by filing "*Comments to the Notice of Intent to Designate Basin-Wide Issue No. 1*" and required that service of the comments follow the **General Docket Sheet Procedure** (In Re SRBA, Twin Falls County Case 39576, ***SRBA Administrative Order 1, Rules of Procedure*** (amended June 21, 1993), Section 7 (Docket Sheet)) and be made on the parties who appeared on the original *Motion to Modify*. Finally, the ***Notice of Intent*** afforded all parties to the adjudication the opportunity to reply to any comments received to the ***Notice of Intent***.

Following the submission of written comments and replies and a hearing, the ***Order Designating Basin Wide Issue No. 1*** issued notifying all claimants and counsel that claimants could become a party to Basin-Wide Issue No. 1 by filing a "*Motion to Participate in Basin-Wide Issue No. 1*" no later than 30 days following the date of publication in the Docket Sheet of the filing of the ***Order Designating***. (In Re SRBA, Twin Falls County Case 39576, ***Order Designating Basin-Wide Issue No. 1 and Setting Pre-Hearing Conference*** (July 26, 1993) (***Order Designating***).)

The Idaho Conservation League, Inc.; Idaho Rivers United, Inc.; Idaho Wildlife Federation, Inc.; and Northwest Resource Information Center, Inc. (Conservation Groups) filed a *Motion to Intervene in Basin-Wide Issue No. 1; and Statement of Position* (*Motion to Intervene*). Following a scheduling conference, the Court set a hearing on the Conservation Groups' *Motion to Intervene*. (In Re SRBA, Twin Falls County Case 39576, ***Scheduling Order***

---

[1] The court Certificate of Mailing consists of parties and counsel who filed a notice of appearance in Twin Falls County Case 39576 pursuant to ***SRBA Administrative Order Re: SRBA Mailing Address, Telephone and Fax Numbers and Notices of Appearance***, dated December 17, 1991.

To resolve the constitutionality of I.C. §§ 42-1416 and 42-1416A, as written, the challengers' positions will be considered in the order presented.

VOID FOR VAGUENESS

The United States and Idaho constitutional guarantees of due process require lawmakers, in adopting statutes, to set reasonably clear guidelines for triers of fact in order to prevent arbitrary and discriminatory enforcement. Statutes that are vague, indefinite or uncertain violate these due process guarantees. The Idaho Supreme Court has defined the void for vagueness doctrine holding that when applied to civil statutes, the test is whether "persons of reasonable intelligence can derive core meaning" from the statutes. *Olsen v. J. A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990).

> In evaluating a constitutional challenge to a statute on the basis of void for vagueness, the Court must consider both the essential fairness of the law and the impracticability of drafting legislation with greater specificity. (Citations omitted.)
>
> It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves judges and jurors free to decide, without any legally fixed standards what is prohibited and what is not in each particular case . . . . Certainly one of the basic purposes of the Due Process Clause has always been to protect a person against having the Government impose burdens upon him except in accordance with the valid laws of the land. Implicit in this constitutional safeguard is the premise that the law must be one that carries an understandable meaning with legal standards that courts must enforce. (Citation omitted.)
>
> . . .
>
> However, a greater tolerance is permitted when addressing a civil or non-criminal statute as opposed to a criminal statute under the void for vagueness doctrine. (Citation omitted.) A civil or non-criminal statute is not unconstitutionally vague if persons of reasonable intelligence can derive core meaning from it. *Olsen v. J. A. Freeman*, *supra*, at 715-716. (Emphasis added.)

In his article Rassier concludes, as does the State of Idaho in this action, that I.C. § 42-1416(1) was intended to "correct ambiguous decrees." However, in making recommendations in three Director's Reports, IDWR followed an entirely different interpretation. Other defenders of the statute advance at least two additional interpretations.

Four possible interpretations of this subsection include:

1. That the first presumption applies when a decree is ambiguous regarding the description of the land irrigated under the decreed right with no expansion in acreage or in diversion volume or rate. This presumption can be rebutted by evidence of forfeiture or evidence that the land irrigated at the time of the adjudication was uncultivated at the time of the decree. (State of Idaho.)

2. That the first presumption applies when a decree is ambiguous regarding the description of the land irrigated under the decreed right with no expansion in acreage or in diversion volume or rate and would apply to changes in use made prior to 1969. This presumption would be rebutted by evidence that the land was not irrigated at the time of the decree or that the changes were illegally made. (Pioneer and Settlers Irrigation Districts and Owen Ranches.)

3. That the first presumption applies to blatant expansion of the decreed right as to both the number of acres irrigated and the volume of water diverted which can be rebutted only by a party showing that it is injured by the expansion. (IDWR; A&B, Burley and Falls Irrigation Districts and Aberdeen-Springfield Canal Company.)

4. That the first presumption applies to blatant expansion of the decreed right as to both the number of acres irrigated and the volume of water diverted except that a party need not show injury to rebut the presumption. The presumption can be rebutted by the production of evidence that the land on which the water right was decreed has been changed or that there is an increase in the volume of water used. (Freemont-Madison Irrigation District.)

As stated previously, this Court begins with the presumption of the statute's constitutionality. To answer the challenge raised to its constitutionality, the court is required to find the requisite core meaning of the statute as it was intended by the legislature. No party has produced any legislative history or other evidence reflecting the legislature's intent with respect to the two interpretations advanced by the State (one

and Idaho Constitutions. Specifically, they point to the complete lack of standards provided by the legislature for the court to apply the "expansion of use" and "absence of injury to other appropriators" provisions. They urge that absent any standards or guidelines, the court's application of this statute could only be arbitrary and capricious.

The standard under which this challenge is to be reviewed is the same as that applied to I.C. § 42-1416(1) above.

The phrase "expansion of use" has been defined and appropriate review standards adopted in other portions of the Idaho Code, I.C. § 42-222. There, expansion of use refers, generally, to changes which may be made to a permitted or licensed water right. Standards have been set for administrative review of such changes following application to IDWR. At the urging of IDWR, the Idaho Supreme Court has ruled that any changes allowed by statute also require a determination by the agency that the changes meet the local public interest standard. *Hardy v. Higginson*, 123 Idaho 485, 849 P.2d 946 (1993).

This Court has ruled on the necessity for a standard in determining how to apply I.C. § 42-1416(2). (In Re SRBA, Twin Falls County Case 39576, ***Order Granting, in Limited Part, Motion to Reconsider Order Denying Motion for Leave to Intervene*** (January 14, 1994).) In ruling on whether certain conservation groups could intervene with respect to water rights claimed or recommended pursuant to I.C. § 42-1416(2), this Court held they could intervene for the reason that the statute allows the same "changes" covered by the decision in *Hardy v. Higginson*, *supra*, and, therefore, required that the same factors be met as for changes under I.C. § 42-222, including the local public interest standard. In so holding, this Court noted it was <u>not</u> ruling on the constitutionality of I.C. § 42-1416 since that matter was at issue in Basin-Wide Issue No. 1.

What is significant about the decision on the Conservation Groups' *Motion to Intervene* is that a number of parties, including three who support the constitutionality of the statute here, have filed motions to reconsider urging that the standards in I.C. § 42-222 <u>do not apply</u> to I.C. § 42-1416(2). Therefore, these parties oppose the adoption of the only reasonable standard this Court can identify to arrive at a core meaning of the second presumption. Absent any definition of the term "expansion of use" or a standard

confusing, contradictory and multifarious interpretations, no person of reasonable intelligence can arrive at a core meaning.

Similarly, the challengers point to the lack of definition and standards of application for the term "absence of injury to other appropriators" as rendering I.C. § 42-1416(2) unconstitutionally vague.

The "injury" standard is a factor to be reviewed for changes under I.C. § 42-222. However, those supporting constitutionality disagree that any of the I.C. § 42-222 factors apply to I.C. § 42-1416(2). Absent standards like those in I.C. § 42-222, when applying the absence of injury clause the courts can only guess to resolve such issues as (1) who must carry the burden of persuasion; (2) can several claimed expansions under this section be aggregated or taken together to establish injury; and (3) how immediate in point of time or amount must the effects of such expansion be to constitute injury. Absent legislative standards, this Court is left to speculate as to the lawmakers' intent. To find a core meaning based on speculation violates due process and renders this statute void for vagueness.

Therefore, I.C. § 42-1416(2) is held to be unconstitutionally vague. Reasonably intelligent people are left to guess at its core meaning and for this Court to do so would be arbitrary and violate the due process guarantees of the United States and Idaho Constitutions.

By finding I.C. § 42-1416(2) unconstitutional under the doctrine of void for vagueness, it is unnecessary to review it under the additional theories advanced by the challengers.

I.C. § 42-1416(3)

The third presumption at issue reads:

> A prior decree adjudicating a tributary stream or subbasin within the basin shall be presumed correct, if:
>
> (a) It is or can be made substantially correct as to current water rights; and

both illogical and contrary to the law of judgments. Whatever was intended by this presumption of correctness of prior decrees escapes understanding, rendering the provisions unconstitutionally vague.

The second condition, I.C. § 42-1416(3)(b), similarly prohibits finding the core meaning of this presumption. It requires that the prior decree be presumed correct if it "contains all the elements necessary to adequately describe the water right." There is no guidance as to which elements must be included. Whether these are the elements in I.C. § 42-1411, adopted in 1985, or elements which were legally required or sufficient on the date the prior decree was entered is not answered. This, again, requires the court to arbitrarily determine the core meaning of the statute.

If, as has been suggested, I.C. § 42-1416(3) is nothing more than a statement of the principles of *res judicata* and collateral estoppel, it misses the mark. The doctrines of *res judicata* and collateral estoppel are grounded upon the constitutional principles of due process and separation of powers. Application of the doctrine of *res judicata* under the unities of parties, claims and issues can, generally, only be done on a case-by-case basis. Due process requires no less. A statute requiring a collective determination of the effect of a prior judgment raises serious due process concerns.

I.C. § 42-1416(3) is unconstitutionally void for vagueness. Absent standards or definition, no core meaning is discernable to persons of average intelligence. A determination of core meaning by the court could only be based upon speculation, rendering that interpretation arbitrary and violative of the due process guarantees of the United States and Idaho Constitutions.

By finding I.C. § 42-1416(3) unconstitutional under the doctrine of void for vagueness, it is unnecessary to review it under the additional two theories advanced by the challengers.

I.C. § 42-1416(4)

This section of the statute declares that the presumptions established in subsections 1-3 are rebuttable. It reads:

(4) The presumptions established in this section are rebuttable.

correctly, identify several additional constitutional problems which arise if the presumptions were intended to be conclusive rather than rebuttable.

The issue presented to the court then is to determine what the legislature intended these presumptions to be, rebuttable or conclusive. While called rebuttable, the presumptions are self-rebutting and senseless. However, the legislature is presumed to have understood the difference between the two types of presumptions and it made these rebuttable, even though meaningless. It is noteworthy that legal scholars have drawn attention to the confused manner in which presumptions have been dealt with in the law. One scholar has expressed the quandary stating:

> Every writer of sufficient intelligence to appreciate the difficulty of the subject matter has approached the topic of presumptions with a sense of hopelessness and has left it with a feeling of despair. Morgan, Presumptions, 12 Wash. L. Rev. 255 (1937).

Green and Nesson, *Problems, Cases, and Materials on Evidence* 793 (1983).

This Court finds that entire scheme of rebuttable presumptions fails for vagueness. No person of reasonable intelligence can determine any core meaning to the application of the rebuttable presumptions contained in the first three subsections of I.C. § 42-1416. There is no definition or standard provided by the legislature which would indicate its true intent with respect to this statutory scheme. Therefore, absent a core meaning, its application by this Court in the SRBA would be based on conjecture or speculation. Such an arbitrary determination would violate the due process guarantees of the United States and Idaho Constitutions.

In conclusion, I.C. § 42-1416 is void for vagueness. Subsections 1, 2 and 3 are not rendered void merely because they are subject to multiple interpretations, even if some of those interpretations are unconstitutional. *See, e.g., Cowles Publishing Co. v. Magistrate Court*, 118 Idaho 753, 759, 800 P.2d 640 (1990). They are void because a person of reasonable intelligence viewing each section of the statute would be unable to discern a core meaning. *Id.* To arrive at a core meaning for each of the subsections individually or to give operation to the rebuttable presumption set forth in subsection 4, this Court would have to enter into the realm of speculation and thereby redraft the

> (a) the water right may be claimed in the general adjudication as changed and an application for change of the water right is not required to be filed pursuant to section 42-222, Idaho Code; and
> (b) the water right may be determined by the director in the director's report pursuant to section 42-1411, Idaho Code, and decreed by the district court pursuant to section 42-1412, Idaho Code, as changed, if the change meets the substantive criteria of section 42-222, Idaho Code, for approval of such changes, provided that the change may be approved subject to conditions necessary to satisfy the substantive criteria of section 42-222, Idaho code, for approval of such changes.
>
> (2) To the extent that the provisions of this section and section 42-1416, Idaho Code, are both applicable to the same water right, the two sections shall be applied conjunctively, if possible, but this section shall not be construed to limit the provisions of section 42-1416, Idaho Code. [I.C., § 42-1416A, as added by 1989, ch. 97, § 1, p. 226.]

I.C. § 42-1416A, the accomplished transfer statute, covers claimants who, prior to commencement of the SRBA, completed a change in their point of diversion, place of use, period of use or nature of use in violation of I.C. §§ 42-222 and 42-108. It purports to allow them to claim and have the use decreed as changed if the changed use complies with the requirements of I.C. § 42-222. As discussed in regard to I.C. § 42-1416(2), a number of parties, including three who support the constitutionality of the statute here, have filed motions to reconsider this Court's decision on intervention, In Re SRBA, Twin Falls County Case 39576, ***Order Granting, in Limited Part, Motion to Reconsider Order Denying Motion for Leave to Intervene*** (January 14, 1994), asserting that the criteria of I.C. § 42-222 do not apply to I.C. § 42-1416A.

The constitutionality of I.C. § 42-1416A has been challenged as void for vagueness. It must be reviewed under the same standard as applied in determining the constitutionality of I.C. § 42-1416, above.

core meaning, application of I.C. § 42-1416A in the SRBA would violate the due process protections of the United States and Idaho Constitutions. The statute is void for vagueness.

Having found I.C. § 42-1416A void for vagueness, it is unnecessary to address the remaining grounds on which the statute's constitutionality is challenged.

III. CONCLUSION

The designation of Basin-Wide Issue No. 1 requires this Court to resolve the constitutionality of I.C. §§ 42-1416 and 42-1416A, as written.

It is held that both I.C. §§ 42-1416 and 42-1416A are unconstitutional, as written. The resolution of this issue is made as a matter of law on a controverted question of constitutional construction and involves no substantial factual issues. *Sutherland Statutory Construction* § 2.06 (4th Ed., 1985 revision).

Reviewing both statutes in light of due process protections of the United States and Idaho Constitutions, it is held that they lack sufficient standards or guidance allowing a person of reasonable intelligence to find a core meaning. The statutes are, therefore, unconstitutional under the void for vagueness doctrine. Application of either statute in the SRBA would require the court to speculate as to their core meaning. Enforcement of a statute based on such speculation constitutes an arbitrary act prohibited by the due process guarantees of the United States and Idaho Constitutions.

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Boise, ID 83701

EXHIBIT C

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	**Subcase No. 75-10117 (Lemhi Gold Trust LLC)**
Case No. 39576	**MEMORANDUM DECISION AND ORDER ON CHALLENGE**
	FINAL ORDER DISALLOWING WATER RIGHT CLAIM

I.
FACTS AND PROCEDURAL BACKGROUND

1. This matter concerns the constitutionality of Idaho Code § 42-223(11) as applied to the above-captioned water right claim. The claim was originally filed in the Snake River Basin Adjudication ("SRBA") on April 17, 1990, by Joseph and Hallie Proksch. It sought the right to divert 0.5 cfs from Ditch Creek for year-round mining purposes under a June 1, 1895, priority. The basis of the claim is beneficial use.

2. On January 11, 2007, the Director filed his *Director's Report for Irrigation & Other Users, Basin 75*. That *Director's Report* included a recommendation that the above-captioned water right claim be decreed disallowed. No objections to the recommendation were filed by any party, and on November 13, 2009, this Court entered a *Final Order* disallowing the claim.

3. On September 28, 2012, Lemhi Gold Trust LLC ("Lemhi Gold"), a successor-in-interest to Proksch, filed a *Motion to Set Aside* the *Final Order* disallowing the claim. The *Motion* was filed pursuant to Idaho Rule of Civil Procedure 60(b)(5) and/or (6). The grounds for the *Motion* was that the Idaho Legislature's enactment of Idaho Code § 42-223(11) on March 25,

Master Report" or "*SMR*"). In his *Special Master Report*, the Special Master engaged in analysis concerning the constitutionality of Idaho Code § 42-223(11) as applied to the facts of this case. *SMR*, pp.11-13. The Special Master ultimately found that while the claim meets the statutory criteria of Idaho Code § 42-223(11), that statute may be applied constitutionally "only if Lemhi Gold's water right is subordinated to all water rights on the system with priority dates earlier than the date the statute became effective, March 25, 2008." *SMR*, p.12. Therefore, the Special Master recommended the claim be decreed as recommended, with the addition of a remark subordinating the right to all water rights on Ditch Creek with priority dates earlier than March 25, 2008.

9. On July 28, 2014, Lemhi Gold filed a *Motion to Alter or Amend* the *Special Master Report.*

10. On August 8, 2014, Lemhi Gold filed a *Motion for Voluntary Disqualification and Reassignment*, wherein it requested for reasons stated therein that the Special Master voluntarily disqualify himself from presiding over the *Motion to Alter or Amend.* On that same date, the Special Master entered an *Order* granting the *Motion for Voluntary Disqualification.* On August 12, 2014, this Court entered an *Order* rescinding its order of reference and treating Lemhi Gold's *Motion to Alter or Amend* as a *Notice of Challenge* under *SRBA Administrative Order 1, Rules of Procedure*, § 13.c. Briefing in support of the *Notice of Challenge* was filed by Lemhi Gold. Briefing in opposition to the *Notice of Challenge* was filed by Felton and Rabe.

11. Oral argument on challenge was held before this Court on November 3, 2014. The parties did not request the opportunity to submit additional briefing nor does the Court require any. Therefore, this matter is deemed fully submitted for decision on the next business day or November 4, 2014.

II.
STANDARD OF REVIEW

A. Challenge.

A district court is required to adopt a special master's findings of fact unless they are clearly erroneous. I.R.C.P. 53(e)(2); *Rodriguez v. Oakley Valley Stone, Inc.*, 120 Idaho 370, 377, 816 P.2d 326, 333 (1991). In determining whether findings of fact are clearly erroneous, a reviewing court "inquires whether the findings of fact are supported by substantial and

is unconstitutional unless Lemhi Gold's right is subordinated was in error and must be corrected." *Motion to Alter or Amend*, p.8. It asserts that "[w]here the Special Master determined that Lemhi Gold's water right qualified for exemption from the operation of forfeiture pursuant to I.C. § 42-223(11), his inquiry should have stopped there." *Id.* Further, that the Special Master's recommendation of subordination is contrary to the language and intent of the statute and "renders the entire purpose of I.C. § 42-223, to exempt certain rights from the operation of forfeiture pursuant to I.C. § 42-222, useless." *Id.*

The constitutionality of statutes enacted by the legislature is a question of law. *Freemont-Madison Irr. Dist. and Mitigation Group v. Idaho Ground Water Appropriators, Inc.*, 129 Idaho 454, 457, 926 P.2d 1301, 1304 (1996). There is a presumption under Idaho law in favor of the constitutionality of a challenged statute. *Moon v. North Idaho Farmers Ass'n*, 140 Idaho 536, 540, 96 P.3d 637, 641 (2004). The party challenging the statute "bears the burden of establishing that the statute is unconstitutional." *Id.* The Idaho Supreme Court has further instructed that "[t]he judicial power to declare legislative action invalid upon constitutional ground is to be exercised only in clear cases." *Id.* For the reasons set forth herein, the Court finds that the Special Master correctly determined that Idaho Code § 42-223(11) is unconstitutional as applied to the facts of this case.

A. The Special Master correctly determined that Idaho Code § 42-223(11) is unconstitutional as applied to the above-captioned claim.

Idaho water law has long recognized statutory forfeiture.[3] At present, Idaho Code § 42-222(2) provides that a water right "shall be lost and forfeited" for five years' nonuse. Various exceptions and defenses to statutory forfeiture are provided for in Idaho Code § 42-223. The most recent statutory exception came about in 2008, when the Idaho Legislature enacted Idaho Code § 42-223(11). That legislation provides a means for exempting water rights for mining, mineral processing or milling from statutory forfeiture if certain conditions are met. It provides in full as follows:

> No portion of any water right with a beneficial use related to mining, mineral processing or milling shall be lost or forfeited for nonuse, so long as the nonuse

[3] Idaho law has contained a statute recognizing and providing for statutory forfeiture since 1903. *Sagewillow, Inc. v. Idaho Dept. of Water Resources*, 138 Idaho 831, 836, 70 P.3d 669, 674 (2003).

Master struggled with the constitutionality of the statute when applied to the facts of this case. Of primary concern was the effect the statute's application would have on junior water rights established by Rabe on Ditch Creek during the period of nonuse. After reviewing the Idaho Constitution, as well as pertinent case law from the SRBA and Idaho Supreme Court, the Special Master determined that the statute could not be applied in a constitutional manner to the facts of this case without the inclusion of an additional subordination condition. *SMR*, pp.11-13. He held that "[t]he inescapable conclusion is that, in these circumstances, the statute is constitutional only if Lemhi Gold's water right is subordinated to all water rights on the system with priority dates earlier than the date the statute became effected, March 25, 2008." *SMR*, p.12. The Special Master therefore recommended that Lemhi Gold is entitled to a partial decree adjudicating its claim as recommended by IDWR, with the addition of the following subordination remark: "This water right is subordinated to all water rights on Ditch Creek with priority dates earlier than March 25, 2008." *SMR,* p.13. It is the Special Master's constitutional analysis and his resulting recommendation that Lemhi Gold challenges before this Court.

i. The application of Idaho Code § 42-223(11) to the above-captioned claim unconstitutionally injures Rabe's water rights in violation of Article XV, § 3 of the Idaho Constitution.

Article XV, § 3 of the Idaho Constitution provides explicit protections to established water rights. It provides that "[t]he right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied . . ." Further, that "[p]riority of appropriations shall give the better right as between those using the water." The Idaho Supreme addressed the protections afforded by Article XV, § 3 against alleged legislative infringement in *Fremont-Madison Irr. Dist. and Mitigation Group v. Idaho Ground Water Appropriators, Inc.*, 129 Idaho 454, 926 P.2d 1301 (1996) ("*Fremont-Madison*"). The Court's constitutional analysis in that case is instructive here and must be reviewed.

In *Fremont-Madison*, the Idaho Supreme Court addressed the constitutionality of Idaho Code §§ 42-1425 and 42-1426. Idaho Code § 42-1425 allows water users in the SRBA to claim historic accomplished changes in certain elements of their water rights that would have otherwise violated Idaho's transfer statutes. Idaho Code § 42-1426 allows water users in the SRBA to claim historically enlarged water rights that would have otherwise violated Idaho's mandatory

> Section 42-1426 of the Idaho Code *would violate Article XV, § 3 of the Idaho Constitution if it allowed a party with a claim for an enlargement to unconditionally receive a priority date as of the date of enlargement regardless of injury to junior appropriators.* However, that is not the case. The clear and unambiguous language of the statute provides that only those enlargements which do not increase the rate of diversion, do not injure other water rights existing on the date of enlargement, and which fully mitigate any potential injury to junior water rights existing as of the date of enactment of the amnesty statutes are permitted. I.C. § 42-1426(2). *Section 42-1426 of the Idaho Code is constitutional as written because it provides that an enlargement cannot be allowed that would injure a junior appropriator.*

Fremont-Madison, 129 Idaho at 460, 926 P.2d at 1307 (emphasis added).

Unlike the statutes analyzed in *Fremont-Madison*, Idaho Code § 42-223(11) contains no express protections to prevent injury to other validly established water rights. In this case, the Court finds that the express terms of the statute, as applied to the above-captioned claim, would injure Rabe's water rights by diminishing their priority in violation of Article XV, Section 3 of the Idaho Constitution. The record in this case establishes that during the nonuse period associated with the above-captioned claim, and well after the five year statutory forfeiture had run, Rabe established two intervening water rights on Ditch Creek – water right numbers 75-7349 and 75-7443. Water right number 75-7349 authorizes Rabe to divert 1.97 cfs of water from Ditch creek under an April 11, 1983, priority for irrigation and power purposes. Water right number 75-7443 authorizes Rabe to divert 2.10 cfs from Ditch Creek under an October 31, 1986, priority for year-round power purposes. Both of Rabe's water rights were licensed on September 30, 1996. The Special Master found that "Ditch Creek is fully appropriated, if not over appropriated."[5] *SMR*, pp.11-12. As explained further in the succeeding section of this decision, at the time Rabe established and perfected his two water rights, and up until the time the Idaho Legislature enacted Idaho Code § 42-223(11), the above-captioned water right claim was subject to statutory forfeiture under Idaho Code § 42-222(2). Water use under that right could not lawfully be resumed by Lemhi Gold to the detriment of Rabe under the facts presented here. Therefore, since Idaho Code § 42-223(11) allows a party whose water right was previously subject to statutory forfeiture to resume use under that right to the injury of junior appropriators, the Court finds that the statute violates Article XV, § 3 of the Idaho Constitution.

[5] No party challenges this holding before the Court in this proceeding.

acquired after its passage. The emergency clause does not stop there, however. In addition to applying on and after its passage, the emergency clause continues "and shall apply to all existing water rights" not finally determined to be forfeited. This language clearly refers to the past, and is retroactive as applied to the facts of this case.

In this case, the Court finds that the above-captioned water right was not finally determined to be forfeited at the time Idaho Code § 42-223(11) was enacted on March 25, 2008. At that time, no court had entered any order or decree finally adjudicating the right to be forfeited. Nor had any third-party, including Rabe, instituted administrative or judicial proceedings and proven by clear and convincing evidence that Lemhi Gold or its predecessors had forfeited the right. *See e.g.*, *Sagewillow, Inc. v. Idaho Department of Water Resources*, 138 Idaho 831, 842, 70 P.3d 669, 680 (2003) (holding, "Forfeiture of water rights must be proven by clear and convincing evidence," and directing further that the party asserting that a water right has been forfeited has burden of proving the forfeiture"). To the contrary, at the time Idaho Code § 42-223(11) was enacted, the above-captioned beneficial use water right had been claimed and was pending unresolved in the SRBA. Although the Director had issued a recommendation prior to the statute's enactment that the claim be disallowed, this Court had not entered a final order disallowing the claim.[7] Since the water right had never been proven to be forfeited, or finally determined to be forfeited, as of the date of enactment of Idaho Code § 42-223(11), that statute, by and through the express terms contained in the emergency clause, applies here.

[7] After enactment, this Court did enter a *Final Order* disallowing the claim based on the Director's recommendation. Lemhi Gold then moved the Court to set aside that *Final Order* under Idaho Rules of Civil Procedure 60(b)(5) & (6). Its motion was based largely on grounds that the recommendation on which the *Final Order* was entered did not take into account the change in law contained in Idaho Code § 42-223(11). Additionally, Lemhi Gold argued that since its beneficial use water right had not been "finally determined to be forfeited" as of the enactment date, Idaho Code § 42-223(11), by its express terms, applied. As stated above, no party to the SRBA opposed Lemhi Gold's *Motion to Set Aside*. Since the *Motion* unopposed, and since this Court found good cause to set aside the *Final Order* under Rule 60(b) due to the change in law, this Court entered an *Order* setting aside the *Final Order* disallowing the claim. No party opposed Lemhi Gold's *Motion to Set Aside* at the time it was filed. Likewise, on challenge, no party challenges the decision to set aside the *Final Order* disallowing the above-captioned claim. Any such challenge at this stage in the proceeding would be rejected as untimely for the following reason. This Court's *Order* setting aside the *Final Order* was entered pursuant to an unopposed *Report and Recommendation* issued by the Special Master on December 11, 2012. Under *SRBA Administrative Order 1*, § 13, any party in the adjudication that disagreed with that *Report and Recommendation* was required to "file a *Motion to Alter or Amend* within 21 days from the date the *Special Master's Recommendation* appears on the Docket Sheet." No party to the adjudication, including the parties to this subcase, filed a *Motion to Alter or Amend*. As a result the parties to this subcase waived the right to challenge that decision under *AO1*, § 13, which provides: "Failure of any party in the adjudication to pursue or participate in a *Motion to Alter or Amend* the *Special Master's Recommendation* shall constitute a waiver of the right to challenge it before the Presiding Judge. The waiver shall also apply to further proceedings in the subcase if remanded back to the Special Master."

to resume use of the above-captioned water right under the analysis provided by the Idaho Supreme Court in *Sagewillow*. As a matter of law, upon issuance, Rabe's water rights were superior to Lemhi Gold's dormant right. The consequence of the passage of Idaho Code § 42-223(11) is that Lemhi Gold now has the better right to the use of water in Ditch Creek as against, and to the detriment of, Rabe. Under the new statute, Lemhi Gold's water right is exempt from forfeiture. If Lemhi Gold were now to resume use under its water right it would do so under its senior priority, despite its extended nonuse. Rabe's rights would then be pushed down the tabulation of priorities on Ditch Creek, thereby diminishing the rights. Given the above, the Court finds that Idaho Code § 42-223(11), as applied to the facts of this case, operates retroactively to affect substantive and vested rights (i.e., Rabe's water rights), and to diminish those vested rights. As such, the Court finds that Idaho Code § 42-223(11) retroactively injures Rabe's water rights in violation of Article XI, § 12 of the Idaho Constitution.

B. This Court declines to adopt the Special Master's recommendation that the above-captioned claim be subordinated to all water rights on the system with priority dates earlier than March 25, 2008.

The Special Master found Idaho Code § 42-223(11) unconstitutional in his *Special Master Report.* However, he determined that he could apply the statute in a constitutional manner if he recommended that Lemhi Gold's water right be subordinated to all water rights on the system with priority dates earlier than the date the statute became effective, March 25, 2008. While such a subordination remark may resolve any injury to Rabe and other intervening water users on the source, this Court declines to adopt the Special Master's recommendation in this respect.

The Idaho Supreme Court has instructed that a "[c]ourt cannot engraft a condition that does not exist in the legislation." *Fremont-Madison*, 129 Idaho at 460, 926 P.2d at 1307. Further, that "[i]t is not the province of the Court to read desirable protections into a statute that simply are not there as a matter of legislative prerogative." *Nampa & Meridian Irr. Dist. v. Washington Federal Sav.*, 135 Idaho 518, 524, 20 P.3d 702, 708 (2001). If this Court were to adopt that Special Master's subordination recommendation, it would in effect read a condition and/or protection into the plain language Idaho Code § 42-223(11) that is simply not there.

IV.

REMAINING ISSUES

In addition to the constitutional issue addressed above, Lemhi Gold raises several other issues on challenge. However, given the Court's holding that Idaho Code § 42-223(11) is unconstitutional as applied to the above-captioned claim, it is unnecessary for this Court to reach those additional issues.

V.

CONCLUSION

Pursuant to Idaho Rule of Civil Procedure 53(e)(2) and *SRBA Administrative Order 1*, Section 13.f., this Court has reviewed the Findings of Fact contained in the *Special Master Report*, finds that they are supported by the evidence, and wholly adopts them as its own. With respect to the Conclusions of Law contained in the *Special Master Report*, this Court adopts them in part and rejects them in part. For the reasons set forth in this decision, this Court adopts the Special Master's conclusion of law that Idaho Code § 42-223(11) is unconstitutional as applied to the above-captioned water right claim. The Court rejects the Special Master's recommendation, for reasons set forth herein, that the above-captioned claim be decreed as recommended by the Director with the addition of the following subordination remark: "This water right is subordinated to all water rights on Ditch Creek with priority dates earlier than March 25, 2008."

Since applying Idaho Code § 42-223(11) to revive the above-captioned claim would unconstitutionally injure intervening water rights, that statute cannot be applied to save the above-captioned water right from the operation of forfeiture. Nor can that statute relieve the above-captioned claim from the original recommendation in this case that it be decreed disallowed. The Court finds that the clear and convincing evidence in this matter establishes that the above-captioned water right has been forfeited due to nonuse, and that use cannot be resumed under the resumption of use doctrine due to intervening water rights on the source. Because the Court is prohibited from crafting a subordination remark to remedy the injury, the above-captioned claim must be decreed disallowed.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the MEMORANDUM DECISION AND ORDER ON CHALLENGE / FINAL ORDER DISALLOWING WATER RIGHT CLAIM was mailed on November 12, 2014, with sufficient first-class postage to the following:

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BEFORE THE DEPARTMENT OF WATER RESOURCES OF

THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE IRRIGATION DISTRICT'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	**MUNICIPAL INTERVENORS' RESPONSE TO PETITIONER'S OPENING BRIEF**

COME NOW, Intervenors City of Boise, City of Meridian, City of Caldwell, City of Jerome, City of Post Falls, City of Rupert, City of Idaho Falls, City of Pocatello, Association of Idaho Cities, and Hayden Area Regional Sewer Board (hereinafter "Municipal Intervenors") by and through their respective attorneys and hereby submit this Response to Petitioner Riverside Irrigation District's Opening Brief.

I. INTRODUCTION

Riverside Irrigation District (hereinafter "Riverside") submitted a Petition seeking a Declaratory Ruling that Pioneer Irrigation District (hereinafter "Pioneer") is required to obtain a water right from the Idaho Department of Water Resources (hereinafter "IDWR") for Pioneer's

use of treated wastewater[1] discharged into Pioneer's Phyllis Canal by the City of Nampa (hereinafter "Nampa"). Pioneer responded to Riverside's Petition, denying the alleged need for a water right. Nampa and the Municipal Intervenors submitted a joint Petition to Intervene in the proceedings, as did Idaho Power Company. All Petitions to Intervene were granted by the Director pursuant to a Stipulation entered into by all parties. All parties other than Idaho Power Company entered into a Stipulation of Facts (hereinafter "SOF") filed with IDWR, and also stipulated to the admission of exhibits in the proceeding. While not entering into either stipulation, Idaho Power Company does not oppose either the SOF or the admission of exhibits.

II. FACTS

As a "municipal water provider" within the meaning of I.C. § 42-202B(5), Nampa diverts groundwater into its potable water system for delivery to its customers pursuant to municipal water rights that it holds and exercises for that purpose. SOF, ¶¶ 7-10. Nampa collects the sewage generated by its potable water system customers, treats it in its Wastewater Treatment Plant (hereinafter "WWTP"), and currently discharges treated wastewater (together with a relatively small quantity of water collected from other sources including treated wastewater from other providers, operational water introduced by Nampa at its WWTP, and infiltration and inflow into the system) into Indian Creek. SOF, ¶¶ 23, 25, 27.

Riverside diverts water from Indian Creek downstream from the WWTP into the Riverside Canal pursuant to surface water rights it holds authorizing the diversion of approximately 180 cfs. SOF, ¶ 28, 33. Accordingly, Riverside (along with other Indian Creek water right holders with points of diversion downstream from the WWTP) has diverted and put

[1] The term "wastewater" is differentiated from the term "waste water" in this brief. "Wastewater" (without a space) is used by municipalities, sewer districts and governmental entities such as IDEQ and EPA to refer to sewage or effluent. "Waste water" (with a space) is used in water law to refer to water diverted pursuant to a water right but not consumed by the water user.

to use wastewater discharged by Nampa into Indian Creek. SOF, ¶ 30. Notably, this augmentation of Indian Creek (that benefits Riverside) results from Nampa's diversion, use, treatment, and discharge of groundwater into Indian Creek pursuant to water rights that were appropriated decades after Riverside's appropriations of its surface water supply from Indian Creek. SOF, ¶¶ 9, 33. An examination of IDWR's water right records shows Riverside does not hold a waste water right from Indian Creek.

Pursuant to a Reuse Permit issued by the Idaho Department of Environmental Quality (hereinafter "IDEQ"), Nampa intends to eliminate discharging water from its WWTP into Indian Creek during the irrigation season, but will continue this practice outside of the irrigation season. SOF, ¶¶ 34, 52; Ex. G. Instead, pursuant to that Reuse Permit and a Reuse Agreement between Nampa and Pioneer, Nampa intends to direct its treated wastewater from its WWTP into Pioneer's Phyllis Canal during the irrigation season. SOF, ¶¶ 45, 49; Ex. F; Ex. G. Pioneer has not sought a water right to accept such treated wastewater into the Phyllis Canal. SOF, ¶ 35. Water from the Phyllis Canal is delivered by Pioneer to Nampa's non-potable municipal irrigation water delivery systems, and to Pioneer's own agricultural irrigation landowners within Pioneer's authorized place of use, including some within Nampa's area of city impact. SOF, ¶¶ 57 – 60.

Municipal Intervenor Concerns

The Municipal Intervenors are concerned about the potential issuance of an order requiring that Pioneer obtain a water right prior to accepting previously appropriated and subsequently treated wastewater discharged by Nampa. The Municipal Intervenors are concerned because any such order may impact the control and direction they are entitled to assert over their own treated wastewater. Each of the Municipal Intervenors either currently discharges

their own treated wastewater into facilities owned by outside parties, or may desire to do so in the future. A short summary of each Intervenor's concerns and factual situation follows:

A. City of Jerome

The City of Jerome is interested in the outcome of the case because it treats water at its WWTP that was appropriated by the City and other users, including industry. Since the end of World War II, the City has discharged treated water into the North Side Canal Company's ("NSCC") J8 Canal for beneficial use by NSCC. This is done pursuant to an NPDES permit and a written Agreement for Discharge of Treated Wastewater between Jerome and NSCC. Under Riverside's theory of the case, NSCC would require a water right to accept water treated by Jerome at its WWTP, thereby upsetting this approximately seventy-five year relationship for protest by third parties. If this relationship required a water right, and because it has been ongoing since well before either the 1963 or 1971 mandatory permit statutes, the water use could have been claimed in the Snake River Basin Adjudication.

B. City of Boise

The City of Boise currently discharges treated effluent from its Water Renewal Facilities into the Boise River pursuant to its NPDES permit. The City of Boise treats wastewater from multiple providers including the City of Boise's potable water provider Suez, multiple sewer districts, and other private users. The City of Boise is interested in the ability to explore alternatives to discharging its treated effluent to the Boise River, one such alternative being reuse of its treated effluent.

C. City of Meridian

The City of Meridian discharges most of the effluent treated at its WWTP to Fivemile Creek pursuant to its NPDES permit. Some of that treated effluent is delivered (prior to

discharge into Fivemile Creek) to various users, including a park, commercial landscaping, a car wash, and others. While the delivery of effluent to other users is a fraction of the total effluent produced by the City, it intends to continue searching for ways in which to use its treated effluent. The City's NPDES permit also allows discharge to the Boise River, and the City maintains infrastructure to do the same if desired.

D. City of Caldwell

The City of Caldwell discharges effluent treated at its WWTP to the Boise River just upstream of the mouth of Indian Creek pursuant to an NPDES permit. Caldwell currently does not deliver treated effluent to any end user. It has, however, engaged in discussions with other entities, including Riverside Irrigation District, to find ways in which it can deliver such effluent for use by those entities.

E. City of Post Falls

The City of Post Falls treats water at its WWTP that was appropriated by the City and other municipal providers, then discharges treated water into the Spokane River below Post Falls dam, pursuant to an NPDES permit, and just a mere matter of miles upriver from the border with the State of Washington. In the future, Post Falls may look to recycle more water than it discharges into the Spokane River.

F. City of Rupert

The City of Rupert treats water at its WWTP that was appropriated by the City and other users, including industry, then land applies the same water onto fields owned and operated by the City during the irrigation season and stores water it treats in lagoons during the non-irrigation season, pursuant to an IDEQ Reuse Permit. Rupert has an agreement with the United States to discharge treated water into the Minidoka Irrigation District canal in the event of an emergency.

In the future, Rupert may want to discharge all or some of the water it treats into an irrigation canal.

G. City of Idaho Falls

The City of Idaho Falls treats water at its WWTP that was appropriated by Idaho Falls, other municipal providers, private water purveyors and other users, including industry, and discharges treated effluent to the Snake River pursuant to an NPDES permit. This single discharge point to the Snake River is immediately adjacent to the WWTP and upstream of the Gem State Hydroelectric Dam. Idaho Falls does not currently provide treated effluent to any end user, but is continuously seeking ways to best manage this resource.

H. City of Pocatello

The City of Pocatello discharges waste water from its Water Pollution Control Plant (WPC) into the Portneuf River. The Pocatello WPC treats waste water received from the City of Pocatello and the City of Chubbuck to satisfy permit requirements for secondary treatment, nitrification and phosphorus removal. However, the City anticipates that it will be faced with additional and expensive treatment requirements in the future and has begun to consider land application or other arrangements with nearby water users that would allow it to avoid expensive new treatment technologies.

I. Hayden Area Regional Sewer Board

Hayden Area Regional Sewer Board ("HARSB") is somewhat different than the other intervenors. It was created more than 30 years ago by way of a joint powers agreement between Kootenai County, the City of Hayden and Hayden Lake Sewer District (collectively "Members"). As a publicly owned treatment works, it was created to receive wastewater generated by its Members' customers, treat that wastewater, and use the effluent and biosolids in

a manner that best serves the Members. No Member is a municipal water provider.

The Members' customers receive their water from various water districts, associations, or private wells. The water provider delivers appropriated water to its customers for use, and the customer provides the resulting wastewater to a Member to collect and delivers to HARSB for treatment and use in the most efficient and cost conservative manner that benefits the Members and their customers.

Currently HARSB land applies the treated effluent to farmland it owns during the summer months, and discharges it to the Spokane River the remainder of the year. HARSB is looking at future options to use the effluent year-round and discontinue delivering it to the river. I.C. § 42-201(8) recognizes that treated waste water effluent is unique and distinctly different from any other water. It expressly exempts publicly owned treatment works ("POTW") and sewer districts that use and manage treated wastewater effluent from the requirement that they obtain a water right for such use.

POTWs and sewer districts frequently are not the original providers of the wastewater they treat or collect. If this case were to result in a water right being required to receive wastewater to manage or to deliver it to another entity in the management of that wastewater effluent, it would invalidate the exception for wastewater effluent carved out by the Legislature and relied on by HARSB and be detrimental to HARSB, its Members, and the Members' customers.

J. Association of Idaho Cities ("AIC")

AIC is a non-partisan organization founded in 1947 that represents its city members, both large and small so as to safeguard cities' ability to manage their water rights, water use and discharge as necessary to meet the needs of their residents and any applicable laws and

regulations. Riverside's arguments here implicate cities' management and use of water rights, water use and discharge. Thus AIC endorses the arguments made in this brief to allow cities to operate as they have historically under applicable Idaho state law.

III. ARGUMENT

Riverside seeks an order from IDWR to require that Pioneer obtain a water right for Nampa's discharge of its treated effluent into the Phyllis Canal. Idaho's legislature has already resolved this issue by enacting I.C. § 42-201(8) -- which provides that public entities operating wastewater treatment plants (such as Nampa in this case) are not required to obtain a water right to dispose of the effluent from their treatment plants. Additionally, Idaho case law establishes that Nampa cannot be compelled to continue to waste appropriated ground water into Indian Creek to Riverside's benefit. Instead of addressing these principles head-on, Riverside makes several arguments (including an irrelevant focus on the source and purpose elements of Nampa's water rights), all of which amount to a refusal to recognize the bedrock legal principle that public entities are entitled to maintain control of their waste water and dispose of it as they see fit within the confines of the law and regulations to which they are subject.

Municipal Intervenors join in and concur in the briefs filed by Nampa and Pioneer. For purposes of economy, and because of the detailed responses in the briefs filed by Nampa and Pioneer, Municipal Intervenors will not address every issue raised by Riverside. Municipal Intervenors reserve the right to address any issue raised by Riverside in argument if so desired by the Director.

A. Cities Have Legislative Authority to Maintain Control Over their Treated Wastewater

To the extent there was any question that Idaho law could be construed to compel a city, municipal provider, sewer district, or regional public entity operating a POTW to continue

wasting water back into a natural channel, that question was put to rest with enactment of Idaho Code § 42-201(8). That statute provides in part as follows:

> Notwithstanding the provisions of subsection (2) of this section, a municipality or municipal provider as defined in section 42-202B, Idaho Code, a sewer district as defined in section 42-3202, Idaho Code, or a regional public entity operating a publicly owned treatment works shall not be required to obtain a water right for the collection, treatment, storage or disposal of effluent from a publicly owned treatment works or other system for the collection of sewage or stormwater where such collection, treatment, storage or disposal, including land application, is employed in response to state or federal regulatory requirements.

I.C. § 42-201(8).

The statute permits Nampa and other entities who operate WWTPs (such as the Municipal Intervenors) to collect, treat, store and dispose of the effluent from those treatment plants in response to state or federal regulatory requirements without the need to obtain a water right for those purposes. That is exactly what Nampa is doing here. It is simply changing how it manages its wastewater by altering the discharge location of water it is treating at the WWTP. The plain language of the statute is exactly on point and is consistent with the associated legislative history that is discussed at length by Nampa in its response. Accordingly, a water right is not required if Municipal Intervenors (including the City of Nampa in this case) make the conscious decision to cease wasting water, and Riverside cannot compel the continued waste of Nampa's treated effluent into Indian Creek.

Riverside argues that the application of I.C. § 42-201(8) in this case would render that statute unconstitutional as applied. *Petitioner's Opening Brief* at 29. Riverside's argument that the statute is unconstitutional as applied in this case is premised entirely on the assumption that its water rights will be injured. *Id.* at 29-33. However, as discussed below, Riverside has no claim of injury to its water rights because it cannot compel Nampa to continue its discharge of effluent into Indian Creek, nor is it entitled to rely on the continued discharge of that effluent as

part of its Indian Creek water rights.

B. Notwithstanding I.C. § 42-201(2) and Because Pioneer is Acting as Nampa's Agent, No Water Right is Required

As explained in Nampa's brief, Riverside's argument that I.C. § 42-201(2) requires Pioneer to obtain a water right to "divert" or "apply" Nampa's discharged effluent is simply inapplicable because the Idaho legislature intended that statute to address the diversion and subsequent application of that water; not the application of discharged effluent as is the case here. However, even if Riverside is correct that Pioneer "divert[s]" water treated by Nampa from the manmade WWTP into the Phyllis Canal within the meaning of I.C. § 42-201(2), or that Pioneer's subsequent "application" of that treated wastewater to lands within its place of use similarly falls within the meaning of that statute, I.C. § 42-201(8) exempts that "diver[sion]" and "application" from the requirement of I.C. § 42-201(2) that any person diverting water or applying it to any purpose must first obtain a water right.

I.C. § 42-201(8) starts out with the words "[n]otwithstanding the provisions of subsection (2) of this section . . . ." Emphasis added. In other words, the statute states that despite the requirement of I.C. § 42-201(2), diverters and users of water must obtain a water right, municipal providers and certain others need not do so when disposing of treated effluent from a WWTP. Black's Law Dictionary 1230 (10th ed. 2014) (ordinary meaning of "notwithstanding" is "in spite of" or "despite").

Additionally, no water right is required because Pioneer is merely acting as Nampa's agent for the disposal of Nampa's treated effluent: water that was previously appropriated, and discussed in the agreement between the two parties. SOF ¶ 49. Much like Riverside has no right to compel Nampa to continue wasting water into Indian Creek, where Pioneer is acting as Nampa's agent, Pioneer obtains no right to water discharged by Nampa from the WWTP into the

Phyllis Canal that requires another water right with IDWR. *First Security Bank of Blackfoot v. State*, 49 Idaho 740, 746 (1930) ("If the water right was initiated by the lessee, the right is the lessee's property, unless the lessee was acting as the agent of the owner.").

To the extent Riverside raises questions regarding place of use, Petitioner's Opening Brief at 5 ("The place of use for each of these rights is Nampa's service area in accordance with Idaho Code § 42-202B(9). SOF ¶ 11."), or purpose of use, *Id.* at 17 ("Nampa's effluent water rights are for municipal use only"), the plain language of I.C. § 42-201(8) resolves the issues:

> If land application is to take place on lands not identified as a place of use for an existing irrigation water right, the municipal provider or sewer district shall provide the department of water resources with notice describing the location of the land application, or any change therein, prior to land application taking place. The notice shall be upon forms furnished by the department of water resources and shall provide all required information.

Emphasis added.

Here, water from the WWTP will be land applied on lands that are within the places of use for irrigation water right held by Nampa and/or Pioneer. Nampa's service area and Pioneer's place of use overlap in some locations. If any lands are not already described in an existing irrigation water right, the cure is remarkably simple: Nampa can file a standard Notice of Land Application of Effluent form with IDWR.[2]

In short, no water right is required because of the agency relationship between Nampa and Pioneer, combined with the fact that the requirements of I.C. § 42-201(8) are met, notwithstanding what Riverside cites to in I.C. § 42-201(2).

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[2] (According to that form: "Idaho Code § 42-201(8) requires municipalities, municipal providers, sewer districts and regional public entities operating treatment works to notify the Department when land application of effluent is to take place on land not identified as a place of use for an existing irrigation water right. Also use this form to notify the Department of any change in the location of land application of effluent. Notice shall be provided prior to land application taking place.")

C. Idaho Waste Water Law Permits Nampa to Maintain Control Over its WWTP Effluent

Riverside's attempt to obtain relief from the Director that would force Nampa – and all entities that treat and discharge effluent heretofore or thereafter – to continue wasting previously appropriated water into a natural channel greatly concerns the Municipal Intervenors. The Legislature's decision to enact I.C. § 42-201(8) was not done in an attempt, as Riverside argues, to injure water right holders, rather it was codification of longstanding waste water principles. That an appropriator of water must continue to waste appropriated water into a natural channel has been soundly rejected in this State:

> In point of law the general principle upon which the plaintiff relies is scarcely open to controversy; one who by the expenditure of money and labor diverts appropriable water from a stream, and thus makes it available for fruitful purposes, is entitled to its exclusive control so long as he is able and willing to apply it to beneficial uses, and such right extends to what is commonly known as wastage from surface run-off and deep percolation, necessarily incident to practical irrigation. Considerations of both public policy and natural justice strongly support such a rule. Nor is it essential to his control that the appropriator maintain continuous actual possession of such water. So long as he does not abandon it or forfeit it by failure to use, he may assert his rights. It is not necessary that he confine it upon his own land or convey it in an artificial conduit. It is requisite, of course, that he be able to identify it; but, subject to that limitation, he may conduct it through natural channels and may even commingle it or suffer it to commingle with other waters. In short, the rights of an appropriator in these respects are not affected by the fact that the water has once been used.

United States v. Haga, 276 F. 41, 43-44 (D. Idaho 1921) (emphasis added).

Here, and consistent with the decision in *Haga*, the water that is treated by Nampa is within its dominion and control at the WWTP. At the WWTP, Nampa can measure and quantify the water it treats. Instead of wasting water into Indian Creek, and pursuant to the exclusive control the City exercises over its water rights, the water Nampa treats will instead be beneficially used by landowners of Pioneer for irrigation within Pioneer's place of use, many of whom are Nampa and its citizens. SOF ¶¶ 57 – 60. Despite Riverside's argument to the

contrary, what Nampa has already been permitted by IDEQ to accomplish does not require another water right because Idaho law expressly affords Nampa the ability to choose what to do with appropriated water that remains within its control.

To the extent Riverside, as a surface water user, has come to rely on artificially enhanced flows in Indian Creek from ground water that was previously appropriated, then pumped, treated, and intentionally discharged into Indian Creek by Nampa, the past century of precedent prevents Riverside from compelling Nampa to waste previously appropriated water into Indian Creek for Riverside's junior waste water use:

> It is axiomatic that no appropriator can compel any other appropriator to continue the waste of water whereby the former may benefit. If respondent, by a different method of irrigation . . . could so utilize his water that it would all be consumed in transpiration and consumptive use . . . and thus no waste water return by seepage or percolation to the river, no other appropriator – from the evidence herein – could complain. . . . . The rule that a junior appropriator has the right to a continuation of stream conditions as they were at the time he made his appropriation, could not compel respondent to continue to waste his water . . . .

Application of Boyer, 73 Idaho 152, 162-63 (1952) (internal citations removed) (emphasis added). *See also Hidden Springs Trout Ranch, Inc. v. Hagerman Water Users, Inc.*, 101 Idaho 677, 681 (1980) ("While the waste of the original appropriator is not to be encouraged, the recognition of a right in a third person to enforce the continuation of waste will not result in more efficient uses of water."); *Thompson v. Bingham*, 78 Idaho 305, 308 (1956) ("The original appropriator may at any time recapture waste water remaining on his land and apply it to a beneficial use."); *Reynolds Irr. Dist. v. Sproat*, 70 Idaho 217, 222 (1950) ("It is settled law that seepage and waste water belong to the original appropriator and, in the absence of abandonment or forfeiture, may be reclaimed by such appropriator as long as he is willing and able to put it to a beneficial use."); *Crawford v. Inglin*, 44 Idaho 663, 669 (1927) ("He can use all his water, waste none of it, or apply it on other lands, and thereby prevent its flow into the ditch."); *Sebern*

v. Moore, 44 Idaho 410, 418 (1927) ("We conclude that surface waste and seepage water may be appropriated . . . subject to the right of the owner to cease wasting it, or in good faith to change the place or manner of wasting it").

Accordingly, despite Riverside's contrary protestations, by simply changing its discharge point for treated wastewater from its WWTP, Nampa will neither enlarge nor expand its existing water rights. Certainly, Nampa cannot injure Riverside's senior surface water rights by ceasing discharge of treated, ground water-based wastewater into Indian Creek. If Riverside has come to rely on augmented waste water flows in Indian Creek due to Nampa's discharge of appropriated ground water, Riverside has no basis upon which to assert injury to its existing surface water rights. Moreover, even if Riverside had a waste water right from Indian Creek – which it does not – there would be no basis for a claim of injury due to the century of precedent that allows Nampa the right to cease wasting previously appropriated water over which it maintains dominion and control.

IV. CONCLUSION

Riverside's Opening Brief is replete with arguments about why Pioneer must obtain a water right prior to Nampa's placement of treated effluent from its WWTP into the Phyllis Canal and/or before Pioneer's subsequent application of that effluent to lands within places of use of water rights held by either Pioneer or Nampa. The singular glaring error in all of Riverside's arguments is its refusal to recognize that the treated effluent is wastewater that remains under Nampa's direction and control as it is being put into the Phyllis Canal, and as it is being applied to lands by Pioneer. Riverside's reliance on wastewater from Nampa is not a valid basis for overturning the established statutory authorization and waste water legal principles discussed herein. Accordingly, the Director should determine that it is completely unnecessary for Pioneer

to obtain a water right to accept Nampa's discharge of treated effluent, or to thereafter apply it to lands within the place of use of water rights held by either Pioneer or Nampa.

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Dated this 30th day of October, 2020

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Candice M. McHugh, Attorney for Association of Idaho Cities

HONSINGER LAW, PLLC

Dated this ____ day of October, 2020

Charles L. Honsinger, Attorney for Cities of Meridian, Caldwell

CITY OF BOISE

Dated this ____ day of October, 2020

Abigail R. Germaine, Attorney for City of Boise

to obtain a water right to accept Nampa's discharge of treated effluent, or to thereafter apply it to lands within the place of use of water rights held by either Pioneer or Nampa.

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Dated this ____ day of October, 2020

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01

Docket No. P-DR-2020-01

NAMPA'S RESPONSE BRIEF

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Regulations

Constitutional Provisions

INTRODUCTION

Shorthand definitions used by Nampa are collected in the footnote.[1]

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[1] This and other submissions by the Reuse Proponents employ the following shorthand definitions:

"AF".....acre-feet.
"AFA".....acre-feet per annum (year).
"AIC".....Association of Idaho Cities.
"Black Rock".....Black Rock Utilities, Inc.
"Boise-Kuna".....Boise-Kuna Irrigation District.
"Bureau".....U.S. Bureau of Reclamation.
"Department".....Idaho Department of Water Resources.
"DMR".....Discharge Monitoring Report.
"effluent".....treated sewage water that leaves a WWTP aka POTW.
"EPA".....U.S. Environmental Protection Agency.
"HARSB".....Hayden Area Regional Sewer Board.
"IDWR".....Idaho Department of Water Resources.
"IDEQ".....Idaho Department of Environmental Quality.
"Idaho Power".....Idaho Power Company.
"influent".....untreated sewage water that enters a WWTP aka POTW.
"McCall".....City of McCall.
"Municipal Intervenors"..The cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Nampa, Pocatello, Post Falls, and Rupert, AIC and HARSB.
"Municipal Intervenors Response Brief".....Municipal Interveners' Response to Petitioner's Opening Brief, filed on October 30, 2020.
"Nampa" or "City".....City of Nampa.
"Nampa WWTP".....Nampa's wastewater treatment plant.
"NMID".....Nampa Meridian Irrigation District.
"Non-Potable System" (aka "PI System").....Nampa's non-potable pressurized irrigation water delivery system.
"NPDES Permit".....Nampa's National Pollution Discharge Elimination System Permit No. ID0022063.
"Opening Brief".....*Petitioner's Opening Brief* filed by Riverside in this proceeding on Oct. 2, 2020.
"Party" or "Parties".....Any or all of the Reuse Proponents and Reuse Opponents.
"Payette District".....Payette Lakes Recreational Water & Sewer District.
"Petition".....Riverside's *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01.*
"PI System" (aka "Non-Potable System")....Nampa's non-potable pressurized irrigation water delivery system.
"Pioneer".....Pioneer Irrigation District.

This proceeding was initiated by the submission of Riverside's Petition on February 24, 2020. Nampa filed both an answer and a petition to intervene. Intervention in support of Nampa was sought by Pioneer and the Municipal Intervenors. Idaho Power also sought intervention, apparently in support of Riverside. All petitions to intervene were granted. All parties joined in the SOF filed on September 11, 2020.[2] Municipal Providers submitted Exhibits A through T, and all parties stipulated to their admission on September 11, 2020, subject to limitations set out in that stipulation. This brief is filed in response to Riverside's Opening Brief.

"Pioneer's Response Brief".....Intervenor Pioneer Irrigation District's Response to Petitioner's Opening Brief, filed on October 30, 2020.
"Potable System".....Nampa's potable water delivery system.
"POTW".....POTW stands for "publically owned treatment works." A POTW is a publicly owned WWTP.
"Project Participants".....Nampa and Pioneer.
"RAFN".....RAFN is an acronym for "reasonably anticipated future needs" as defined in Idaho Code § 42-202B(8).
"Reuse Agreement".....The agreement between Pioneer and Nampa known as *Recycled Water Discharge and Use Agreement* dated 3/7/2018.
"Reuse Opponents".....Riverside Irrigation District and Idaho Power Company.
"Reuse Permit".....Reuse Permit No. M-255-01 issued to Nampa by IDEQ.
"Reuse Project".....The project authorized by Nampa's *Reuse Permit* and to be undertaken pursuant to the *Reuse Agreement* with Pioneer.
"Reuse Proponents".....Municipal Intervenors and Pioneer.
"Riverside".....Riverside Irrigation District.
"SOF".....*Stipulation of Facts by All Parties* filed on Sept. 11, 2020 (not to be confused with the preliminary *Reuse Proponents' Stipulation of Facts* filed on June 30, 2020).
"Title 50 Agreement".....An agreement simply titled "Agreement" dated Sept. 9, 1974, a copy of which is set out as Exhibit L (In Submission of Exhibits K-T).
"waste water".....This term (with a space) is used in water law to describe water diverted under a water right but not consumed by the water user.
"wastewater".....This term (without a space) is used by municipalities, IDEQ, and EPA to refer to sewage or effluent.
"WWTP".....WWTP stands for "wastewater treatment plant." A WWTP is a POTW if it is publicly owned.

[2] Idaho Power did not stipulate to the accuracy of the facts, but stipulated that it does not currently intend to challenge them. SOF at 3.

Nampa, Pioneer, and the Municipal Intervenors have cooperated to minimize overlap in their briefs, which have different emphases and approaches but are intended to work together and make consistent arguments. Accordingly, Nampa adopts and incorporates the briefs of Pioneer and the Municipal Intervenors.

SUMMARY OF ARGUMENT

The Department is called upon to determine whether Pioneer is required to obtain a water right in order to accept delivery of wastewater[3] collected and treated by the Nampa and delivered to Pioneer in accordance with the Reuse Agreement and the Reuse Permit. Riverside does not contend that Nampa is required to obtain a new water right in connection with this undertaking. Riverside acknowledges that the water right requirement also could be satisfied by a transfer of Nampa's water rights. Nampa's position is that neither an appropriation nor a transfer is required.

If Riverside prevails and Pioneer is required to obtain a water right, it appears that Riverside will contend in such a proceeding that Pioneer must mitigate for the resulting reduction of wastewater currently discharged by Nampa to Indian Creek. (Riverside calls this injury and enlargement. Opening Brief at 23-25.) A requirement to provide a substitute supply of water to replace the entire irrigation-season flow of wastewater now wasted to Indian Creek would be

[3] Before turning to the substance, we offer this comment on terminology. The terms "waste water" and "wastewater" have different, but overlapping, meanings. The term "waste water" (with a space) is commonly employed in water law to describe water diverted under a water right but not consumed by the water user. (See definition of waste water quoted in *A&B Irrigation Dist. v. Aberdeen-American Falls Ground Water District*, 141 Idaho 746, 751, 118 P.3d 78, 83 (2005).) Waste water must be returned to the common supply as return flow, seepage, or drainage water unless it is lawfully recaptured by the original diverter. The term "wastewater" (without a space) is employed by municipalities, IDEQ, and EPA to mean treated municipal effluent. In this brief, the term "waste water" is employed in the context of water law, and the term "wastewater" is used in reference to effluent (which, of course, may also be waste water in the water law context).

impossible as a practical matter and would scuttle the Reuse Project, costing Nampa citizens tens of millions of dollars (SOF ¶¶ 38, 40-43), all to the benefit of Riverside.

Riverside pins its argument on its reading of Idaho Code § 42-201(2), which is a central component of Idaho's mandatory permitting statutes. Riverside contends, incorrectly, that the delivery of wastewater under Nampa's dominion and control for use within Pioneer's Irrigation District constitutes the "diversion" of water by Pioneer, and that application of any water to land (even water it obtained outside the public water supply) requires a permit. This is a misreading of subsection 2, which prohibits the diversion or application of water obtained from the public water supply. In allowing effluent to be added to its canal, Pioneer is neither diverting nor applying water it obtained from a public water supply.

Riverside's argument also ignores Nampa's right to use and reuse to extinction water diverted under its municipal water rights. Such reuse is lawful, does not constitute enlargement of the underlying municipal water rights, and consequently does not result in injury to others.

Last, but by no means least, subsection 8 of Idaho Code § 42-201 overrides subsection 2 and authorizes the Reuse Project without a water right. This is clear from the words of the statute (which make subsection 8 applicable "notwithstanding" subsection 2), from its legislative history (which makes clear that its purpose is to eliminate mandatory licensing, not shift the burden to farmers and irrigation districts), and from the presence of the IDWR notice requirement (which would be unnecessary if farmers and irrigation districts were required to obtain new water rights).

Indeed, subsection 8 alone is a complete and sufficient defense to Riverside's contentions. All of the other arguments amount to belts and suspenders.

In apparent recognition of the destructive force of subsection 8 to Riverside's argument under subsection 2, Riverside contends that subsection 8 is unconstitutional. That is quite a reach. If that argument were true, all statutory exemptions from permitting requirements—e.g., water for fighting fires[4]—would be unconstitutional.

Indeed, the subsection 8 exemption is in an even stronger position against constitutional attack than other exemptions. This is because it cannot seriously be contended that it results in legal injury. Injury occurs only if something is taken to which one has a legally protected right under the priority system. No water appropriator may be compelled to continue wasting its waste water back to the public water supply after an initial beneficial use if it is authorized, under its water right, to make further use of that water. Nor may an entity that lawfully obtains dominion and control of water outside of the appropriation system (e.g., sewer districts that collect effluent) be compelled to continue a particular practice for disposing of that collected water. Hence, allowing Nampa to replace its discharge of wastewater to Indian Creek with a delivery of that wastewater to Pioneer cannot constitute injury or an unconstitutional taking of property. In short, no property right is taken.

Indeed, Riverside's core assumption and its motivation for pursuing this declaratory ruling is based on this misunderstanding of injury. If Pioneer were allowed or required to obtain a new water right in Nampa's effluent, it could readily do so. It could seek a permit for a junior waste water right allowing it to use the effluent lawfully placed in the Phyllis Canal by Nampa

[4] Subsection 42-201 contains several exemptions. Subsection 42-201(3)(a) (2000 Idaho Sess. Laws, ch. 291, § 1) makes it unnecessary to obtain a water right for diversions to fight existing fires. Subsection 42-201(3)(b) (2008 Idaho Sess. Laws, ch. 320, § 1) addresses forest practices and dust abatement. Subsection 42-201(3)(c) (2020 Idaho Sess. Laws, ch. 6.) addresses environmental cleanups. The only exemption that would survive constitutional challenge under Riverside's theory of injury is subsection 42-201(9) (2016 Idaho Sess. Laws, ch. 139, § 1), because the exemption from hydropower licensing is limited to incidental power generation.

pursuant to Idaho Code § 42-201(8), in accordance with the Reuse Permit and Reuse Agreement.[5] For the reasons just mentioned, Riverside would be in no position to demand mitigation or other tribute. The junior position of such a waste water right would be of no consequence, because the water is under the physical control of the parties and subject to rights created by contract. But a new junior water right would provide no more security or certainty to Pioneer than it already has under the Reuse Agreement.[6] And the existence of a water right held by Pioneer could confuse or complicate matters if Nampa ever elected to end its delivery of wastewater to Pioneer. A requirement to go through such a pointless water right exercise (with attendant costs, delays, and judicial reviews) would be a waste of resources, as the Legislature wisely recognized in enacting subsection 42-201(8).

ARGUMENT

I. IDAHO CODE § 42-201(8) AUTHORIZES MUNICIPALITIES TO COLLECT AND DISPOSE OF EFFLUENT WITHOUT OBTAINING A WATER RIGHT.

A. Subsection 8 is sufficient to resolve the question presented here.

The statutes primarily at issue in this proceeding are found within Idaho Code § 42-201. Subsections 1 and 2 of section 42-201 (together with Idaho Code §§ 42-103 and § 42-229) constitute Idaho's mandatory permitting law. The remaining subsections of 42-201 are exceptions to or clarifications of that mandate. The one pertinent here is subsection 8.

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[5] Pioneer explains in its brief that it cannot obtain and perfect a separate water right for effluent physically delivered to it by Nampa. Pioneer observes that Idaho water rights are based on diversion from a natural source. Nampa agrees with Pioneer that requiring it to obtain such a water right is unnecessary and improper. But if the Department ruled otherwise, i.e., if the Department ruled that Pioneer can "appropriate" the water delivered to it by Nampa, the best analogy would be to a waste water appropriation.

[6] See Pioneer's Response Brief for a thorough discussion of the Reuse Agreement.

The linchpin of Riverside's statutory argument is subsection 2. As Nampa explains in section II at page 25 below, that argument fails. Subsection 2 does not impose a water right requirement on Pioneer, because Pioneer is neither diverting nor applying water from a public water supply.

Nampa begins its discussion, however, with subsection 8, because it is sufficient to answer the question presented. Subsection 8 declares that no water right is required for a municipality, municipal provider, sewer district, or regional operator of a POTW that land applies or otherwise disposes of treated effluent pursuant to regulatory requirements. It reads in full:

> Notwithstanding the provisions of subsection (2) of this section, a municipality or municipal provider as defined in section 42-202B, Idaho Code, a sewer district as defined in section 42-3202, Idaho Code, or a regional public entity operating a publicly owned treatment works shall not be required to obtain a water right for the collection, treatment, storage or disposal of effluent from a publicly owned treatment works or other system for the collection of sewage or stormwater where such collection, treatment, storage or disposal, including land application, is employed in response to state or federal regulatory requirements. If land application is to take place on lands not identified as a place of use for an existing irrigation water right, the municipal provider or sewer district shall provide the department of water resources with notice describing the location of the land application, or any change therein, prior to land application taking place. The notice shall be upon forms furnished by the department of water resources and shall provide all required information.

Idaho Code § 201(8).[7]

[7] This statute was enacted in 2012. 2012 Idaho Sess. Laws, ch. 2018 (H.B. 608) (reproduced together with its legislative history at Addendum C at page 103). The legislation was prompted by concerns raised by the City of McCall over its disposal of effluent, which was land applied on farms outside the city. Official communications between McCall and the Department that led up to the legislation are set out in Addendum F at page 191.

B. The plain words of subsection 8 state that no water right is required for the disposal of Nampa's effluent.

Subsection 8 is a simple statute. By adding this subsection in 2012, the Legislature declared that no water right is required when a city or sewer district disposes of effluent in order to comply with environmental regulatory requirements.

Riverside implicitly concedes that the statute absolves Nampa of any requirement to obtain a water right in connection with its Reuse Permit. Opening Brief at 22-27. Its sole argument is that, unlike Nampa, Pioneer is not covered by subsection 42-201(8). In other words, according to Riverside, the legislation does not eliminate the burden of obtaining a water right in connection with water reuse. It merely shifts that burden to the farmers and irrigation districts who accept effluent from cities and sewer districts.

Riverside's niggardly reading of the legislation would negate the very purpose of subsection 8, which was to facilitate environmentally regulated reuse of wastewater by eliminating the uncertainty, delay, and expense attendant to new water right acquisition (not to mention eliminating an unnecessary use of scarce agency resources).

The statute says the city or sewer entity need not obtain a water right. But the statute also contains a sweeping declaration that when a city or sewer district takes action pursuant to subsection 8, the mandatory permitting requirements are set aside. The first nine words of subsection 8 state that this waiver operates "[n]otwithstanding the provisions of subsection (2)." The permitting requirements do not come back into play simply because a city employs an agent or contracting party to effectuate its disposal of effluent.

Riverside reads subsection 8 to say that mandatory permitting requirements are waived only if the city is able to accomplish its disposal without the involvement of any other party. But that is not what the statute stays. The statute does not concern itself with what contractual

relationships the city may employ to accomplish the disposal. Instead, the statute broadly declares the city does not need a water right, period, "notwithstanding" subsection 2. Riverside's suggestion that the subsection 2 survives the "notwithstanding" command and re-imposes water right requirements on anyone participating with the city is not a credible reading of the statute.

After all, the "notwithstanding" language employed in subsection 8 is identical to the "notwithstanding" language employed in all of the exemptions (subsections 3(a), 3(b), 3(c), 8, and 9). If Riverside is correct that subsection 8 exempts cities and sewer districts but not those applying the effluent to beneficial use, then the same problem would occur under subsection 9. That subsection exempts operators of irrigation canals that have made arrangements for the incidental generation of hydropower. Riverside's parsimonious reading of the "notwithstanding" language would lead to the result that Idaho Power must obtain a water right. That result is just as wrong. The plain and most logical reading of the "notwithstanding" reading is that any agent or contracting party acting in conjunction with the exempted party is also exempted from the mandatory permitting requirement in subsection 2.

C. The legislative history resolves any ambiguity.

The statute is clear enough. But if there is any ambiguity, the legislative history of H.B. 608 leaves no doubt that the statute's purpose was to eliminate the very argument that Riverside now raises.[8]

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[8] The Idaho Supreme Court has observed:

> If the language is clear and unambiguous, there is no occasion for the court to resort to legislative history or rules of statutory interpretation. *Escobar*, 134 Idaho at 389, 3 P.3d at 67. [*State v. Escobar*, 134 Idaho 387, 389, 3 P.3d 65, 67 (Ct. App. 2000).] When this Court must engage in statutory construction, it has the duty to ascertain the legislative intent and give effect to that intent. *Rhode*, 133 Idaho at 462, 988 P.2d at 688. [*State v. Rhode*, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999).] To ascertain the intent

The legislation was prompted by concerns over whether the City of McCall needed a water right to deliver effluent from its WWTP to farmers under contract with the city.[9] In formal communications between the City of McCall and IDWR, the Department concluded that no water right would be needed if McCall's WWTP treated only wastewater derived from the city's municipal water rights. Alas, that was not the situation. McCall's WWTP accepted substantial quantities of influent collected by the Payette Lakes Recreational Water & Sewer District from households outside the city. Because this was water originating in domestic wells, not traceable to the city's municipal water rights, the Department informed McCall that a water right likely would be needed for its land application.[10]

As a result, McCall worked with the Department, IWUA, IAC, HARSB, and other stakeholders to develop legislation to exempt McCall and all others in its situation from the obligation to obtain a water right. The result was H.B. 608 (Idaho Code § 42-201(8)).

> of the legislature, not only must the literal words of the statute be examined, but also the context of those words, the public policy behind the statute, and its legislative history. *Id.* It is "incumbent upon a court to give a statute an interpretation which will not render it a nullity." *State v. Nelson*, 119 Idaho 444, 447, 807 P.2d 1282, 1285 (Ct. App. 1991).

State v. Reyes, 139 Idaho 502, 505, 80 P.3d 1103, 1106 (Ct. App. 2003).

[9] The city's contractual arrangement with farmers is documented in the legislative history of H.B. 608. See, e.g., House State Affairs Committee (Feb. 28, 2012) (Statement of Rep. Stevenson) reproduced in Addendum C at page 117, and Senate Resources & Environment Committee (Mar. 16, 2012) reproduced in Addendum C at page 129 (Statements of Mr. Meyer). It is also documented in a letter in the files of IDWR from Christopher H. Meyer to Garrick L. Baxter dated September 16, 2011, reproduced in Addendum F at page 200.

[10] See letters in the files of IDWR from Garrick L. Baxter to Christopher H. Meyer dated September 7, 2011 and September 19, 2011, reproduced in Addendum F, items 2 and 4 at pages 198 and 202, respectively.

The legislation, approved unanimously by both Houses,[11] was clearly and unambiguously intended to eliminate altogether the need for new water rights when cities engage in programs to deliver effluent to those in a position to put it to beneficial use.

The following are four examples:

> The purpose of this legislation is to clarify that a separate water right is not required for the collection, treatment storage or disposal storage [sic], including land application, of the effluent from publicly owned treatment works. Effluent is water that has already been diverted under an existing right and has not been returned to the waters of the state. If the land application is to be on land for which there is not already identified a place of use for an existing water right, notice of the place of use will be provided to the department of water resources to allow the department to have complete records of where the water is being used.

Statement of Purpose (emphasis added) reproduced in Addendum C at page 113.

> Rep. Stevenson presented RS 21325, proposed legislation to clarify that a separate water right is not required for the collection, treatment storage or disposal storage, including land application, of the effluent from publicly owned treatment works. Rep. Stevenson stated this legislation was brought by the Association of Cities due to a situation that arose in McCall. They were combining wastewater from the city with a sewer district and realized each individual entity did not require a permit, but when combined, there was ambiguity. RS 21325 makes it clear that when you combine these two sources, if a land application is to take place, this will not require a permit.

House State Affairs Committee (Feb. 28, 2012) (Statement of Rep. Stevenson) (emphasis added) reproduced in Addendum C at page 117.

> The Association of Idaho Cities strongly supports House Bill 608, which would clarify that a separate water right is not required for the collection, treatment, storage, or disposal of effluent from publicly owned treatment works when wastewater is

[11] For unanimous passage, see 2012 Final Daily Data, reproduced in Addendum C at page 114.

> treated and disposed on behalf of entities that do not have a municipal water right.
>
> . . .
>
> House Bill 608 will benefit communities around the state that are working to provide wastewater treatment and disposal as efficiently and effectively as possible, while complying with a myriad of federal water quality requirements

Memorandum from Ken Harward, Association of Idaho Cities, to Senate Resources & Environment Committee (Mar. 14, 2012) (emphasis added) reproduced in Addendum C at page 128.

> . . . Mr. Meyer said the purpose of this legislation was to clarify that a separate water right was not required for the collection, treatment storage or disposal storage, including land application, of the effluent from publicly owned treatment works.
>
> . . .
>
> . . . The purpose of this legislation, he said, was to get the water lawyers out of this business and to allow municipalities to spend their dollars and focus their attention on the issue at hand, which was the water quality side of the equation. The Department of Water Resources was involved in drafting this legislation and added some provisions to it . . . .

Senate Resources & Environment Committee (Mar. 16, 2012) (Statement of Mr. Meyer) (emphasis added) reproduced in Addendum C at page 129.

These statements, and indeed everything in the legislative history,[12] make clear that the legislation was intended to eliminate the water right requirement across-the-board, not to shift the water right burden from the city to the farmer or irrigation district who accepts the effluent.

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[12] Riverside also cites the legislative history. Its cherry picking is ineffective. It quotes Lindley Kirkpatrick's statement to the House Resources & Conservation Committee (Mar. 5, 2012) reproduced in Addendum C at page 119. Mr. Kirkpatrick simply said that the legislation established that cities and sewer districts do not need to acquire a new water right. He said nothing to suggest that other entities instead would be required to obtain those new water rights. Riverside also notes Mr. Kirkpatrick said the bill is crafted narrowly. Riverside fails to explain that this was said in the context that the legislation does nothing to lighten environmental requirements. "He said this doesn't change anything about DEQ's reuse tools, it only allows cities to use wastewater on growing crops." *Id.* Perhaps most misleadingly, Riverside quoted

Indeed, if a complete elimination of the water right requirement was not accomplished by the "notwithstanding" language in section 8, H.B. 608 would not have solved the very problem faced by McCall. As noted above, McCall did not undertake the land application itself. It relied on farmers outside the city to apply the effluent to land. (See footnote 9 at page 17.) If Riverside's reading of section 8 is correct, those farmers would have been required to obtain water rights. The legislative history shows that the role of the farmers was understood by the Legislators and the Department, and no one intended that any new water right would be required. Those farmers and Pioneer stand in the same position. Both were engaged by a city in an undertaking falling within the ambit of subsection 8. The legislation intended that neither would be obligated to shoulder the very burden the statute was intended to eliminate.

In sum, if any corroboration or clarification of the statute's meaning is needed, the legislative history confirms the legislation's obvious goal. It shows that the only sensible reading of the "notwithstanding" language is to eliminate the water right requirement for the named entities as well as their agents and contractees. Riverside should not be allowed to exploit a perceived ambiguity in its language to achieve a result opposite that which was plainly intended.

D. Riverside's subsection 8 argument cannot be reconciled with the provision's notice requirement.

Subsection 8 includes only one affirmative requirement: notification of IDWR if effluent will be applied to lands not already identified as a place of use for an irrigation water right. The last two sentences of subsection 8 state:

Mr. Kirkpatrick's statement that IDWR "has assured the city they can reuse waste water when they have a municipal water right." Riverside fails to explain that this is the reason H.B. 608 was enacted—the City did not have a municipal water right for about half of its effluent. The whole point of the legislation was to make this a non-issue.

> If land application is to take place on lands not identified as a place of use for an existing irrigation water right, the municipal provider or sewer district shall provide the department of water resources with notice describing the location of the land application, or any change therein, prior to land application taking place. The notice shall be upon forms furnished by the department of water resources and shall provide all required information.

Idaho Code § 201(8).

The notification requirement was added, at the request of IDWR, to assure that the Department would have a record of authorized irrigation corresponding to irrigated lands depicted in aerial photography. This was a significant feature of the legislation, repeatedly mentioned in the legislative history.[13]

Obviously, there would be no need for the notification requirement if the farmer or irrigation entity receiving the effluent were required to obtain a new water right. The very basis of the notice requirement is that land may be irrigated with effluent for which the mandatory permit requirement is waived under subsection 8. If the Department saw "green" land in aerial photography and found no corresponding water right, notice that the land was covered by the

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[13] See Statement of Purpose reproduced in Addendum C at page 113 ("If the land application is to be on land for which there is not already identified a place of use for an existing water right, notice of the place of use will be provided to the department of water resources to allow the department to have complete records of where the water is being used."); Memorandum from Ken Harward, Association of Idaho Cities, to Senate Resources & Environment Committee (Mar. 14, 2012) reproduced in Addendum C at page 128 ("In the event that land application is to occur on land for which there is not already identified a place of use for an existing water right, notice of the place of use will be provided to the Department of Water Resources to ensure the department is informed about where water is being used."); Senate Resources & Environment Committee (Mar. 16, 2012) (Statement of Mr. Meyer) (emphasis added) reproduced in Addendum C at page 129 ("Mr. Meyer further pointed out, that if the land application was to be on land which was not already identified as a place of use for an existing water right, notice of the place of use would be provided to the Department of Water Resources. This would allow the Department to have complete records of where the water was to be used. He said this bill resolved this question.").

section 8 exemption would allow the Department to put the matter to rest without further investigation or action.

Plainly, the purpose of the notice requirement was not to allow IDWR to turn its enforcement attention to the entity receiving the effluent. If that had been the case, notice would have been required for all land application, not just land application "on lands not identified as a place of use for an existing irrigation water right."

Statutes are intended to be read together as a whole.[14] One cannot read the last two sentences of subsection 8 as anything but confirmation that subsection 8 lifts mandatory permitting not only for cities and sewer entities, but also those acting as their agents or contractees (i.e., farmers and irrigation districts accepting the effluent).

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[14] Idaho courts have observed:

> Statutes that are in *pari materia*, i.e., relating to the same subject, must be construed together to give effect to legislative intent. *Paolini v. Albertson's Inc.*, 143 Idaho 547, 549, 149 P.3d 822, 824 (2006); *Union Pacific R.R. Co. v. Bd. of Tax Appeals*, 103 Idaho 808, 811, 654 P.2d 901, 904 (1982). In construing a statute, this Court examines the language used, the reasonableness of the proposed interpretations, and the policy behind the statutes. *Webb v. Webb*, 143 Idaho 521, 525, 148 P.3d 1267, 1271 (2006).

Johnson v. McPhee, 147 Idaho 455, 561, 210 P.3d 563, 569 (Ct. App. 2009).

> "Language of a particular section need not be viewed in a vacuum. And all sections of applicable statutes must be construed together so as to determine the legislature's intent." *Lockhart v. Dept. of Fish and Game*, 121 Idaho 894, 897, 828 P.2d 1299, 1302 (1992) (quoting *Umphrey* [*v. Sprinkel*], 106 Idaho [700,] 706, 682 P.2d [1247,] 1253 [(1983)]; *see* also *J.R. Simplot Co. v. Idaho State Tax Comm'n*, 120 Idaho 849, 853–54, 820 P.2d 1206, 1210–11 (1991)). Statutes and ordinances should be construed so that effect is given to their provisions, and no part is rendered superfluous or insignificant. *See Brown v. Caldwell Sch. Dist. No. 132*, 127 Idaho 112, 117, 898 P.2d 43, 48 (1995).

Friends of Farm to Market v. Valley Cty., 137 Idaho 192, 197, 46 P.3d 9, 14 (2002).

E. Subsection 8 is constitutional.

Riverside contends that subsection 42-201(8) is unconstitutional if it allows municipalities and sewer entities to move their effluent discharge to a new location without compensating downstream right holders.[15] Opening Brief at 29-33. If Riverside were right, its argument would invalidate far more than subsection 8; it would invalidate all statutory exemptions from mandatory permitting. (See footnote 4 at page 12 for other exemptions within section 42-201.) If Riverside's property is taken as a result of less water flowing in Indian Creek, then so too must water users be compensated for every bucket of water taken to fight a fire, for every ranch relying on instream stockwatering, and for every home with an exempt domestic well.

In fact, our Idaho Constitution does not mandate that every use of water be subject to a water right. Riverside pins its constitutional argument on these words: "The right to divert and appropriate the unappropriated waters of any natural stream shall never be denied . . . . Priority of appropriation shall give the better right as between those using the water. . . ." Idaho Const. art. XV, § 3. Those words establish that people have a right to obtain a water right under the appropriation system, and that among such appropriations, their relative priority shall govern. That is all. The Constitution does not prohibit uses of water that operate outside the appropriation system.[16]

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[15] Needless to say, an agency proceeding is not the proper forum to mount a constitutional challenge to a statute. IDAPA 37.01.01.415. Nampa briefly addresses Riverside's argument nonetheless, because it is baseless and should not be allowed to color the Department's analysis.

[16] Riverside cites to *In Re SRBA, Subcase No. 75-10117 (Lemhi Gold Trust LLC)*, Idaho Dist. Ct., Fifth Jud. Dist. (Memorandum Decision and Order on Challenge, Nov. 12, 2014) in support of its constitutionality argument. However, this SRBA decision is inapposite. Judge Wildman concluded that "since Idaho Code § 42-223(11) allows a party whose water right was

The fact that water uses may operate outside the priority system is evident in the fact that the 1986 legislation was needed at all. That legislation, for the first time in 100 years (except for ground water a few years earlier), made it unlawful to divert and use public waters without a water right (subject to exceptions). Perhaps the best known and most important statutory exemption from mandatory permitting is for domestic wells[17]—an exemption repeatedly recognized as proper by our courts. Riverside's sweeping constitutional argument would invalidate that exemption, too.

Plainly, the Legislature has the power to exempt water uses from mandatory permitting as it sees fit, without causing an uncompensated taking. This is because uncompensated takings occur only when one's property is taken. Riverside and others in its position have no legally protected interest in the discharge of effluent by cities or sewer districts.

This is particularly evident in the context of subsection 8. As previously discussed, cities that discharge effluent traceable to their municipal water rights may recapture and reuse that water. Doing so is not deemed an enlargement. And they have no duty to continue to waste

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previously subject to statutory forfeiture to resume use under that right to the injury of junior appropriators, the Court finds the statute violates Article XV, § 3 of the Idaho Constitution." *Id.* at 9. The *Lemhi Gold Trust* case addressed the as-applied constitutionality of a forfeiture exception contained in Idaho Code § 42-223(11) to resurrect a senior water right on Ditch Creek that was previously forfeited and disallowed. Both the *Lemhi Gold Trust* decision and the *Fremont-Madison* case (*Fremont-Madison Irrigation Dist. v. Idaho Ground Water Appropriators, Inc.*, 129 Idaho 454, 926 P.2d 1301 (1996)) discussed in the *Lemhi Gold Trust* decision addressed situations where decreed water rights were proposed to be issued to water users (enlargement water rights in the *Fremont-Madison* case and a resurrected water right based exclusively on Idaho Code § 42-223(11) in the *Lemhi Gold Trust* case). The dispute before the Director initiated by Riverside does not involve issuance of a water right to Nampa or Pioneer. Rather, it is squarely centered on the rights of a municipality to treat and dispose of its wastewater without issuance of a water right.

[17] Idaho Code §§ 42-111, § 42-227 and IDAPA 37.03.08.035.01.b (exempting certain domestic wells). See also Idaho Code § 42-113 and IDAPA 37.03.08.035.01.c (exempting instream stockwatering).

water that was previously not reused. (See section III.B(2) at page 34.) A city's "reuse" may come in the form of a new beneficial use, such as irrigation of city parks. But it also includes any other disposal that is undertaken pursuant to environmental mandates.

Nor do sewer districts and others that discharge effluent not traceable to their municipal water rights have a duty to maintain an historical discharge to a public water body. For example, when a sewer district builds a sewer system, it does not first obtain a water right for the sewage it collects from homes and businesses. Sewage water generated by homes and businesses is not part of the public water supply unless and until it enters a public water body. Accordingly, and thankfully, the treatment and disposal of effluent by entities who have no prior water right in that wastewater operates outside the water right system. As a result, the law of "injury" does not apply, and no other water user who incidentally benefits from the discharge of treated effluent into the public water supply may demand that the treatment program never change.

Either way you look at it, water users like Riverside have no legally protected right to the continued discharge of effluent by either cities or sewer districts. Accordingly, the exemption found in subsection 8 cannot result in an uncompensated taking of property. It, and all other water right exemptions, pass constitutional muster.

II. SECTION 42-201(2) DOES NOT PROHIBIT PIONEER'S ACCEPTANCE OF TREATED EFFLUENT FROM NAMPA'S WWTP.

A. Nampa's delivery of wastewater to Pioneer is not a diversion of water from a natural watercourse.

Riverside's argument that Pioneer must obtain a water right rests on Idaho Code § 42-201(2). Opening Brief at 13-16. This subsection reads:

> No person shall use the public waters of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply

> water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists.

Idaho Code § 42-201(2). In short, this subsection requires a water right when a person diverts water from a public supply, or applies such water to land. As will be shown below, Pioneer is doing neither.

(1) Effluent from a WWTP is not a public water supply.

Nampa's WWTP is not a natural watercourse, and the effluent it releases is not "public waters of the state of Idaho" unless and until it is released from Nampa's control into a pubic waterbody. Unlike water in a public supply, the effluent is lawfully possessed by Nampa and remains under its dominion and control until it is delivered to Pioneer.

(2) Pioneer's acceptance of effluent delivered to it by Nampa is not a diversion.

Riverside insists that Nampa's delivery of wastewater to Pioneer pursuant to contract is a "diversion" of water within the meaning of subsection 2. Opening Brief at 15. This defies the common understanding of the word "divert" in water law. Water is not "diverted" in the sense of an appropriation unless it is diverted from a public watercourse or other public supply such as ground water.

The inherent connection between diversion, appropriation, and public supply is evident even in our Constitution, which establishes that "[t]he right to divert and appropriate the unappropriated waters of any natural stream to beneficial use, shall never be denied . . . ." Idaho Const. art. XV, § 3 (emphasis added).

This connection between appropriation and public supply is restated in the very first section of the Idaho Water Code:

> All the waters of the state, when flowing in their natural channels, including the waters of all natural springs and lakes within the

> boundaries of the state are declared to be the property of the state, whose duty it shall be to supervise their appropriation and allotment to those diverting the same therefrom for any beneficial purpose . . . .

Idaho Code § 42-101 (emphasis added).

The connection between appropriation and public supply appears also in the first of the two sections of the 1971 mandatory permitting statute.

> The right to the use of the unappropriated waters of rivers, streams, lakes, springs, and of subterranean waters for other sources within this state shall hereafter be acquired only by appropriation . . . .

Idaho Code § 42-103 (emphasis added) (as amended by 1971 Idaho Sess. Laws, ch. 177, § 2).

The connection appears again in the 1986 amendment to Idaho's mandatory permitting requirements:

> No person shall use the public waters of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so.

Idaho Code § 42-201(2) (emphasis added) (added by 1986 Idaho Sess. Laws, ch. 313, § 2).

The connection between public supply and appropriation is found once again in the section that describes the permit application process:

> For the purpose of regulating the use of the public waters and of establishing by direct means the priority right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, shall, before commencing of the construction, enlargement or extension of the ditch, canal, well, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the department of water resources for a permit to make such appropriation. . . .

Idaho Code § 42-202(1).

These statutory and constitutional provisions simply underscore what we all know. The diversion and appropriation of water occurs only when water is taken from a public water supply.

For instance, when Nampa discharges effluent into Indian Creek and Riverside removes that water downstream, that is a diversion. In contrast, Pioneer's acceptance of treated effluent physically delivered to it by Nampa is not a "diversion" of water under Idaho's mandatory permitting statutes.

B. The words "apply water to land" must be understood to refer to water that was diverted from a natural watercourse.

(1) This is clear from the textual context.

Apparently recognizing the weakness of its argument that Pioneer is "diverting" the water provided to it by Nampa, Riverside pivots to a semantic argument under subsection 42-201(2).

This is Riverside's "or" argument:

> Idaho § Code [sic] 42-201(2) is not limited only to water withdrawn from a "natural watercourse" as Nampa asserts. The disjunctive use of the word "or" in this code section extends this requirement to any application of water to land.

Opening Brief at 14.

There is no question that the statute employs the disjunctive word "or." The question is: What do the words "apply water to land" refer to? The sentence must be read as a whole. That textual context makes clear that the water one may not apply to land without a water right is water that was diverted from a natural watercourse.

This plain reading of the statute, if not plain enough on its face, is made perfectly clear by the context of its enactment and by its legislative history, discussed below.

(2) The conclusion is reinforced by the legislative context.

Subsection 2 was added in 1986 for a single and simple purpose. It plugged a loophole in Idaho's mandatory permitting statute enacted in 1971.[18] 1971 Idaho Sess. Laws, ch. 177 §§ 2 and 3 (codified as amended at Idaho Code §§ 42-103, 42-201(1)) (reproduced in Addendum A at page 57).[19]

Here is the loophole. The 1971 legislation established that the only way to obtain a water right is through the permitting process. But one could still divert and apply water from a public supply to a beneficial use without obtaining a water right. In other words, the 1971 legislation says that if you want to acquire an enforceable water right, you must go through the permitting process. That is, no post-1971 beneficial use rights could be created. But it did not explicitly prohibit people from simply diverting and using water without the protection and priority of a water right.

As Director Kenneth Dunn explained:

> The present law states that users must have a permit to appropriate water but it doesn't say it is against the law to appropriate water without the permit. This legislation makes it clear that no person shall divert water without having a permit to do so.

Minutes, House Resources and Conservation Committee (Jan. 9, 1986) (reproduced in Addendum B, item 6, at page 90).[20]

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[18] The permitting process became mandatory for ground water rights in 1963. 1963 Idaho Sess. Laws, ch. 216 (codified at Idaho Code § 42-229). The 1971 statute made permitting mandatory for all water rights.

[19] In 1971, what is now subsection 42-201(1) constituted the entirety of section 42-201. All the subsections to section 42-201 were added subsequently.

[20] The 1986 amendment adding subsection 42-201(2) was part of a larger piece of legislation aimed at strengthening IDWR enforcement tools with respect to violation of water

This context should remove any doubt as to the meaning and purpose of subsection 2. It plugged a loophole that, until then, allowed people to lawfully evade the priority system and the permitting process. That permitting system, and the prior appropriation doctrine itself, is concerned with the application to beneficial use of water diverted from a public supply. Subsection 2 was enacted for the simple purpose of ensuring that public waters not be taken or used outside the permitting system that enables the prior appropriation system to function—unless an exemption is provided.

Riverside's semantic argument about the word "or" would disconnect the mandatory permitting process from its inherent link to Idaho's public water supply. That construction should be rejected. As its legislative context makes clear, subsection 2 does not address water that is not part of Idaho's public waters. The statute does not require a person to obtain a water right to water one's garden with bottled spring water. Nor does it require Pioneer to obtain a water right in order to deliver treated effluent to lands within its boundary. Neither bottled water nor Nampa's effluent are part of the public water supply. Neither of these "applications to land" undermines the priority system. And protection of the priority system through the permitting process is the sole purpose of subsection 2.

III. EVEN UNDER THE COMMON LAW, NAMPA IS AUTHORIZED TO UNDERTAKE THE REUSE PROJECT UNDER OF ITS MUNICIPAL WATER RIGHTS.

A. Nampa does not need the 2012 amendment to the mandatory permitting statute.

As noted above in section I.C at page 16, the impetus behind H.B. 608 (which added subsection 8) was to cover the City of McCall's land application of effluent that it received from

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right conditions, cancellation of forfeited water rights, and preventing uses beyond the scope of a water right.

the Payette Lakes Recreational Water & Sewer District. IDWR determined that no legislation was required to cover McCall's delivery of its own effluent to farms outside the city or the farmers' application of that water to their land. (See footnote 10 at page 17.)

This is because under the common law, all water users may recapture and reuse water they lawfully divert, so long as they act within the bounds of the water right under which it was diverted. This principle, when applied to municipal water rights, allows cities like Nampa to use and reuse to extinction water diverted under its municipal water rights.

Unlike McCall, Nampa's WWTP accepts no influent from other sewer districts. Except for other *de minimis* components that are typical, if not inherent, in all municipal systems, Nampa's wastewater derives entirely from ground water it diverts under its municipal rights.[21] SOF ¶¶ 23, 25, 26. Accordingly, even if Idaho Code § 42-201(8) were unavailable, Nampa is authorized to undertake its Reuse Project, with the assistance of Pioneer, under the common law. This common law, and IDWR guidance on the subject, is explored below.

B. Water lawfully diverted and applied to beneficial use may be recaptured and reused under the original water right.

(1) All water right holders have a right to recapture and reuse water within the geographic bounds and other limits of the original water right.

It is a basic premise of the prior appropriation doctrine that water diverted and not consumed be returned to its source. This principle is at the core of Riverside's contention that the Reuse Project cannot be undertaken without Nampa or Pioneer obtaining a new water right.

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[21] If the ordinary and unavoidable quantities of other water entering Nampa's WWTP disqualify it from the law of recapture, the same would be true for all cities, and the entire body of law developed on the subject of reuse of municipal effluent would be academic.

But the obligation to return unused water to the public supply is counterbalanced by the equally important principle that an appropriator may recapture and reuse water previously diverted so long as the reuse occurs within the bounds of the original water right. This is not so much an exception to the obligation to return water to the common source as it is a clarification of what is "unused." Simply put, water that is lawfully recaptured and beneficially reused within the scope of the original water right is not "unused" water that must be returned to the common supply.[22]

The right to recapture has long been recognized Idaho law.

> It is settled law that seepage and waste water belong to the original appropriator and, in the absence of abandonment or forfeiture, may be reclaimed by such appropriator as long as he is willing and able to put it to a beneficial use.

Reynolds Irrigation Dist. v. Sproat, 70 Idaho 217, 222, 214 P.2d 880, 883 (1950).

> In point of law the general principle upon which the plaintiff relies is scarcely open to controversy; one who by the expenditure of money and labor diverts appropriable water from a stream, and thus makes it available for fruitful purposes, is entitled to its exclusive control so long as he is able and willing to apply it to beneficial uses, and such right extends to what is commonly known as wastage from surface run-off and deep percolation, necessarily incident to practical irrigation. Considerations of both public policy and natural justice strongly support such a rule.

United States v. Haga, 276 F. 41, 43 (Dist. Idaho 1921).

The recapture and reuse may occur years after the initial water right was established. And, most importantly, it is true even if the change reduces the water available to other water

[22] A good overview of the entire subject of water rights in waste water and reuse is James W. Johnson, et al., *Reuse of Water: Policy Conflicts and New Directions*, 38 Rocky Mtn. Min. L. Inst. § 23 (1992).

users downstream.[23] It is generally recognized that the recapture must occur before the appropriator relinquishes control (i.e., before the water reaches natural water bodies where it becomes available for appropriation by others).

For example, a farmer may capture tail water running off the low end of a field and pump it back to a portion of that field which, due to topography or other factors, was chronically under-irrigated. Others who may have come to rely on the waste water may not insist that the original appropriator maintain the artificial conditions from which they have benefited.

This is not to say that all seepage and waste water "belongs" to the original appropriator in the sense that they may do with it as they like. Notably, the right to recapture and reuse waste water does not override other principles of water law, such as the rule against enlargement. Thus, the farmer is not free to use recaptured water to bring new lands under cultivation.[24]

Although the earlier cases[25] authorizing an appropriator's recapture and reuse of waste water did not expressly address the enlargement issue, it now has been addressed, and in clear terms. If additional lands or other uses are to be added to a water right through the recapture of waste water, a new water right will be necessary.

This rule against enlargement was articulated by the Idaho Supreme Court in *Fremont-Madison Irrigation Dist. v. Idaho Ground Water Appropriators, Inc.*, 129 Idaho 454, 926 P.2d

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[23] One principle governing waste water is that an irrigator "is not bound to maintain conditions giving rise to the waste of water from any particular part of its system for the benefit of individuals who may have been making use of the waste." Wells A. Hutchins, *The Idaho Law of Water Rights*, 5 Idaho L. Rev. 1, 100 (1968).

[24] See, e.g., *United States v. Haga*, 276 F. 41 (Dist. Idaho 1921) (limiting reuse to project lands).

[25] E.g., *Sebern v. Moore*, 44 Idaho 410, 258 P. 176 (1927); *In re Boyer,* 73 Idaho 152, 248 P.2d 540 (1952); *Hidden Springs Trout Ranch v. Hagerman Water Users, Inc.*, 101 Idaho 677, 619 P.2d 1130 (1980).

1301 (1996), and reinforced a few years later in *A&B Irrigation Dist. v. Aberdeen-American Falls Ground Water District*, 141 Idaho 746, 118 P.3d 78 (2005). In the 2005 opinion, the Court ruled that "A&B may use the [recaptured waste] water on its original appropriated lots." *A&B*, 141 Idaho at 752, 118 P.3d at 84.

However, the no-enlargement limitation imposes little if any constraint on reuse of municipal rights, which may be used and reused to extinction within a flexible and expanding service area. (See section III.B(1) at page 31, section III.C at page 37, and section III.D at page 38.)

(2) The appropriator of waste water released by another may not compel the other user to continue to discharge waste water.

There are instances in which a third person may make a new appropriation of waste water generated by another or even by the same user.[26] However, waste water loses its characterization as such when released back to the public water supply. Thereafter, it is subject to appropriation (and available to satisfy prior appropriations) just like any other public water. It is in this context that Riverside has rights in Indian Creek, which benefits from waste water released to the creek by Nampa.

In either case, an important caveat is that the appropriator (whether of waste water or of water whose supply is enhanced by waste water) has no guarantee that the waste water will

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[26] In *Sebern v. Moore*, 44 Idaho 410, 258 P. 176 (1927), the Court confirmed the basic right to appropriate waste and seepage water made available as a by-product of the diversions of other appropriators. "We conclude that surface waste and seepage water may be appropriated under the provisions of C. S. § 5562, subject to the right of the owner to cease wasting it, or in good faith to change the place or manner of wasting it, or to recapture it, so long as he applies it to a beneficial use." *Sebern*, 44 Idaho at 418, 258 P. at 178. (Prior to this decision, there was some thought that appropriations might be limited to water naturally occurring.) See also, *A&B*, 141 Idaho at 752, 118 P.3d at 84 (an appropriation of "recaptured drain and/or waste water" requires compliance with the mandatory permitting requirements).

continue to be available. An irrigator "is not bound to maintain conditions giving rise to the waste of water from any particular part of its system for the benefit of individuals who may have been making use of the waste." Wells A. Hutchins, *The Idaho Law of Water Rights*, 5 Idaho L. Rev. 1, 100 (1968).[27]

For instance, the original appropriator who generates the waste water could cease diverting altogether so as to leave the waste water appropriator without that waste water supply. Likewise, the original appropriator might alter his or her operation to reduce the amount of waste water generated (e.g., by ditch lining). Finally, as noted, the original appropriator may recapture the waste water for use within the scope of his or her water right.

Indeed, in *Sebern*, the waste water appropriator was allowed to re-establish his diversion of waste water after a waste ditch was relocated by another appropriator. The Court added the now-familiar caveat, however, that the waste water appropriation is "subject to the right of the owner [that is, the person generating the waste water] to cease wasting it, or in good faith to change the place or manner of wasting it, or to recapture it, so long as he applies it to a beneficial use." *Sebern*, 44 Idaho at 418, 258 P. at 178. This is significant given that in a change or transfer application, the prior appropriator is <u>not</u> allowed to make any change (even in good faith) that would injure a junior.

In 1956, the Idaho Supreme Court held that a neighbor could not obtain a waste water appropriation that essentially compelled the original appropriator to continue to discharge waste water:

> It is a rule long recognized that a landowner cannot acquire a prescriptive right to the continued flow of waste or seepage water

[27] See also *In re Boyer,* 73 Idaho 152, 162-63, 248 P.2d 540, 546 (1952) and numerous other cases cited in Municipal Intervenors' Response Brief.

> from the land of another, that is, seepage water or waste water running from one's land to that of another need not be continued and it may be intercepted and taken by such owner at any time and used on the land to which it is appurtenant.

Thompson v. Bingham, 78 Idaho 305, 308, 302 P.2d 948, 949 (1956) (citing cases in Utah and Colorado).

In *Hidden Springs Trout Ranch v. Hagerman Water Users, Inc.*, 101 Idaho 677, 619 P.2d 1130 (1980), the Idaho Supreme Court unanimously reaffirmed the principle that an appropriator of waste water may not compel the original diverter to continue the practices leading to the generation of the waste water.

> No appropriator of waste water should be able to compel any other appropriator to continue the waste of water which benefits the former. *Crawford v. Inglin*, 44 Idaho 663, 258 P. 541 (1927). While the waste of the original appropriator is not to be encouraged, the recognition of a right in a third person to enforce the continuation of waste will not result in more efficient uses of water.

Hidden Springs, 101 Idaho at 681, 619 P.2d at 1134.

The *Hidden Springs* Court emphasized that it makes no difference whether the waste water arises before the use (from a leaky canal) or after the use (from post-irrigation tail water, for example). The original appropriator may at any time cease the practice giving rise to the waste water, even to the detriment of those who hold valid water rights in that waste water (subject, of course, to the limitations as to non-enlargement and beneficial use as described in *A&B Irrigation Dist. v. Aberdeen-American Falls Ground Water District*, 141 Idaho 746, 752, 118 P.3d 78, 84 (2005)).[28]

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[28] These legal principles pertaining to waste water have been followed in the Snake River Basin Adjudication ("SRBA"). Special Master Terry Dolan reiterated them in *Special Master's Report, In re SRBA,* Case No. 39576, Subcases 75-4471 and 75-10475 (Silver Creek Ranch Trust) at 4 and 6-7 (September 28, 2009). Similarly, in *In re: Janicek Properties, LLC,*

C. A water user may shift to more consumptive uses without seeking a transfer.

(1) Municipal rights are potentially 100 percent consumptive.

Water rights held for municipal purposes serve a grab bag of potential purposes, some of which may be entirely consumptive. Idaho Code § 42-202B(6) (definition of "municipal purposes"). In other words, the consumptive use of particular municipal uses vary, but municipal use is potentially 100 percent consumptive.

IDWR's Transfer Processing Memorandum No. 24 (*Transfer Processing Policies & Procedures*), ¶ 5d(9) at page 31 (revised Dec. 21, 2009) ("*Transfer Memo*") refers to municipal uses being "considered fully consumptive."[29]

In an informal guidance letter issued the year earlier, Mat Weaver confirmed, "IDWR recognizes municipal use as being fully consumptive." Letter from Mat Weaver to Christopher Meyer (Sept. 29, 2008) (reproduced within Addendum D, item 3, at page 162).

Memorandum Decision and Order on Motion for Summary Judgment, In re SRBA, District Court of the Fifth Jud. Dist. of the State of Idaho, Subcase No. 63-27475 (May 2, 2008), the Bureau of Reclamation and its contracting irrigation district argued that they constructed a drain and could trace most or even all of the water in it to seepage and return flows from the district's irrigated lands. They contended that the drain was not a natural watercourse and that they should be deemed the owner of the drain and the water in it. Based on this reasoning, they asked the adjudication court to invalidate a farmer's 1951-priority licensed water right pursuant to which he pumped water from the drain to irrigate his crops. The Special Master rejected this challenge to the farmer's drain water right, ruling that, regardless of who constructs a drain, the water in it is "public water of the state of Idaho and subject to appropriation and beneficial use." *Janicek Properties*, slip op. at 6. The SRBA Court found that whether the drain is a natural watercourse "is immaterial—what matters is that the water is water of the state" and is subject to appropriation. *Id.* at 8.

[29] The referenced section of the *Transfer Memo* deals primarily with transfers to facilitate disposal of wastewater from dairies and industries. It should not be read to mandate a change application for disposal of municipal wastewater where a transfer is not otherwise required.

(2) Shifts in use that are authorized under a water right do not require a transfer simply because they increase consumptive use.

It is black letter law that changes in consumptive use, in themselves, do not require a transfer application. "Changes in consumptive use do not require a transfer pursuant to section 42-222, Idaho Code." Idaho Code § 42-202B(1).

This principle is reiterated in the *Transfer Memo*, which notes that no transfer is required for "changes in water use under a water right for the authorized purpose of use that simply change the amount of consumptive use . . . provided that no element of the water right is changed." *Transfer Memo* §2, p. 4.

The *Transfer Memo* does not specifically address land application or other disposal of municipal wastewater. Given that municipal use is allowed to be 100 percent consumptive, it necessarily follows no transfer is required for reuse of municipal water so long as the reuse occurs within the broadly-defined bounds of the municipal water right.

D. A municipal provider may use and reuse to extinction water diverted under its municipal right.

(1) The right to reuse of water is broader in the context of municipal uses than elsewhere.

The principles of recapture and reuse that were developed in the context of irrigation apply as well in the context of municipal wastewater. In short, a city may recapture and reuse effluent from its sewage treatment plant before it is released to a public water body. Likewise, irrigators or others who had come to rely on the prior discharge of that wastewater cannot complain when the city recaptures and reuses it.

Although the same general principles apply to all water uses, there are important practical differences when it comes to municipal wastewater.

First, municipal water rights do not have a fixed place of use. Instead, a municipal service area may grow over time as service and uses are extended. Idaho Code § 42-202B(9). This moots the constraint applicable to irrigators and industrial users limiting the reuse to the original place of use.

While this is an important principle, it does not come into play here because Nampa will use the treated wastewater within its existing place of use. In other words, the Reuse Project is not driving expansion of Nampa's service area.

Second, municipal use encompasses a broad range of uses from low consumptive domestic uses to high consumptive uses by industries served by the municipal provider. This mix may change over time. Accordingly, the Department deems municipal water rights to be potentially 100 percent consumptive. (See discussion in section III.C(1) at page 37.) As a result, cities may recapture wastewater and reuse it for other municipal uses (such as watering parks, golf courses, or lawns) and such use is not deemed to be an enlargement.

These aspects of municipal rights work together to allow cities to use and reuse their wastewater without enlargement that might otherwise be deemed injury to others. "This rule [limiting reuse to the original irrigated land] was changed for municipalities, without an adjustment period for those who had relied on the return flow, when the courts allowed municipalities to start consuming their sewage effluent through disposal methods that no longer sent it back to the stream as return flow." Robert E. Beck, *Municipal Water Priorities/Preferences in Times of Scarcity: The Impact of Urban Demand on Natural Resource Industries*, 56 Rocky Mtn. Min. L. Inst. § 7.02[4] (2010).

(2) The principle of municipal reuse to extinction has been recognized and applied by the Department.

(a) Application Processing Memorandum No. 61

The Department has long recognized the principle of reuse of municipal rights to extinction. In guidance issued in 1996, the Department provided this detailed analysis of the case law:

> The case law addressing this issue appears to deal almost exclusively with the disposal of municipal effluent. In the case of municipalities, the majority view is that the proper disposal of effluent from waste treatment facilities comes within the parameters of the beneficial use of a municipal water right. One of the most frequently cited cases is *Arizona Public Service Co. v. Long*, 773 P .2d 988 (Ariz. 1989). In this case, the owners of downstream junior water rights that had historically used the effluent for irrigation following upstream discharge sued the City of Phoenix alleging that the city had no right to contract with a utility for the transport and use of the effluent in the cooling towers of a nuclear power plant. The court upheld the contract, holding that sewage effluent was neither surface water nor ground water, but was simply a noxious byproduct which the city must dispose of without endangering the public health and without violating any federal or state pollution laws. In reaching its decision, the Arizona Court quoted from a much earlier Wyoming decision which upheld the sale by a city of effluent discharged directly into the buyer's ditch, but also held that effluent discharged into a stream became public water subject to appropriation. *Wyoming Hereford Ranch v. Hammond Packing Co.*, 236 P.2d 764 (Wy. 1925). The Arizona Public Service case generally holds that cities may put their sewage effluent to any reasonable use that would allow them to maximize their use of the appropriated water and dispose of it in an economically feasible manner. Beck, *Waters and Water Rights*, § 16.04(c)(6) (1991).
>
> In an even more recent Arizona case, the court upheld a city contract for the disposal of its effluent noting that the effluent from the city of Bisbee delivered to Phelps Dodge for copper leaching operations was not useable for drinking water, irrigation, or fire protection purposes and that it was only useful for the leaching operation. The city contract had been challenged by the local water utility that otherwise would have provided water for the leaching operation.

> Other cases reviewed have reached results similar to that in Arizona for municipal entities without as much emphasis on the distinct character of effluent. In a more recent Wyoming case, the court held that the City of Roswell could recapture its sewage effluent before it is discharged as waste or drainage and reuse it for municipal. purposes. *Reynolds v. City of Roswell*, 654 P.2d 537 (Wy. 1982). The court characterized sewage effluent as artificial water and therefore primarily private and subject to beneficial use by the owner and developer thereof because treated sewage effluent depends upon the acts of man.
>
> In the early Colorado case of *Pulaski Irrigation Ditch Co., et al v. City of Trinidad, et al*, 203 P. 681 (Colo. 1922), the court held that where a city had voluntarily chosen to treat its effluent in a manner that produced surplus water, it did not have the right to sell its purified water. The court went on to recognize, however, that where there is no other practicable method of disposing of the sewage, public policy might permit its disposal by the evaporation of the water. 203 P. at 683. A more recent Colorado case, *Metropolitan Denver Sewage Disposal District No. 1 v. Farmers Reservoir & Irrigation Co.*, 499 P.2d 1190 (Colo. 1972) merely holds that changes in the points of return of waste water to a stream are not governed by the same rules as changes of points of diversion and that there is no vested right in downstream appropriators to maintenance of the same point of return of irrigation waste water or effluent from a municipality or a sanitation district. In *Barrack v. City of Lafayette*, 829 P.2d 424 (Colo. App. 1992), the court held that impossibility of performance relieved the city from any obligation to deliver effluent to plaintiffs after state regulation made such delivery illegal. The court concluded that plaintiffs had no property right to the delivery of untreated water that could no longer be legally delivered.

Application Processing Memorandum No. 61 (Memorandum from Phil Rassier to Norm Young, pages 1-2 (Sept. 5, 1996)) (attached at Addendum G, item 2, at page 207.)[30]

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[30] In *Wyoming Hereford* and *Reynolds* (discussed in Phil Rassier's memorandum), municipal providers were allowed to reuse municipal waste water only if it were recaptured before entering a public water body. This principle was addressed again in *City of San Marcos v. Texas Comm'n on Envtl. Quality*, 128 S.W.3d (Texas Ct. App. 2004). The Texas Court of Appeals found that the City of San Marcos did not have the right to recapture its wastewater effluent in a river three miles downstream of the sewage treatment plant. The city sought to recapture the water, treat it, pipe it back to the city, and add it to its municipal supply. The purpose of leaving it in the river for so long was to allow the effluent to be diluted with cleaner river water, thus reducing the cost of treatment after recapture. In rejecting the plan, the Texas

Phil Rassier's summary of the law, though 24 years old, continues to provide an accurate summary of Idaho law and Departmental policy.[31]

(b) IDWR's guidance to Black Rock

Mat Weaver's 2008 *Review Memo* (Addendum D, item 2, at page 156) responded to an inquiry from counsel for Black Rock Utilities, Inc, a municipal water provider in North Idaho. Mr. Weaver confirmed Black Rock's authority to irrigate a golf course with municipal effluent without obtaining a new water right. The *Review Memo* began with this thorough analysis of prior guidance as it applies in a municipal context:

> The second issue deals with the enlargement of the historical consumptive use of the water diverted under the permit. The municipal use is recognized by IDWR as being completely consumptive, in actuality this may or may not be the case. Certainly the uses of water under the general heading of municipal use are varied enough that it is not unreasonable to assume that some of that water is in fact returned to the surrounding environment. Especially in the instance of the Black Rock project which is a stand alone community with water treatment, wastewater treatment, and irrigation all occurring and being contained within the development. By this reasoning land

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court concluded that the character of the water changed once the city released it to the river, whereupon it became public water. "By intentionally discharging its effluent into the river, where it eventually commingles with the State's water, the City effectively abandons its control over the identifying characteristics of its property. This physical reality suggests that the City is voluntarily and intentionally abandoning its ownership rights over the effluent." *San Marcos*, 128 S.W.3d at 277. By clear implication, however, the city would have been allowed to recapture and reuse its wastewater if it had done so before returning it to the river. Indeed, as the court noted, that was exactly what the city's opponents said: "If the City wants to reuse its wastewater, it should use it directly rather than unnecessarily mixing it with the pure river water." *San Marcos*, 128 S.W.3d at 267.

[31] Although the 2009 *Transfer Memo* revised some of the guidance in the 1996 *Application Memo No. 61* "concerning wastewater from industrial uses" (see *Transfer Memo*, n.1, p. 3), nothing in the *Transfer Memo* changes the guidance contained in Phil Rassier's memo concerning reuse of municipal water. Indeed, Mr. Rassier's analysis was included in the Department's recent website listing pursuant to the Governor's Executive Order No. 2020-02 requiring publication of "any agency guidance document that an agency intends to continue."

> application, a fully consumptive process, would represent some additional volume of consumption, or loss of water from this development, over and above the historical quantity of water lost from the development under the previous practices. So should this enlargement of consumptive use be allowed?
>
> If we consider the Administrator's Application Processing Memorandum No. 61 regarding industrial waste water and take forward the reasoning and direction put forth in that memo and apply it to municipal waste water, then the "consumptive use" associated with the use can increase (over the historical base line value) up to the amount determined to be consistent with the original water rights as reasonably necessary to meet treatment (land application) requirements. . . . For all these reasons it would seem that any enlargement of the consumptive component of the permit associated with the new practice of land application, can and should be allowed by IDWR.

Review Memo at p. 3 (emphasis added) (Addendum D, item 2, p. 156).

The *Review Memo* then repeated (in italics) the conclusion for which confirmation was sought, and then provided IDWR's confirmation:

> *The condition of Water Right No. 95-9055 prohibiting use of this ground water right for irrigation of land to which surface rights are available does not prohibit land application of treated municipal effluent on such land.*
>
> Mr. Meyer is correct in this regard. This condition is speaking to the primary or first use the diverted groundwater is put to. IDWR recognizes Municipal Use as being fully consumptive, as such, once the groundwater has served its initial purpose the Municipal Provider is free to use or reuse the reclaimed water at their discretion.

Review Memo at p. 5 (italics in original, emphasis added) (Addendum D, item 2, p. 156).

Mr. Weaver attached a footnote to that quoted statement noting the continued vitality of Phil Rassier's 1996 memorandum:

> This position does not seem to be explicitly articulated in any Idaho Statute or IDWR Administrator's Memorandum that I reviewed. However, this position does seem to have been regularly upheld in case law, although not completely without rulings in the opposite, and is well summarized by Mr. Phil Rassier

> in his Memo to Norm Young from September 5, 1996 titled "Land Application of Industrial Effluent."

Review Memo at p. 6, n. 2 (Addendum D, item 2, p. 156).

The *Review Memo* then concluded:

> Based upon my discussion in the BACKGROUND section of this memo it seems to me that not only is the land application of treated wastewater allowed for under the municipal use general heading, but should be encouraged as a valid and worthwhile conservation effort.

Review Memo at p. 6 (emphasis added) (Addendum D, item 2, p. 156).

(c) IDWR's guidance to Nampa

The quotations immediately above were made in reference to a municipal water right held by Black Rock Utilities in North Idaho. These principles were confirmed in more recent informal guidance provided to counsel for Nampa by the Department's counsel. This discussion took place not in the context of the current Reuse Project, but in the context of an earlier idea (never implemented) to dispose of Nampa's treated wastewater in infiltration basins outside of the city.

IDWR's counsel confirmed Nampa's authority to do so, without obtaining a new or changed water right. The quotation below shows the edits made by IDWR counsel (on May 26, 2011) to an earlier letter (dated May 24, 2011) from Nampa's counsel.

> You confirmed my understanding that a city may recapture and reuse its municipal effluent and apply it to other municipal uses within its growing service area, and that doing so does not cause legal injury to other water uses. You also confirmed that, if required to meet environmental regulations, treatment utilizing an infiltration basin would be viewed as being within the existing municipal use. You also confirmed that the uses could be modified over time. For example, as conditions change and demand grows, the City could put less water into ~~recharge~~ treatment of effluent by infiltration and use some or all of the effluent to serve new customers (e.g., for lawn or open space irrigation). Finally, you

> confirmed that these uses would not require a transfer—assuming that the reuse of the effluent was required in order to satisfy environmental requirements.

Letter from Christopher H. Meyer to Garrick L. Baxter and Jeff Peppersack (May 24, 2011) (redline edits reflect changes made by Garrick L. Baxter in his letter of May 26, 2011). These letters are reproduced in Addendum E, items 2 and 3, at pages 174 and 183, respectively. An interlineated version of the May 24, 2011 letter (matching the quotation above) was included as an attachment to a letter from Nampa's counsel dated June 2, 2011 (Addendum E, item 4, at page 188).

(d) IDWR's guidance to McCall

A few months later, another round of communication occurred between the same counsel in connection with the City of McCall. This is the discussion that led to the enactment of H.B. 608, discussed in section I.C at page 16.

Counsel for IDWR wrote:

> This responds to your letter of August 18, 2011 requesting confirmation that the City of McCall ("City") has authority to land apply its municipal effluent to lands located beyond the city limits but within the City's service area. I have reviewed your letter with the staff of the Idaho Department of Water Resources ("IDWR") and am able to confirm that on the issue of whether municipal reuse of waste water comes within the original use of the municipal right, your analysis is consistent with current IDWR policy. Waste water treatment necessary to meet adopted state water quality requirements is considered by IDWR as part of the use authorized under a municipal right so long as the treatment process complies with the best management practices required by the Idaho Department of Environmental Quality, the U.S. Environmental Protection Agency, or other state or federal agency having regulatory jurisdiction. For new uses of municipal wastewater that are not necessary to meet water quality requirements, an application for permit to appropriate water should be filed as required by Idaho Code § 42-202.

Letter from Garrick L. Baxter to Christopher H. Meyer (Sept. 7, 2011) (emphasis added).

The September 7, 2011 letter went on to say that, under the 1996 Municipal Water Rights Act, the land application could occur outside the boundaries of the city so long as "the constructed water delivery system for the area outside the city limits shares a common water distribution system with lands located within the corporate limits." The city limits issue was mooted by H.B. 608 (Idaho Code § 42-201(8)) enacted in 2012. In any event, Nampa will reuse water delivered to the Phyllis Canal within its service area. See discussion in section E below.

The informal guidance provided by IDWR to McCall gave rise to the enactment of H.B. 608, 2012 Idaho Sess. Laws, ch. 218 (codified at Idaho Code §§ 42-201(8), 42-221(P)) (set out in Addendum C at page 103). This legislation is discussed in section I.C at page 16.

In sum, the Department has long recognized and applied common law principles that allow municipalities like Nampa to recapture and reuse effluent traceable to their municipal water rights.

E. Nampa's Reuse Project fits within the common law right to reuse municipal water.

Nampa's Reuse Project may be seen as fitting within the common law principle of reuse of municipal water in either of two ways.

(1) Reuse within Nampa's current municipal service area

Nampa is reusing its own effluent within its Non-Potable System (aka PI System). This results from the fortuitous circumstance that Nampa will deliver effluent to the Phyllis Canal above the locations at which water is delivered by Pioneer for irrigation use by Nampa's customers. SOF ¶¶ 20, 27, 53, 54, 55. (This physical arrangement is described more fully in Pioneer's Response Brief.)

Of course, Nampa's effluent is mixed with other water in the Phyllis Canal. So there is no way of assuring which molecules (effluent or non-effluent) are delivered back to Nampa. But

in an accounting sense, Nampa can be seen to take all of its effluent back. Pursuant to the Title 50 Agreement[32] Pioneer currently delivers, at peak, more water to Nampa (21.64 cfs) than Nampa will contribute as effluent to the canal upstream of the delivery points (18.6 cfs).[33]

(2) Reuse is occurring within an expanded service area including all land within Pioneer's district boundary.

As an alternative to the accounting model, Nampa may be seen to reuse all of its effluent on lands served by Pioneer within an expanded municipal service area. Assuredly, the Reuse Project does not turn all of Pioneer's landowners into "customers" of Nampa, for the simple reason that they will not be receiving a water bill from Nampa (unless they are already residential or industrial customers). But that does not mean that Nampa is not making a beneficial use of the water delivered to Pioneer. As discussed above, the Department has recognized that environmental compliance is part of the beneficial use of municipal (and other) water rights.

That beneficial use is achieved through the agency of Pioneer, but it is a beneficial use to Nampa nonetheless. Indeed, it will save the good citizens and customers of Nampa many millions of dollars.

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[32] The Title 50 Agreement is an agreement pursuant to Title 50 (notably Idaho Code §§ 50-1801, 50-1805, 50-1805A) dated Sept. 9, 1974, a copy of which is set out as Exhibit L (In Submission of Exhibits K-T).

[33] Pioneer holds water rights and entitlements with an apportioned benefit under Idaho Code § 43-404 of an inch per acre, which it is obligated to provide to its district landowners, including Nampa. SOF ¶ 1. Nampa has the capacity to pump 33.3 cfs from the Phyllis Canal. SOF ¶ 17. During the irrigation season, Nampa currently pumps an average of 9.57 cfs and a peak of 21.64 cfs from the Phyllis Canal for use in its Non-Potable System. SOF ¶ 17. Nampa's current wastewater stream (effluent generated by its WWTP) is 18.6 cfs during the irrigation season. SOF ¶¶ 25, 29. Thus Nampa currently takes more Phyllis Canal water, at peak, than it generates as effluent, and it is entitled to and capable of taking much more. It is fair to assume that as Nampa grows, the ratio of wastewater generated to water pumped from the Phyllis Canal will remain roughly the same.

Accordingly, Nampa's municipal service area may be seen as expanding to include this new beneficial use. As the Department recognized in the McCall scenario, this occurs under the statutory definition of a flexible, expanding service area for municipal providers. Idaho Code § 42-202B(9). For administrative purposes, that flexible service area dovetails perfectly with the requirement under Idaho Code § 42-201(8) that Nampa report to the Department the location of the lands where effluent will be applied.

To reiterate, the Department may view the effluent as being applied to Nampa's own customer base, based on the accounting described in the previous subsection. Alternatively, if it chooses, the Department may view all of Pioneer's district lands as part of Nampa's expanded service area—at least for purposes of the Reuse Project.

Then again, none of this Jesuitical analysis of which molecules go where and which accounting system is best is necessary. The whole point of Idaho Code § 42-201(8) was to make this head-hurting debate (and all of section III of this brief) beside the point.

IV. RIVERSIDE'S DISCOURSE ON THE NATURE AND SCOPE OF NAMPA'S WATER RIGHTS IS IRRELEVANT.

A. The three relevant points are not mentioned by Riverside.

Riverside engages in a seven-page analysis of the nature and scope of Nampa's water rights. It says this is necessary to determine whether a new water right or transfer is required. Opening Brief at 17-23. Because subsection 42-201(8) is applicable and no water right is required for the Reuse Project, the nature and scope of Nampa's water rights are irrelevant. That is the whole point of subsection 8.

To the extent the nature and scope of Nampa's water rights is relevant (e.g., if Nampa had to rely on its common law right to recapture and reuse), the following three points are sufficient. Each has been addressed above.

First, the source of the effluent is potable water delivered by Nampa under its municipal water rights. (See footnote 21 at page 31 regarding *de minimis* quantities of other water.)

Second, municipal uses include a broad array of uses.[34] Even if "off-site" irrigation of farmland were deemed not to fall within the broad scope of municipal purposes, any use or disposal of the municipal water undertaken for environmental compliance falls within the permissible uses.

Third, Nampa's municipal service area is flexible and expanding, and may include all of Pioneer's district lands. Specifically, the municipal service area may include lands outside the city limits if connected by pipes or other discrete conveyances that keep the water out of the public water supply. Even if Nampa's service area could not expand to Pioneer's lands, Nampa's use of the effluent placed in the Phyllis Canal may be seen as occurring entirely within its existing service area within the city. This is because, pursuant to the Title 50 Agreement and Nampa's entitlement to an inch per acre, Pioneer is obligated to deliver more water to Nampa than Nampa contributes to the canal upstream of the delivery points.

B. The rest are red herrings.

(1) Nampa's water rights are not limited to its potable delivery system.

Riverside incorrectly states that Nampa's rights historically associated with its potable delivery system can only be used within that delivery system. Opening Brief at 17. There is no such limitation on its rights.

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[34] Idaho Code § 42-202B(6) defines "municipal purposes" to include "related purposes." The only use expressly excluded from "municipal purposes" is "water from geothermal sources for heating." Departmental policy informally but consistently recognizes that land application or other disposal of municipal effluent mandated by environmental regulations falls within the definition of municipal purposes.

The "purpose of use" listed for Nampa's water rights is "municipal" with no qualification or limitation. Many of the rights contain a statement under "point of diversion" to the effect: "This water right is part of the potable water delivery system for the City of Nampa." That is simply descriptive information regarding the location of the well or wells, which are indeed connected to (or "part of") the potable delivery system. That sentence does not limit where the water may be used. If there were any such a limitation, it would be found under the "place of use," which, instead, is broadly described.

As the Department is well aware, Nampa has physically connected its Potable System to its Non-Potable System. This was done for the express purpose, and with the blessing of the Department, to enable rights historically associated with the Potable System to be used for municipal irrigation purposes during times of shortage.

(2) It is of no consequence whether the Nampa's effluent is deemed ground water.

Riverside explains at length its theory that Nampa's effluent should be deemed ground water. Opening Brief at 19-22. Perhaps that is so, though it hardly matters given that no water right is required under Idaho Code § 42-201(8). Riverside says it matters because, if the effluent is ground water, "it is subject to the law of enlargements." That would be a problem if Nampa were not a city (as was the situation in the cases cited by Riverside). But, as explained above, Nampa's reuse is not deemed an enlargement. (See section III.B(1) at page 31, section III.C at page 37, and section III.D at page 38.)

(3) Nampa is not in violation of RAFN limitations.

Riverside thinks it is "worth noting" that the Reuse Agreement anticipates future growth and that Nampa and Pioneer may "apply that additional water land outside Nampa's service

area." Riverside contends this will violate a restriction on RAFN rights found in Idaho Code § 42-222. (See also Idaho Code § 42-219(1).) Opening Brief at 22. This is wrong.

Aside from the fact that Nampa has few RAFN rights and that Nampa's service area may expand to cover lands within Pioneer's district boundaries, the referenced statutory limitation on changing the place of use applies only to "that portion of the right held for reasonably anticipated future needs." By the time the water becomes effluent, it has been used. It is therefore evident that it is not the portion reserved for future needs. Likewise, if it is used again in Pioneer's district, it is not being held for future needs.

(4) The source of the water right is not being changed.

Finally, Riverside observes that a water right holder may not change the source of water described on the right. Opening Brief at 22. Even if there were no subsection 8 exemption, Nampa is not changing the source of its water right. The source is ground water. If the water is recaptured as effluent and thereafter reused, that is not a change of the original source. If that were the case, the entire body of law and Departmental guidance on municipal reuse would be wrong.

CONCLUSION

For the reasons stated, Nampa urges the Director issue a declaratory ruling stating that neither Nampa nor Pioneer is required to obtain a new water right in order to undertake the Reuse Project.

Should the Director disagree and find that a water right is required, Nampa urges the Director to include in his declaratory ruling a statement that if Pioneer were to seek an appropriation of the waste water delivered to it by Nampa, Pioneer would not be required, as a

matter of law, to mitigate or otherwise compensate Riverside for any corresponding reduction in Nampa's discharge of that wastewater to Indian Creek.

Respectfully submitted this 30th day of October, 2020.

GIVENS PURSLEY LLP

Christopher H. Meyer
Preston N. Carter
Attorneys for City of Nampa

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of October, 2020, the foregoing, together with exhibits or attachments, if any, was filed, served, and copied as shown below.

DOCUMENT FILED:

IDAHO DEPARTMENT OF WATER RESOURCES P.O. Box 83720 Boise, ID 83720-0098 Hand delivery or overnight mail: 322 East Front Street Boise, ID 83702 Fax: (208) 287-6700	☐ ☒ ☐ ☐ ☐	U. S. Mail Hand Delivered Overnight Mail Fax E-mail

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Charles L. Honsinger HONSINGER LAW, PLLC PO Box 517 Boise, ID 83701 honsingerlaw@gmail.com Fax: (208) 908-6085 *(For City of Meridian and City of Caldwell)*	☒ ☐ ☐ ☐ ☒	U. S. Mail Hand Delivered Overnight Mail Fax E-mail

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☐ Fax
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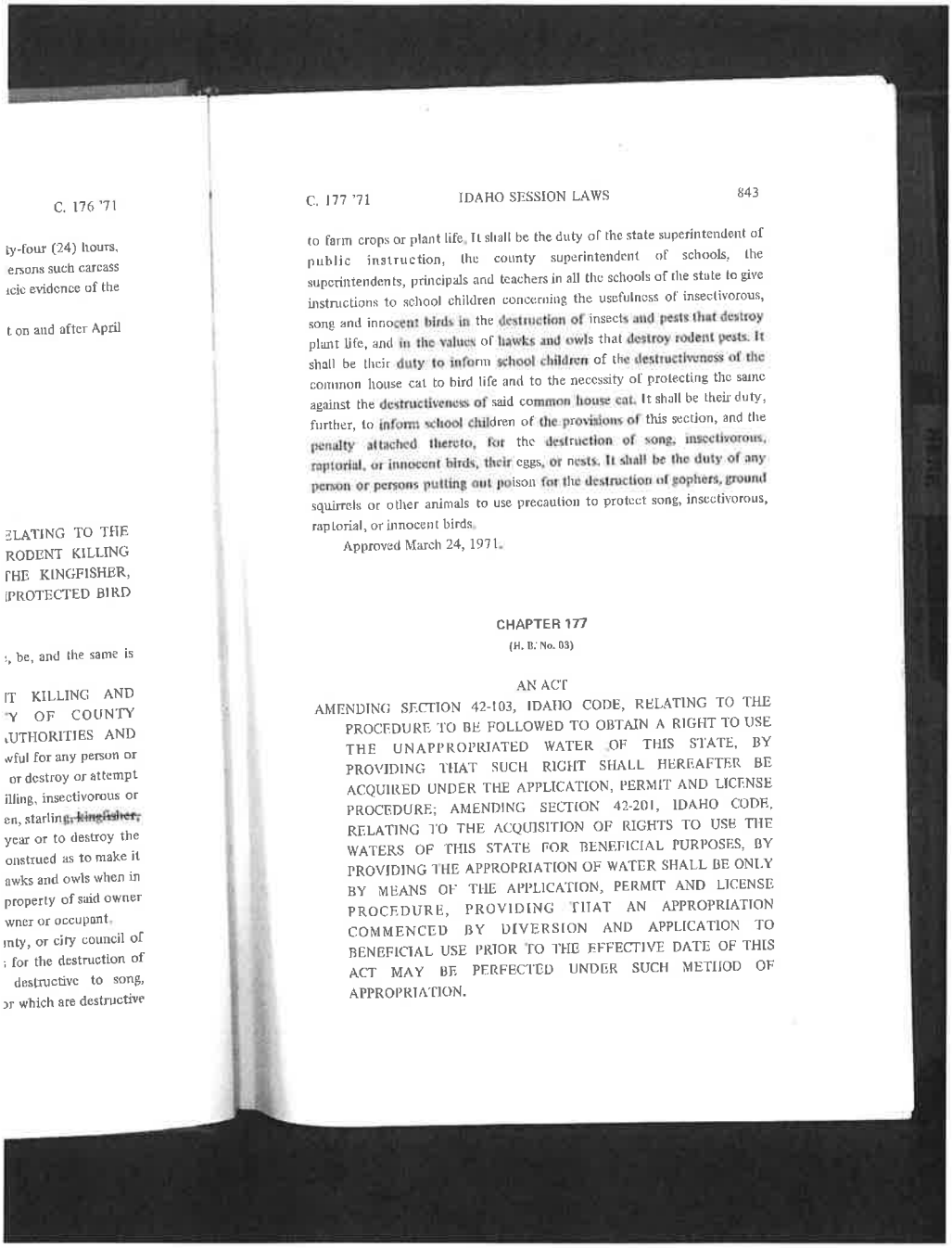
Christopher H. Meyer

Addendum A — H.B. 83, 1971 IDAHO SESS. LAWS, CH. 177 (CODIFIED AS AMENDED AT IDAHO CODE § 42-201(1)) AND ITS LEGISLATIVE HISTORY

1. 1971 Idaho Sess. Laws, ch. 177.
2. Final Daily Data 1971 (H.B. 83).
3. Minutes, House Printing & Legislative Expense Committee (Jan. 30, 1971).
4. Minutes, House Agricultural Affairs Committee (Feb. 5, 1971).
5. Minutes, House Agricultural Affairs Committee (Feb. 9, 1971).
6. Minutes, House Agricultural Affairs Committee (Feb. 11, 1971).



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to farm crops or plant life. It shall be the duty of the state superintendent of public instruction, the county superintendent of schools, the superintendents, principals and teachers in all the schools of the state to give instructions to school children concerning the usefulness of insectivorous, song and innocent birds in the destruction of insects and pests that destroy plant life, and in the values of hawks and owls that destroy rodent pests. It shall be their duty to inform school children of the destructiveness of the common house cat to bird life and to the necessity of protecting the same against the destructiveness of said common house cat. It shall be their duty, further, to inform school children of the provisions of this section, and the penalty attached thereto, for the destruction of song, insectivorous, raptorial, or innocent birds, their eggs, or nests. It shall be the duty of any person or persons putting out poison for the destruction of gophers, ground squirrels or other animals to use precaution to protect song, insectivorous, raptorial, or innocent birds.

Approved March 24, 1971.

CHAPTER 177

(H. B. No. 03)

AN ACT

AMENDING SECTION 42-103, IDAHO CODE, RELATING TO THE PROCEDURE TO BE FOLLOWED TO OBTAIN A RIGHT TO USE THE UNAPPROPRIATED WATER OF THIS STATE, BY PROVIDING THAT SUCH RIGHT SHALL HEREAFTER BE ACQUIRED UNDER THE APPLICATION, PERMIT AND LICENSE PROCEDURE; AMENDING SECTION 42-201, IDAHO CODE, RELATING TO THE ACQUISITION OF RIGHTS TO USE THE WATERS OF THIS STATE FOR BENEFICIAL PURPOSES, BY PROVIDING THE APPROPRIATION OF WATER SHALL BE ONLY BY MEANS OF THE APPLICATION, PERMIT AND LICENSE PROCEDURE, PROVIDING THAT AN APPROPRIATION COMMENCED BY DIVERSION AND APPLICATION TO BENEFICIAL USE PRIOR TO THE EFFECTIVE DATE OF THIS ACT MAY BE PERFECTED UNDER SUCH METHOD OF APPROPRIATION.

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

SECTION 1. That Section 42-103, Idaho Code, be, and the same is hereby amended to read as follows:

42-103. RIGHT ACQUIRED BY APPROPRIATION. – The right to the use of the **unappropriated** waters of rivers, streams, lakes, springs, and of subterranean waters, **or other sources within this state** ~~may~~ **shall hereafter** be acquired **only** by appropriation **under the application, permit and license procedure as provided for in this title, unless hereinafter in this title excepted.**

SECTION 2. That Section 42-201, Idaho Code, be, and the same is hereby amended to read as follows:

42-201. WATER RIGHTS ACQUIRED UNDER CHAPTER. – All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter **and not otherwise.** And after the passage of this title all the waters of this state shall be controlled and administered in the manner herein provided. **Such appropriation shall be perfected only by means of the application, permit and license procedure as provided in this title; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act it may be perfected under such method of appropriation.**

Approved March 24, 1971.

CHAPTER 178

(H. B. No. 272)

AN ACT

AMENDING SECTION 31-4316, IDAHO CODE, RELATING TO RECREATION DISTRICTS, PROVIDING THAT YOUTH RECREATION CENTERS MAY BE OPERATED BY RECREATION DISTRICTS.

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

SECTION 1. That Section 31-4316, Idaho Code, be, and the same is hereby amended to read as follows:

31-4316. PURPOSE OF DISTRICT. – Each district is organized for the uses and purposes of acquiring, providing, maintaining and operating ~~a~~

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1971 FINAL DAILY DATA

H78 UNEMPLOYMENT COMP., extended benefits
by State Affairs

(H) 1/29 Intro - 1st rdg - to Print
1/30 Rpt prt - laid at desk
Rls susp - PASSED 55-0-15
AYES—Allen Andersen Antone Brennan Brocke Cammack Carr Chatburn Claiborn Condie Copple Danielson Davidson Dean Dunn Edwards Elgin Farner Fogg Greenawalt Hankenson Hale Hartvigsen Hedges Hedlund Hyde Jackson Johnson(35) Keithly Kendell Kennevick Koch(17) Koch(19) Kraus Litton Loveless Maynard McDermott McHan McKinney Merrill Murphy Onweiler Reardon Reid Rice Snow Sweeney Tibbitts Tregoning Wagner White Williams Worthen Mr Speaker
NAYS—None
ABSENT—Arnzen Crapo Hammond Jenkins Johnson(29) Larsen Lincoln Little Looney Molyneaux Palmer Ravenscroft Roberts Scoresby Sessions
Title apvd - to S

(S) 2/1 Rec'd fr H - 1st rdg - to Lab/Econ
2/2 Rpt out - rec d/p - to 10th ord
Rls susp - PASSED 33-2-0
AYES — Allen Barker Bilyeu Bivens Brown Budge Chase Cobbs Crookham Crutcher Egbert Ellsworth(20) Ellsworth(30) Evans Fredericksen High Kidwell Klein Manley Manning Miller Mitchell Mix Murphy Peavey Rigby Saxvik Solberg Steen Stoicheff Summers Swenson Williams
NAYS — Brassey Yarbrough
ABSENT — None
Title apvd - to H

(H) 2/3 Rec'd fr S - to Jud f/enrol
Rpt enrol - Sp signed - to S
(S) 2/3 Rec'd fr H - Pres signed - to H
(H) 2/3 To Governor
2/3 Governor signed
Session Law Chapter No. 4
Effective: Immediately

H79 EDUCATION, vocational high school districts
by Education

(H) 1/29 Intro - 1st rdg - to Print
1/30 Rpt prt - to Ed

[redacted] SCHOOLS, emergency fund level computation
by Education

(H) 1/29 Intro - 1st rdg - to Print
1/30 Rpt prt - to Ed
2/3 Rpt out - rec d/p - to 2nd rdg
2/4 2nd rdg - to 3rd rdg
2/5 3rd rdg - PASSED 56-2-12
AYES—Allen Andersen Antone Arnzen Brocke Cammack Carr Chatburn Claiborn Condie Danielson Davidson Dean Dunn Edwards Elgin Farner Fogg Greenawalt Hankenson Hale Hammond Hartvigsen Hedges Hedlund Hyde Jackson Jenkins Johnson(29) Johnson(35) Keithly Kendall Kennevick Koch(19) Kraus Larsen Little Litton Looney Maynard McDermott McHan McKinney Merrill Molyneaux Murphy Onweiler Palmer Ravenscroft Reardon Reid Rice Roberts Scoresby Sessions Worthen
NAYS—Loveless Tregoning
ABSENT—Brennan Copple Crapo Koch(17) Lincoln Snow Sweeney Tibbitts Wagner White Williams Mr Speaker
Title apvd-to S

(S) 2/8 Rec'd fr H - 1st rdg - to HEW
2/13 Rpt out - rec d/p - to 2nd rdg
2/16 2nd rdg - to 3rd rdg

H80 continued

2/17 3rd rdg - PASSED 34-0-1
AYES—Allen Barker Bilyeu Bivens Brown Budge Chase Cobbs Crookham Crutcher Egbert Ellsworth(20) Ellsworth(30) Evans Fredericksen High Kidwell Klein Manley Manning Miller Mitchell Mix Murphy Peavey Rigby Saxvik Solberg Steen Stoicheff Summers Swenson Williams Yarbrough
NAYS—None
ABSENT—Brassey
Title apvd - to H

(H) 2/17 Rec'd fr S - to enrol
Rpt enrol - Sp signed - to S
(S) 2/18 Rec'd fr H - Pres signed - to H
(H) 2/19 To Governor
2/19 Governor signed
Session Law Chapter No. 30
Effective: May 19, 1971

H81 GARNISHMENT, wages, no reason to fire
by Judiciary and Rules

(H) 1/29 Intro - 1st rdg - to Print
1/30 Rpt prt - to Jud

H82 PERMANENT BLDG FUND, liquor fund to
by Onweiler

(H) 1/29 Intro - 1st rdg - to Print
1/30 Rpt prt - to Rev
3/11 Rpt out - to Gen Ord - to Comm of Whole
Rpt out amen w/o rec - to engros - amens ord prt
3/12 Amens rpt prt
3/15 Rpt engros - to 1st rdg as amen
1st rdg - to 2nd rdg as amen
3/16 2nd rdg - to 3rd rdg as amen
3/17 Held till 3/18
3/19 3rd rdg - PASSED 37-31-2
AYES—Allen Andersen Brennan Cammack Copple Crapo Dean Elgin Fogg Hankenson Hammond Hedges Hedlund Hyde Jackson Jenkins Johnson(29) Johnson(35) Keithly Kennevick Koch(17) Koch(19) Looney Loveless Maynard McDermott Merrill Molyneaux Murphy Onweiler Ravenscroft Reardon Reid Rice Sweeney Wagner Worthen
NAYS—Antone Arnzen Brocke Carr Chatburn Claiborn Condie Danielson Dunn Edwards Farner Greenawalt Hale Hartvigsen Kendell Kraus Larsen Lincoln Little Litton McHan McKinney Palmer Scoresby Sessions Snow Tibbitts Tregoning White Williams Mr Speaker
ABSENT—Davidson Roberts
Title apvd - motion to recon FAILED 28-32-10
To S

(S) 3/19 Rec'd fr H - to 1st rdg - to Loc Gov

→ H83 WATER, water right permit system, mandatory
by Resources and Conservation

(H) 1/30 Intro - 1st rdg - to Print
2/2 Rpt prt - to Agric Aff
2/11 Rpt out - rec d/p - to 2nd rdg
2/12 2nd rdg - to 3rd rdg
2/13 3rd rdg - PASSED 45-11-14
AYES — Allen Andersen Cammack Carr Chatburn Claiborn Condie Copple Dunn Edwards Elgin Farner Fogg Greenawalt Hale Hedges Hyde Jackson Johnson(35) Keithly Kendell Kennevick Koch(19) Kraus Lincoln Little Looney Maynard McDermott McHan McKinney Onweiler Palmer Ravenscroft Reid Rice Roberts Snow Sweeney Tibbitts Tregoning Wagner White Worthen Mr Speaker

H83 continued

NAYS -- Brocke Crapo Danielson Davidson Haakenson Larsen Loveless Murphy Reardon Scoresby Sessions
ABSENT – Antone Arnzen Brennan Dean Hammond Hartvigsen Hedlund Jenkins Johnson(29) Koch(17) Litton Merrill Molyneaux Williams
Title apvd - to S

(S) 2/16 Rec'd fr H - 1st rdg - to Res
3/11 Rpt out - rec d/p - to 2nd rdg
3/12 2nd rdg - to 3rd rdg
3/13 Held
3/15 3rd rdg - PASSED 29-1-5
AYES–Allen Barker Bilyeu Bivens Brown Cobbs Crookham Crutcher Egbert Ellsworth(30) Evans Fredericksen High Kidwell Manley Manning Miller Mitchell Mix Murphy Peavey Rigby Saxvik Steen Stoicheff Summers Swenson Williams Yarbrough
NAYS–Budge
ABSENT–Brassey Chase Ellsworth(20) Klein Solberg
Title apvd - to H

(H) 3/16 Rec'd fr S - to enrol
3/17 Rpt enrol - Sp signed - to S
(S) 3/17 Rec'd fr H - Pres signed - to H
(H) 3/18 To Governor
3/24 Governor signed
Session Law Chapter No. 177
Effective: May 19, 1971

H84 FIREARMS, carrying loaded in vehicles
by Resources and Conservation

(H) 1/30 Intro - 1st rdg - to Print

H85 CATTLE, permit to drive across borders
by Agricultural Affairs

(H) 1/30 Intro - 1st rdg - to Print
2/1 Rpt prt - to Agric Aff
2/27 Rpt out - rec d/p - to 2nd rdg
3/1 2nd rdg - to 3rd rdg
3/2 3rd rdg PASSED 59-0-11
AYES–Allen, Andersen, Antone, Arnzen, Brennan, Brocke, Cammack, Carr, Chatburn, Claiborn, Condie, Crapo, Davidson, Dean, Dunn, Elgin, Farner, Fogg, Greenawalt, Haakenson, Hale, Hammond, Hartvigsen, Hedges, Hedlund, Hyde, Jackson, Jenkins, Johnson (29), Keithly, Kendell, Kennevick, Koch (17), Koch (19), Kraus, Larsen, Lincoln, Little, Litton, Maynard, McDermott, McHan, McKinney, Murphy, Onweiler, Palmer, Ravenscroft, Reid, Rice, Roberts, Scoresby, Sessions, Snow, Sweeney, Tibbitts, Tregoning, Wagner, White, Worthen. Total–59.
NAYS–None
Absent and excused–Copple, Danielson, Edwards, Johnson (35), Looney, Loveless, Merrill, Molyneaux, Reardon, Williams, Mr. Speaker. Total–11.
Title apvd - to S

(S) 3/3 Rec'd fr H - 1st rdg - to Ag Aff
3/5 Rpt out - rec d/p - to 2nd rdg
3/6 2nd rdg - to 3rd rdg
3/8 3rd rdg PASSED 22-5-8
AYES–Allen Barker Bilyeu Bivens Budge Chase Cobbs Ellsworth(20) Evans Klein Manning Mitchell Mix Murphy Peavey Rigby Saxvik Solberg Steen Stoicheff Summers Swenson
NAYS–Brown Crookham Crutcher Ellsworth(30) Kidwell
ABSENT–Brassey Egbert Fredericksen High Manley Miller Williams Yarbrough
Title apvd - to H

(H) 3/9 Rec'd fr S - to enrol
3/10 Rpt enrol - Sp signed - to S
(S) 3/11 Rec'd fr H - Pres signed - to H
(H) 3/12 To Governor
3/16 Governor signed
Session Law Chapter No. 120
Effective: Immediately

H86 HEALTH, dist., meeting of budget committee
by Edwards

(H) 1/30 Intro - 1st rdg - to Print
2/1 Rpt prt - to Health/Wel
2/2 Rpt out - rec d/p - to 2nd rdg
2/3 2nd rdg - to 3rd rdg
2/4 3rd rdg - PASSED 62-0-8
AYES–Andersen Antone Arnzen Brennan Brocke Cammack Chatburn Claiborn Condie Copple Crapo Danielson Davidson Dean Dunn Edwards Elgin Fogg Greenawalt Haakenson Hale Hammond Hedges Hedlund Hyde Jackson Jenkins Johnson(29) Johnson(35) Kendall Kennevick Koch(17) Koch(19) Kraus Larsen Lincoln Little Litton Looney Maynard McHan McKinney Merrill Molyneaux Murphy Onweiler Palmer Ravenscroft Reardon Reid Rice Roberts Scoresby Sessions Snow Sweeney Tibbitts Tregoning Wagner Williams Worthen Mr Speaker
NAYS–none
ABSENT–Allen Carr Farner Hartvigsen Keithly Loveless McDermott White
Title apvd to S

(S) 2/5 Rec'd fr H - 1st rdg - to HEW
2/9 Rpt out - rec d/p - to 2nd rdg
2/10 2nd rdg - to 3rd rdg
2/11 3rd rdg - PASSED 30-0-5
AYES–Allen Barker Bilyeu Bivens Brass Brown Budge Cobbs Crookham Crutcher Ellsworth(30) Evans High Klein Manley Manning Miller Mitchell Mix Murphy Peavey Rigby Saxvik Solberg Steen Stoicheff Summers Swenson Williams Yarbrough
NAYS–None
ABSENT–Chase Egbert Ellsworth(20) Fredericksen Kidwell
Title apvd - to H

(H) 2/12 Rec'd fr S - to enrol
2/13 Rpt enrol - Sp signed - to S
(S) 2/16 Rec'd fr H - Pres signed - to H
(H) 2/16 To Governor
2/16 Governor signed
Session Law Chapter No. 27
Effective: May 19, 1971

H87 MINES, MINING, dredge, placer, permit
by Resources and Conservation

(H) 2/1 Intro - 1st rdg - to Print
2/2 Rpt prt - to Res
2/19 Rpt out - rec d/p - to 2nd rdg
2/20 2nd rdg - to 3rd rdg
2/22 Hld till 2/23/71
2/23 Hld till 2/24
2/24 3rd rdg PASSED 54-0-16
AYES–Allen Andersen Arnzen Brennan Brocke Cammack Carr Chatburn Condie Crapo Dean Dunn Elgin Farner Fogg Greenawalt Haakenson Hale Hartvigsen Hedges Hedlund Hyde Jenkins Johnson(29) Johnson(35) Keithly Kendell Kennevick Koch(17) Koch(19) Kraus Litton Looney Loveless Maynard McDermott McHan McKinney Merrill Molyneaux Murphy Onweiler Palmer Ravenscroft Reardon Rice Roberts Sweeney Tibbitts Tregoning White Williams Worthen Mr Speaker
NAYS–none
ABSENT–Antone Claiborn Copple Danielson Davidson Edwards Hammond Jackson Larsen Lincoln Little Reid Scoresby Sessions Snow Wagner
Title apvd - to S

(S) 2/25 Rec'd fr H - 1st rdg - to Res
3/15 Rpt out - rec d/p - to 2nd rdg
3/16 2nd rdg - to 3rd rdg
3/17 3rd rdg - PASSED 31-0-4

HOUSE PRINTING & LEGISLATIVE EXPENSE COMMITTEE

FORTY-FIRST LEGISLATURE - FIRST SESSION

January 30, 1971

The Printing Committee met in Room 311 at 10:30 AM.

PRESENT: Hyde, Chairman
Little
Danielson
Hedges
Elgin
Koch (19)
McDermott
White
Williams

ABSENT: None

H.B. No. 83 (Resources & Conservation) (To provide that the right to use appropriated water shall be only by application, permit and license procedure)

Mr. Williams presented H.B. 83. Mr. Hyde said this was from the Department of Water Administration and what it does, in effect, is eliminate the appropriation of water by building a diversion works and taking it. Mr. Williams moved that it be PRINTED. Seconded by Mr. Hedges. Motion carried unanimously.

H.B. No. 84 (Resources & Conservation) (Prohibit persons from carrying loaded guns in a vehicle)

Miss McDermott presented H.B. 84. She commented on the exemption to "any person hired to herd grazing animals or any person hired specifically for the purpose of controlling predatory animals....." and said that it should also say "in the course of his employment". There was also a question about whether a person duck hunting in a boat would be included in this since the bill states: "...or in any vehicle propelled by man...." Miss McDermott moved that H.B. 84 be HELD until Tuesday for clarification. Seconded by Mr. Hedges. Motion carried unanimously.

H.B. No. 85 (Agricultural Affairs) (To require a permit from the brand inspector to move horses, mules or cattle out of state by any means other than rail)

Mr. Koch presented H.B. 85 and Mr. Hedges moved that it be PRINTED. Seconded by Mr. Elgin. Motion carried unanimously.

H.B. No. 86 (Edwards) (To allow the budget committee of a Public Health District to meet on or before the first Monday of December -- presently they must meet on the first Monday of December)

Mr. White presented H.B. 86 and Mr. Williams moved that it be PRINTED. Seconded by Mr. White. Motion carried unanimously.

The committee discussed H.B. 49 (motor vehicle speed limits) which was being held.

Mr. Keithly appeared before the committee to explain this bill. He said he felt that anyone who had the money to get off of the speeding ticket could and those that didn't had to pay it. He said the bill had been checked by the Legislative Council and the House Attorney and they believed it was in order. He felt it would make the enforcement of the laws easier, and the bill does allow posting of higher or lower speed limits. Mr. Elgin moved that H.B. 49 be PRINTED. Seconded by Miss McDermott. Motion carried unanimously.

Meeting adjourned at 10:50 AM.

Aden Hyde

ADEN HYDE, Chairman

Jan Graff

Jan Graff, Secretary

(House)

AGRICULTURAL AFFAIRS COMMITTEE MEETING

FEBRUARY 5, 1971 9:00 A.M.

PRESENT: Jack Claiborn, Chairman; Walter Little, Vice-Chairman; Angus Condie; Carroll Dean; Virgil Farner; Albert Johnson; Kurt Johnson; Max Kendell; Allan Larsen; Harold Reid; Wayne Tibbitts

ABSENT: George Brocke; Lester Hartvigsen

GUESTS: Mr. Wilson Churchman, Jerome, President, Idaho Horse Racing Sponsoring Association
Mr. Dave Samuelson, Boise Attorney
Mr. Tom Sheldon, Chairman, Horse Racing Commission

Mr. Keith Higginson, Administrator, Water Administration Dept.
Mr. Bob Fleenor, Assistant Director, Water Administration Dept.

The meeting was called to order by Chairman, Jack Claiborn.

RS 2481: INCREASE IDAHO STATE HORSE RACING COMMISSION MEMBERS FROM 3 TO 5: Mr. Wilson Churchman was the first speaker. He said he represents the Idaho Race Horse Sponsoring Association. This consists of 12 groups which are listed on back of Resolution that was handed to Committee members. Half of the group are sponsored under the fair boards.

At the annual meeting November 7th, the resolution was drafted opposing any change in the three man board on the Horse Racing Commission. Mr. Churchman said there was a bill in the Legislature which would increase the take by the sponsor from 15% to 18% but he thought this had been killed. The first three resolutions pertain to that. The last three resolutions pertain to RS 2481. The Resolution was unanimously adopted by all sponsoring associations. Since the start of racing a three man board has handled the duties and this has worked very well. They only have twelve race tracks to supervise.

The Chairman said that a bill was introduced in the Senate and its number is SB 1065. This bill is the same as 1065 except it provides for per diem of $25 per day for members when they are on business of the Commission. The members draw no salary. RS 2481 was drafted by Rep. Williams and Mr. Joe Hansen brought it to Committee Chairman.

Mr. Sheldon gave a history of racing and passed out financial report. During the first year of racing (1963) the Commission handled $608,634. This past year they handled $4,115,511. (See previous remarks by Mr. Sheldon in minutes dated January 26th.)

→ HB 83: IDAHO MANDATORY PERMIT ACT: Mr. Higginson said that this bill would have no effect on any existing water rights whether they are established through permit procudure or through constitutional method of application. It simply would mean that from now on the procedure would be through permit system. Mr. Higginson said they believe there are in excess of 200,000 water rights unadjudicated. There are 10,000 water rights on record by decree and 15,000 permits or approximately 25,000 total. It would give a much more orderly process if water rights were recorded.

SB 1011: RELATING TO BENEFICIAL USES OF WATER: Mr. Higginson said this is not in effect a Water Administration Bill. It was introduced by Mr. Manley in the Senate. Two years ago the Water Administration Department did put in a similar bill. Mr. Higginson said he felt there would be an advantage to having the legislation which would recognize other beneficial uses of water other than the ones listed in the Constitution. They are now satisfied that the Constitution listing of those five uses is not a prohibition against the other uses.

RS 2440: DEFINITION OF "DOMESTIC PURPOSES": This legislation was discussed with Mr. Higginson. He stated that all this does is put back on the books what was passed last year. He also answered questions regarding critical ground water areas.

RS 2541: POTATO COMMISSION BILL: Mr. Larsen moved that this be introduced. Mr. Kurt Johnson seconded. Motion carried.

→ HB 83: This will be held for further study.

SB 1011: Mr. Larsen moved that this be held for further study. Mr. Little seconded. Motion carried.

Meeting adjourned at 10:30 A.M.

Jack D. Claiborn, Chairman

Nancy Gulles, Secretary

(House)

AGRICULTURAL AFFAIRS COMMITTEE MEETING

FEBRUARY 9, 1971 9:00 A.M.

PRESENT: Jack Claiborn, Chairman
Walter Little, Vice-Chairman
George Brocke
Angus Condie
Carroll Dean
Virgil Farner
Lester Hartvigsen
Albert Johnson
Kurt Johnson
Max Kendell
Allan Larsen
Harold Reid
Wayne Tibbitts

GUESTS: Mr. Keith Higginson, Director, Water Administration Dept.
Mr. Bob Fleenor, Assistant Director, Water Administration Dept.

Mr. Hugh Parks, Lewiston, Legislative Adviser, State Grange

Meeting was called to order by Chairman, Jack Claiborn. All members were present.

HB 83: IDAHO MANDATORY PERMIT ACT: Mr. Higginson said there has always been some concern over this proposal by people who feel it would upset the status quo and disrupt the water rights. Actually this legislation would offer protection to existing water rights. There will be a full disclosure before a permit is issued, and there will be records which they do not have now. In Utah they have had a permit procedure since 1906 and they have excellent records. A permit procedure has been on the books in Idaho but it has not been mandatory. Mr. Higginson gave out a letter dated February 10, 1970, regarding court decisions and also a paper entitled, "Justification for House Bill 83".

MOTION: HB 83: Mr. Little moved that this be held until the next meeting to give Members a chance to review literature from Mr. Higginson. Mr. Reid seconded.

AMENDED MOTION: Mr. Condie moved that bill be sent back to desk with "DO PASS" recommendation. Mr. Dean seconded. Motion failed to pass.

VOTE WAS TAKEN ON ORIGINAL MOTION. MOTION CARRIED. Bill will be held until Thursday meeting.

HB 107: DEFINITION OF DOMESTIC PURPOSES: The Chairman felt perhaps the bill should be amended to allow a permit for livestock as well as household use. Mr. Higginson suggested that this could be accomplished by changing the "and" to an "or" in sub-section (d). It would therefore read as follows: "Domestic purposes" is water for household use or livestock . . ."

MOTION: Mr. Little moved that HB 107 be amended by changing the "and" to "or". Mr. Al Johnson seconded. Motion carried. Bill will be placed on GENERAL ORDERS FOR AMENDMENT. Mr. Condie will sponsor.

RS 2398: MOTION: PUBLIC LIVESTOCK MARKET BOARD ACT: Mr. Brocke moved that this be introduced. Mr. Little seconded. Motion carried.

RS 2399: POULTRY GRADING: Mr. Condie moved that we introduce RS 2399. Mr. Farner seconded. Motion carried.

(House)

AGRICULTURAL AFFAIRS COMMITTEE MEETING

FEBRUARY 11, 1971 9:00 A.M.

PRESENT: Jack Claiborn, Chairman
Walter Little, Vice-Chairman
Angus Condie
Carroll Dean
Virgil Farner
Lester Hartvigsen
Albert Johnson
Kurt Johnson
Allan Larsen
Harold Reid
Wayne Tibbitts

ABSENT: George Brocke
Max Kendell

GUESTS: Mr. Bob Henderlider, Secretary, Idaho Cattlemen's Association
Mr. Tom Hovenden, Secretary, Idaho Cattle Feeder's Association

Meeting was called to order by the Chairman. Mr. Henderlider appeared before the Committee to give his views on several pieces of legislation.

RS 2586: BEEF COUNCIL LEGISLATION: Mr. Henderlider said there are areas where they are missing the dimes for beef promotion because of the loophole in the original act. The only time the collection is made is when there is a transfer of ownership. In one area they are actually selling cattle but are shipping to themselves across the State line. Also there are several large packing plants that are feeding cattle and are required to have a brand inspection at time of slaughter, but since no change of ownership is taking place, they are not contributing to the Beef Council even though they are deriving a good deal of the benefit from the promotion of beef. The other corroction in the bill is the time period for asking for a refund. This has been changed from 30 days to 10 days. It is the same people who are asking for a refund time after time.

HB 141: PUBLIC LIVESTOCK MARKET BOARD: Mr. Henderlider said to make it fair they feel a corporation should be treated the same as an individual. This legislation does not require a hearing unless someone requests one. They must submit an application and financial statement. It gives the Board an opportunity to have a hearing for a market change. There are 21 livestock markets in the state.

HB 89: EXEMPTING EMPLOYEES OF COMMODITY COMMISSIONS FROM PERSONNEL COMMISSION: Mr. Henderlider said there is a real problem trying to work with the Personnel Commission. They have been opposed to the Commission from the beginning. Some of the examinations are "downright ridiculous". It would certainly facilitate the work of the Commissions if they did not have to hire through the Personnel Commission.

SB 1032: MEAT BILL: The Chairman asked someone to sponsor SB 1032. Mr. Little volunteered. Mr. Claiborn will make the motion to accept the amendment. Mr. Little will second the motion and explain the amendment.

HB 83: PERMIT & LICENSE PROCEDURE:

MOTION: Mr. Condie moved that this be sent to the desk with "DO PASS" recommendation. Mr. Dean seconded. Motion carried. Mr. Dean will act as sponsor.

AMENDED MOTION: Mr. Little moved that the motion just passed be amended to read that the bill be sent back to the desk "WITHOUT RECOMMENDATION". Mr. Farner seconded. MOTION WAS WITHDRAWN WITH CONSENT OF SECOND.

Addendum B — H.B. 369, 1986 IDAHO SESS. LAWS, CH. 313 (CODIFIED AS AMENDED AT IDAHO CODE § 42-201(2)) AND ITS LEGISLATIVE HISTORY

1. 1986 Idaho Sess. Laws, ch. 313.
2. H.B. 369.
3. Amendments to H.B. 369.
4. Statement of Purpose and Fiscal Note (RS 11737C1).
5. Final Daily Data 1986 (H.B. 369).
6. Minutes, House Resources & Conservation Committee (Jan. 9, 1986).
7. Minutes, House Resources & Conservation Committee (Jan. 21, 1986).
8. Minutes, Senate Resources & Environment Committee (Mar. 12, 1986).
9. Minutes, Senate Resources & Environment Committee (Mar. 14, 1986).
10. Minutes, Senate Resources & Environment Committee (Mar. 17, 1986).
11. Third Reading and Letter of Intent – H. 369 (1986 House Journal, p. 51) (Jan 27, 1986).

SECTION 1. That Chapter 18, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-1841, Idaho Code, and to read as follows:

41-1841. BLOCK CANCELLATIONS AND BLOCK NONRENEWALS — NOTICE TO DIRECTOR REQUIRED. (1) Any insurer intending to implement block cancellations or block nonrenewals of insurance policies shall provide the director written notice of such intentions no later than one hundred twenty (120) days prior to such intended action. Such notice shall fully set forth reasons for such action and shall include additional information that the director may deem appropriate. Failure by any insurer to comply with the requirements of this section shall constitute a violation of the provisions of this section and shall render any policy cancellations or nonrenewals by the insurer null and void and without effect. The failure of any insurer to comply with the requirements of this section shall not affect the contract rights of insureds.

(2) At the end of sixty (60) days the intended insurer action shall be deemed approved unless prior thereto it has been affirmatively approved by order of the director.

(3) Block cancellations or block nonrenewals for the provisions of this section and the enforcement of this code, shall be defined to include any of the following: cancellation or nonrenewal of any class, line, type or subject of insurance, or the withdrawal from the business of insurance in Idaho.

(4) The requirements of this section are not a waiver or limitation of the provisions of this code, or other laws of this state, but are additional requirements.

(5) The director may issue reasonable regulations to establish requirements for reporting required herein.

Approved April 3, 1986.

CHAPTER 311
(H.B. No. 374)

AN ACT

RELATING TO PROBATION; AMENDING SECTION 20-222, IDAHO CODE, TO PROVIDE THAT A PERSON MAY BE PLACED ON PROBATION FOR A PERIOD OF TIME EQUAL TO THE PERIOD OF TIME HE MIGHT HAVE BEEN IMPRISONED.

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

SECTION 1. That Section 20-222, Idaho Code, be, and the same is hereby amended to read as follows:

20-222. INDETERMINED OR FIXED PERIOD OF PROBATION OR SUSPENSION OF SENTENCE -- REARREST AND REVOCATION. The period of probation or suspension of sentence may be ~~indetermined~~ indeterminate or may be

1986

fixed by the court, and may at any time be extended or terminated by the court. Such period with any extension thereof shall not exceed ~~five years, except in cases in which the defendant is charged with failure to provide subsistance to his dependents~~ the maximum period for which the defendant might have been imprisoned.

At any time during probation or suspension of sentence, the court may issue a warrant for violating any of the conditions of probation or suspension of sentence and cause the defendant to be arrested. Thereupon the court, after summary hearing may revoke the probation and suspension of sentence and cause the sentence imposed to be executed, or may cause the defendant to be brought before it and may continue or revoke the probation, or may impose any sentence which originally might have been imposed at the time of conviction.

Approved April 3, 1986.

CHAPTER 312
(H.B. No. 373)

AN ACT

RELATING TO CRIMINAL PUNISHMENT; AMENDING CHAPTER 1, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-112A, IDAHO CODE, TO PROVIDE A FINE FOR FELONY STATUTES WHEN A FINE IS NOT SPECIFICALLY PROVIDED.

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

SECTION 1. That Chapter 1, Title 18, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 18-112A, Idaho Code, and to read as follows:

18-112A. FINE AUTHORIZED. In addition to any other punishment prescribed for felonies in specific statutes of the Idaho Code, the court may also impose a fine of up to five thousand dollars ($5,000). This section shall not apply if the specific felony statute provides for the imposition of a fine.

Approved April 3, 1986.

CHAPTER 313
(H.B. No. 369, As Amended in the Senate)

AN ACT

RELATING TO ADMINISTRATION OF WATER RIGHTS; AMENDING SECTION 42-108, IDAHO CODE, TO PROVIDE THAT ANY PERMANENT CHANGE IN PERIOD OR NATURE OF USE FOR A QUANTITY OF WATER GREATER THAN FIFTY CFS OR FOR A STORAGE VOLUME GREATER THAN FIVE THOUSAND ACRE FEET SHALL

REQUIRE THE APPROVAL OF THE LEGISLATURE EXCEPT THAT ANY TEMPORARY CHANGE WITHIN THE STATE OF IDAHO FOR A PERIOD OF LESS THAN THREE YEARS MAY BE APPROVED BY THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES WITHOUT LEGISLATIVE APPROVAL; AMENDING SECTION 42-201, IDAHO CODE, TO PROHIBIT ILLEGAL APPLICATION AND USE OF PUBLIC WATERS; AMENDING SECTION 42-204, IDAHO CODE, TO PROVIDE FOR EXTENSIONS BY THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES FOR COMPLETION OF WORKS AND APPLICATION OF THE WATER TO FULL BENEFICIAL USE UNDER CERTAIN PERMITS AND TO DELETE ARCHAIC LANGUAGE; AMENDING SECTION 42-221, IDAHO CODE, TO PROVIDE A FEE FOR RECEIPT OF ALL NOTICES OF APPLICATION WITHIN A DESIGNATED AREA; AMENDING SECTION 42-222, IDAHO CODE, TO PROVIDE NOTICE OF A PROPOSED CHANGE IN WATER USE, TO PROVIDE CONDITIONS FOR TRANSFER OF THE RIGHT TO STORED WATER FOR IRRIGATION PURPOSES, TO DELETE LANGUAGE RELATING TO CHANGE OF NATURE OF USE OF A WATER RIGHT AND TO PROVIDE NOTICE OF AN APPLICATION FOR AN EXTENSION; REPEALING SECTIONS 42-240 AND 42-311, IDAHO CODE; AMENDING CHAPTER 3, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-311, IDAHO CODE, TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES THE AUTHORITY TO ISSUE ORDERS PRIOR TO LICENSURE, TO PROVIDE GROUNDS FOR THE ORDER, TO PROVIDE THAT THE ORDER BE SERVED, TO PROVIDE FOR A HEARING, TO PROVIDE FOR JUDICIAL REVIEW AND TO DEFINE PERMITTEE; AMENDING CHAPTER 3, TITLE 42, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 42-350, 42-351 AND 42-352, IDAHO CODE, TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES THE AUTHORITY TO ISSUE ORDERS AFTER LICENSURE, TO PROVIDE GROUNDS, TO PROVIDE THAT THE ORDER BE SERVED, TO PROVIDE FOR A HEARING, JUDICIAL REVIEW OR RIGHT OF ACTION IN DISTRICT COURT, TO DEFINE LICENSEE, TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES AUTHORITY TO ISSUE ORDERS FOR ILLEGAL DIVERSION OR USE OF WATER, TO PROVIDE GROUNDS, TO PROVIDE THAT THE ORDER BE SERVED, TO PROVIDE FOR A HEARING AND JUDICIAL REVIEW AND TO PROVIDE CIVIL PENALTIES; AMENDING CHAPTER 17, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1778, IDAHO CODE, TO CREATE THE WATER RIGHTS ENFORCEMENT ACCOUNT IN THE AGENCY ASSET FUND; AND AMENDING SECTION 42-1805, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES SHALL HAVE THE POWER AND DUTY TO SEEK AN INJUNCTION OR RESTRAINING ORDER PERTAINING TO CERTAIN VIOLATIONS OR ATTEMPTED VIOLATIONS REGARDING WATER LAW.

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

SECTION 1. That Section 42-108, Idaho Code, be, and the same is hereby amended to read as follows:

42-108. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE -- APPLICATION OF ACT. The person entitled to the use of water or owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of the constitution and statutes of this state, may change the point of diversion, period of use, or nature of use, and/or may voluntarily abandon the use of such water in whole or in part on the land which is

receiving the benefit of the same and transfer the same to other lands, if the water rights of others are not injured by such change in point of diversion, place of use, period of use, or nature of use, provided; if the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned and/or managed by an irrigation district, no change in the point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation or irrigation district~~, provided, any~~. Any permanent or temporary change in period or nature of use in or out-of-state for a quantity greater than fifty (50) cfs or for a storage volume greater than five thousand (5,000) acre-feet shall require the approval of the legislature~~. Any lease~~, except that any temporary change within the state of Idaho for a term period of less than three (3) years may be approved by the director without legislative approval.

Any person desiring to make such change of point of diversion, place of use, period of use, or nature of use of water shall make application for change with the department of water resources under the provisions of section 42-222, Idaho Code. After the effective date of this act, no person shall be authorized to change the period of use or nature of use, point of diversion or place of use of water unless he has first applied for and received approval of the department of water resources under the provisions of section 42-222, Idaho Code.

SECTION 2. That Section 42-201, Idaho Code, be, and the same is hereby amended to read as follows:

42-201. WATER RIGHTS ACQUIRED UNDER CHAPTER -- ILLEGAL APPLICATION OF WATER. (1) All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter and not otherwise. And after the passage of this title all the waters of this state shall be controlled and administered in the manner herein provided. Such appropriation shall be perfected only by means of the application, permit and license procedure as provided in this title; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act it may be perfected under such method of appropriation.

(2) No person shall use the public waters of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists.

SECTION 3. That Section 42-204, Idaho Code, be, and the same is hereby amended to read as follows:

42-204. EXAMINATION -- PERMIT -- COMMENCEMENT OF WORK -- EXTENSIONS -- APPEAL. On receipt of the application, which shall be of a form prescribed by the department of water resources, it shall be the duty of that department to make an indorsement thereon of the date of

its receipt, and to examine said application and ascertain if it sets forth all the facts necessary to show the location, nature and amount of the proposed use. If upon such examination the application is found defective, it shall be the duty of the department of water resources to return the same for correction or to correspond with the applicant to obtain the needed information or amendments. If the application is returned to the applicant or the department shall request additional information and the applicant fails to return the corrected application or to supply the needed information within thirty (30) days, the department may void the record of said application and notify the applicant of such action. If the corrected application is returned or the information is supplied after thirty (30) days, such corrected application shall be treated in all respects as a new application, and the priority of the right initiated shall be determined by the date of receipt, in the office of the department, of the corrected application or additional information; provided, that upon request, and good cause appearing therefor, the director of the department of water resources may grant an extension of time within which to return the corrected application or supply needed information. All applications which shall comply with the provisions of this chapter and with the regulations of the department of water resources shall be numbered in such manner as will aid in their identification, and it shall be the duty of the department to approve all applications, made in proper form, which contemplate the application of water to a beneficial use: provided, that the department may deny any such application, or may partially approve and grant permit for a lesser quantity of water than applied for, or may grant permit upon conditions as provided in the preceding section.

The approval of an application shall be indorsed thereon, and a record made of such indorsement in the department of water resources. The application so indorsed shall constitute a permit, and a copy thereof shall be returned to the applicant, and he shall be authorized, on receipt thereof, to proceed with the construction of the necessary works for the diversion of such water, and to take all steps required to apply the water to a beneficial use and perfect the proposed appropriation. In its indorsement of approval on any application the department shall require that actual construction work and application of the water to full beneficial use shall be complete within a period of five (5) years from the date of such approval, but may limit the application to a less period than is named in the application, and such indorsement shall give the date when beneficial application of the water to be diverted by such works shall be made. Sixty (60) days before the date set for the completion of the appropriation of water under any permit, the department shall forward a notice to the applicant by certified mail at his address of record of the date for such completion, which said notice shall advise the applicant of the necessity of submitting an affidavit of completion or a request for an extension of time on or before said date; Provided that:

1. In cases where the applicant is prevented from proceeding with his work by his failure to obtain necessary consent or final approval or rejection from the federal government because of the pendency of an application for right of way or other matter within the jurisdiction

of the United States, or by litigation of any nature which might bring his title to said water in question, the department of water resources upon proper showing of the existence of any such condition, and being convinced that said applicant is proceeding diligently and in good faith, shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit for each and every action required.

2. The time for completion of works and application of the water to full beneficial use under any permit involving the ~~construction of a reservoir of more than two hundred thousand (200,000) acre feet capacity or for the appropriation of water to be impounded in such reservoir of more than two hundred thousand (200,000) acre feet capacity, or a~~ diversion of more than twenty-five thousand (25,000) acre feet in one (1) irrigation season for a project of no less than five thousand (5,000) acres, may upon application to the director of the department of water resources supported by a showing that additional time is needed on account of the time required for organizing, financing and constructing works of such large size, be extended by the director of the department of water resources for an additional period of seven (7) years, but not to exceed twelve (12) years in all from the date of permit: Provided, that no such extension shall be granted unless the applicant for such extension shall show that there has been actually expended toward the construction of said ~~reservoir or diversion~~ (including expenditures for the purchase of rights of way and property in connection therewith) at least one hundred thousand dollars ($100,000).

3. The time for completion of works and application of the water to full beneficial use under any permit involving the construction of a reservoir of more than ten thousand (10,000) acre feet capacity or for the appropriation of water to be impounded in such reservoir of more than ten thousand (10,000) acre feet capacity, may be extended by the director of the department of water resources upon application to the director if the permittee establishes that the permittee has exercised reasonable diligence and that good cause exists for the requested extension.

4. In connection with permits held by the United States, or the Idaho water resource board, whether acquired as the original applicant, by assignment or otherwise, the director of the department of water resources may extend the time for completion of the works and application of the water to full beneficial use for such additional period or periods of time as he may deem necessary upon application supported by a showing that such additional time is required by reason of the status of plans, authorization, construction fund appropriations, construction, or any arrangements which are found to be requisite to completion of the construction of such works.

45. In all other situations not governed by these provisions the department may grant one (1) extension of time, not exceeding five (5) years beyond the date originally set for completion of works and application of the water to full beneficial use, upon request for extension received on or before the date set for completion, provided good cause appears therefor.

Any applicant feeling himself aggrieved by the indorsement made by

the department of water resources upon his application may request a hearing before the director in accordance with section 42-1701A(3), Idaho Code, for the purpose of contesting the indorsement and may seek judicial review pursuant to section 42-1701A(4), Idaho Code, of any final decision of the director following the hearing.

Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter appropriating twenty-five (25) cubic feet or less per second must, within one (1) year from the date upon which said permit issues from the office of the department of water resources, commence the excavation or construction of the works by which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted through no fault of the holder of such permit by circumstances, over which he has no control.

~~The director shall, prior to July 1, 1982, notify holders of permits existing on the effective date of the act of the provisions of this act. Notice shall be by mail to the permit holder's last known address. Existing permit holders shall have one (1) year from the date of mailing to meet the provisions of this section.~~

The holder of any permit who shall fail to comply with the provisions of this section within the time or times specified shall be deemed to have abandoned all rights under his permit.

SECTION 4. That Section 42-221, Idaho Code, be, and the same is hereby amended to read as follows:

42-221. FEES OF DEPARTMENT. The department of water resources shall collect the following fees which shall constitute a fund to pay for legal advertising, the publication of public notices and for investigations required of the department in connection with the issuance of permits and licenses as provided in this chapter:

A. For filing an application for a permit to appropriate the public waters of this state:

1. For a quantity of 0.2 c.f.s. or less or for a storage volume of 20 acre feet or less $30.00
2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s. or for a storage volume greater than 20 acre feet but not exceeding 100 acre feet $45.00
3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 2,000 acre feet ..... $45.00 plus $20.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.
4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s. or for a storage volume greater than 2,000 acre feet but not exceeding 10,000 acre feet ..... $425.00 plus $10.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.
5. For a quantity greater than 100.0 c.f.s. but not exceeding 500.0 c.f.s., or for a storage volume greater than 10,000 acre feet but not exceeding 50,000 acre feet $1,225.00

plus $5.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 100 c.f.s. or 10,000 acre feet.

6. For a quantity greater than 500 c.f.s., or for a storage volume greater than 50,000 acre feet ..... $3,225.00 plus $1.00 for each additional 1.0 c.f.s. or part thereof or 100 acre feet or part thereof over the first 500.0 c.f.s. or 50,000 acre feet.

B. For filing application for change of point of diversion, place, period, or nature of use of water of established rights; ~~for exchange of water;~~ or for an extension of time within which to resume the use of water under a vested right:

1. For a quantity of 0.2 c.f.s. or less or for a storage volume of 20 acre feet or less $30.00
2. For all other amounts $50.00

C. For filing application for amendment of permit $20.00

D. For filing claim to use right under section 42-243, Idaho Code $30.00

E. For filing a late claim to use a right under section 42-243, Idaho Code, where the date filed with the department of water resources, or if mailed to the department of water resources the postmark is:

1. After June 30, 1983, but not later than June 30, 1984..$100.00
2. After June 30, 1984, but not later than June 30, 1988..$200.00

F. For readvertising application for permit, change, exchange, or extension to resume use $20.00

G. For certification, each document $1.00

H. For making photo copies of office records, maps and documents for public use .... A reasonable charge as determined by the department.

I. For filing request for extension of time within which to submit proof of beneficial use on a water right permit $15.00

J. For tasks requiring in excess of one (1) hour research or for computerized data provided for public use .... A reasonable charge as determined by the department.

K. For receipt of all notices of application within a designated area, a reasonable annual charge as determined by the department.

All fees received by the department of water resources under the provisions of this chapter shall be transmitted to the state treasurer for deposit in the water administration account.

SECTION 5. That Section 42-222, Idaho Code, be, and the same is hereby amended to read as follows:

42-222. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER UNDER ESTABLISHED RIGHTS -- FORFEITURE AND EXTENSION -- APPEALS. (1) Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of

all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required by section 42-108, Idaho Code, and if otherwise proper to cause provide notice of the proposed change ~~to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation within the county where the water is diverted, if there is such paper, otherwise in a newspaper of general circulation within the county~~ in the same manner as applications under section 42-203A, Idaho Code. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. Upon the receipt of any protest it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed change and the watermaster shall notify the director of the department of water resources of his recommendation on the application, and the director of the department of water resources shall not finally determine the action on the application for change until he has received from such watermaster his recommendation thereof, which action of the watermaster shall be received and considered as other evidence.

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is in the local public interest as defined in section 42-203, Idaho Code; except the director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area. ~~The director shall not approve such a change in nature of use of a water right if a change has previously been allowed except where the change is back to the original user.~~ The transfer of the right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby. A copy of the approved application for change shall be returned to the applicant and he shall be authorized upon receipt thereof to make the change and the original water right shall be presumed to have been amended by reason of such authorized change. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of

five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter. Provided, further, that upon proper showing before the director of the department of water resources of good and sufficient reason for nonapplication to beneficial use of such water for such term of five (5) years, the director of the department of water resources is hereby authorized to grant an extension of time extending the time for forfeiture of title for nonuse thereof, to such waters for a period of not to exceed five (5) additional years. Application for an extension shall be made before the end of the five (5) year period upon forms to be furnished by the department of water resources and shall fully describe the right on which an extension of time to resume the use is requested and the reasons for such nonuse and shall be accompanied by the statutory filing fee. Upon the receipt of such application it shall be the duty of the director of the department of water resources to examine the same and to ~~cause notice to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation within the county where the water has been diverted if there is such a paper, otherwise in a newspaper of general circulation within the county~~ provide notice of the application for an extension in the same manner as applications under section 42-203A, Idaho Code. The notice shall fully describe the right, the extension for which is requested and the reason for such nonuse and shall state that any person desiring to object to the requested extension may submit a protest to the director of the department of water resources within ten (10) days of the last date of publication. Upon receipt of a protest it shall be the duty of the director of the department of water resources to investigate and conduct hearing thereon as in this chapter provided. The director of the department of water resources shall find from the evidence presented in any hearing, or from information available to the department, the reasons for such nonuse of water and where it appears to the satisfaction of the director of the department of water resources that other rights will not be impaired by granting an extension of time within which to resume the use of the water and good cause appearing for such nonuse, he may grant one (1) extension of five (5) years within which to resume such use. In his approval of the application for an extension of time under this section the director of the department of water resources shall set the date when the use of water is to be resumed. Sixty (60) days before such date the director of the department of water resources shall forward to the applicant at his address of record a notice by certified mail setting forth the date on which the use of water is to be resumed and a form for reporting the resumption of the use of the water right. If the use of the water has not been resumed and report thereon made on or before the date set for resumption of use such right shall revert to the state and again be subject to appropriation, as provided in this section. In the event the director of the department of water resources determines that a proposed extension of time within which to resume use of a water right shall not be approved as provided in this section he shall deny same and forward notice of such

action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(3) Any person or persons feeling themselves aggrieved by the determination of the department of water resources in approving or rejecting an application to change the point of diversion, place, period of use or nature of use of water under an established right or an application for an extension of time within which to resume the use of water as provided in this section, may, if a protest was filed and a hearing held thereon, seek judicial review pursuant to section 42-1701A(4), Idaho Code. If no protest was filed and no hearing held, the applicant may request a hearing pursuant to section 42-1701A(3), Idaho Code, for the purpose of contesting the action of the director and may seek judicial review of the final order of the director following the hearing pursuant to section 42-1701A(4), Idaho Code.

SECTION 6. That Sections 42-240 and 42-311, Idaho Code, be, and the same are hereby repealed.

SECTION 7. That Chapter 3, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-311, Idaho Code, and to read as follows:

42-311. CANCELLATION OF PERMIT — GROUNDS -- HEARING -- PERMITTEE DEFINED. (1) If the director of the department of water resources finds, on the basis of available information at any time after a permit is issued but prior to license, that the permittee has wilfully and intentionally failed to comply with any of the conditions in the permit, then the director of the department of water resources may issue (a) an order to show cause before the director of the department or the director's designee on or before a date therein set, which shall be not less than thirty (30) days from the date of service, why the director of the department should not cancel said permit and declare the water subject to appropriation; or (b) an order directing the permittee to cease and desist the activity or activities alleged to be in violation of the conditions of the permit. A cease and desist order may direct compliance with the permit forthwith or may provide for a time schedule to bring the permittee into compliance with the conditions of the permit.

(2) Any order to show cause or order to cease and desist shall contain a statement of findings of fact and of conclusions of law that provide a factual and legal basis for the order of the director of the department of water resources.

(3) The director of the department of water resources shall serve forthwith, in accordance with the rules for service of a summons and complaint in the Idaho rules of civil procedure, a certified copy of any such order on the permittee.

(4) The permittee shall have a right to an administrative hearing before the department and to judicial review, all as provided in section 42-1701A, Idaho Code.

(5) The term "permittee," as used in this chapter, includes the heirs, successors, or assigns of the person to whom the department

issued a water right permit.

SECTION 8. That Chapter 3, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 42-350, 42-351 and 42-352, Idaho Code, and to read as follows:

42-350. REVOCATION OF LICENSE -- GROUNDS -- HEARING -- LICENSEE DEFINED. (1) If the director of the department of water resources finds, on the basis of available information at any time after a license is issued, that the licensee has ceased to put the water to a beneficial use for a period of five (5) continuous years or that the licensee has wilfully and intentionally failed to comply with any of the conditions in the license, then the director of the department of water resources may issue (a) an order to show cause before the director of the department or the director's designee on or before a date therein set, which shall be not less than thirty (30) days from the date of service, why the director of the department should not revoke said license and declare the water subject to appropriation; or (b) an order directing the licensee to cease and desist the activity or activities alleged to be in violation of the conditions of the license. A cease and desist order may direct compliance with the license forthwith or may provide for a time schedule to bring the licensee into compliance with the conditions of the license.

(2) Any order to show cause or order to cease and desist shall contain a statement of findings of fact and of conclusions of law that provide a factual and legal basis for the order of the director of the department of water resources.

(3) The director of the department of water resources shall serve forthwith, in accordance with the rules for service of a summons and complaint in the Idaho rules of civil procedure, a certified copy of any such order on the licensee.

(4) The licensee shall have a right to an administrative hearing before the department and to judicial review, all as provided in section 42-1701A, Idaho Code.

(5) If the director of the department of water resources has issued an order to show cause why the director should not revoke a license, the licensee may, within twenty-one (21) days from the date of service of the order, notify the director in writing of the intent of the licensee to waive the right to an administrative hearing before the department and to file a complaint in the district court for a determination of the validity of the license. The complaint shall name the director of the department of water resources as a defendant and shall be filed either in the county where the point of diversion or the place of use under the license is located, or in the county where the director issued the order to show cause. The complaint shall be filed within forty-two (42) days of the date of service of the order to show cause by the director.

(6) The term "licensee," as used in this chapter, includes the heirs, successors, or assigns of the person to whom the department issued a water right license.

42-351. ILLEGAL DIVERSION OR USE OF WATER — CEASE AND DESIST ORDERS. (1) If the director of the department of water resources finds, on the basis of available information, that a person is diverting water from a natural watercourse or from a ground water source without having obtained a valid water right to do so or is applying water not in conformance with the conditions of a valid water right, then the director of the department of water resources may issue an order directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or of any existing water right. A cease and desist order may direct compliance with applicable law and with any existing water right or may provide a time schedule to bring the person's actions into compliance with applicable law and with any existing water right.

(2) Any order to cease and desist shall contain a statement of findings of fact and of conclusions of law that provide a factual and legal basis for the order or the director of the department of water resources.

(3) The director of the department of water resources shall serve forthwith, in accordance with the rules for service of a summons and complaint in the Idaho rules of civil procedure, a certified copy of any such order on the person the subject of the cease and desist order.

(4) The person who is the subject of the cease and desist order shall have a right to an administrative hearing before the department and to judicial review, all as provided in section 42-1701A, Idaho Code.

42-352. CIVIL PENALTIES. (1) Any person who wilfully violates any cease and desist order issued under chapter 3, title 42, Idaho Code, after the same has been served on that person shall be subject to a civil penalty not to exceed one hundred dollars ($100) for each day following service of the cease and desist order in which the illegal diversion or use of water occurs. The director of the department of water resources shall have the authority to file an action in the appropriate district court to impose, assess and recover said civil penalties.

(2) All civil penalties collected by the director of the department of water resources under this section shall be deposited in the state water rights enforcement account established by section 42-1778, Idaho Code.

SECTION 9. That Chapter 17, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-1778, Idaho Code, and to read as follows:

42-1778. WATER RIGHTS ENFORCEMENT ACCOUNT. (1) The water rights enforcement account is hereby created and established in the agency asset fund.

(2) All moneys in the water rights enforcement account are reserved, set aside, appropriated and made available until expended as may be directed by the director of the department of water resources in carrying out a water rights enforcement program.

SECTION 10. That Section 42-1805, Idaho Code, be, and the same is hereby amended to read as follows:

42-1805. ADDITIONAL DUTIES. In addition to other duties prescribed by law, the director of the department of water resources shall have the following powers and duties:

(1) To represent the state in all matters pertaining to interstate and international water rights affecting Idaho water resources; and to cooperate with all agencies, now existing or hereafter to be formed, within the state or within other jurisdictions, in matters affecting the development of the water resources of this state.

(2) To prepare a present and continuing inventory of the water resources of this state, ascertain means and methods of conserving and augmenting these and determine as accurately as possible the most effective means by which these water resources may be applied for the benefit of the people of this state.

(3) To conduct surveys, tests, investigations, research, examinations, studies, and estimates of cost relating to availability of unappropriated water, effective use of existing supply, conservation, storage, distribution and use of water.

(4) To prepare and compile information and data obtained and to make the same available to interested individuals or agencies.

(5) To cooperate with and coordinate activities with the administrator of the division of environmental protection of the department of health and welfare as such activities relate to the functions of either or both departments concerning water quality. Such cooperation and coordination shall specifically require that:

(a) The director meet at least quarterly with the administrator and his staff to discuss water quality programs. A copy of the minutes of such meeting shall be transmitted to the governor.

(b) The director transmit to the administrator, reports and information prepared by him pertaining to water quality programs, and proposed rules and regulations pertaining to water quality programs.

(c) The director shall make available to the administrator and the administrator shall make available to the director all notices of hearings relating to the promulgation of rules and regulations relating to water quality, waste discharge permits, and stream channel alteration, as such directly affect water quality, and notices of any other hearings and meetings which relate to water quality.

(6) To perform administrative duties and such other functions as the board may from time to time assign to the director to enable the board to carry out its powers and duties.

(7) After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of minimum flow provisions of the state water plan.

(8) To promulgate, adopt, modify, repeal and enforce rules and

regulations implementing or effectuating the powers and duties of the department.

(9) To seek a preliminary or permanent injunction, or both, or a temporary restraining order restraining any person from violating or attempting to violate (a) those provisions of law relating to all aspects of the appropriation of water, distribution of water, headgates and measuring devices; or (b) the administrative or judicial orders entered in accordance with the provisions of law.

Approved April 3, 1986.

CHAPTER 314
(H.B. No. 569, As Amended)

AN ACT

RELATING TO SANITARY REGULATIONS FOR PUBLIC EATING PLACES; AMENDING SECTION 39-1611, IDAHO CODE, TO STRIKE REFERENCES TO INDIVIDUAL CLEAN TOWELS AND TO AUTHORIZE OTHER SANITARY DRYING DEVICES; AND AMENDING SECTION 39-1612, IDAHO CODE, TO STRIKE REFERENCES TO CUSPIDORS AND REQUIREMENTS FOR POSTING OF NOTICES.

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

SECTION 1. That Section 39-1611, Idaho Code, be, and the same is hereby amended to read as follows:

39-1611. SLEEPING IN COOK ROOM PROHIBITED -- WASHING FACILITIES AND REQUIREMENTS -- COMMON TOWEL PROHIBITED. No person shall sleep in any room where food is prepared, or cooked. No person in any way connected with the handling, cooking, preparing or serving of food in any kitchen or eating place, shall engage at work following a visit to a toilet room without first thoroughly cleansing his or her hands. Conveniently located washing facilities, including hot and cold running water, soap and ~~individual~~ clean towels or other sanitary drying devices, shall be provided in all such eating places. The use of a common towel is prohibited.

SECTION 2. That Section 39-1612, Idaho Code, be, and the same is hereby amended to read as follows:

39-1612. ~~CUSPIDORS---SMOKING~~, CHEWING, AND SPITTING ~~----NOTICES~~. ~~Cuspidors of impervious material shall be provided for the use of employees and the public, and these shall be cleaned daily.~~ No employee or other person shall spit or discharge any substance from the mouth or nose on the floor or walls of the kitchen or any other room of an eating place. The smoking, snuffing or chewing of tobacco is prohibited in any part of any eating place, except that smoking will be permitted in ~~the toilet room or rest room, and in the dining room by the public only~~ designated smoking areas. ~~Plain notices shall be posted in every eating place forbidding any person to spit on the~~

~~floor or walls, or to use tobacco except as herein permitted.~~

Approved April 3, 1986.

CHAPTER 315
(H.B. No. 568)

AN ACT

RELATING TO MOTOR FUELS TAXES; AMENDING SECTION 63-2401, IDAHO CODE, TO PROVIDE A DEFINITION OF MOTOR FUELS; AMENDING CHAPTER 24, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-2442A, IDAHO CODE, TO PROVIDE TAX COMMISSION AUTHORITY TO ENTER INTO INTERSTATE AGREEMENTS FOR THE ENFORCEMENT AND ADMINISTRATION OF MOTOR FUELS TAXES.

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

SECTION 1. That Section 63-2401, Idaho Code, be, and the same is hereby amended to read as follows:

63-2401. DEFINITIONS. ~~As used in~~ In this chapter:

(1) "Aircraft engine fuel" means any substance, the primary use of which is fuel for the propulsion of aircraft.

(2) "Bond" means:

(a) A surety bond, in an amount required by this chapter, duly executed by a surety company licensed and authorized to do business in this state conditioned upon faithful performance of all requirements of this chapter, including the payment of all taxes, penalties and other obligations arising out of the provisions of this chapter; or

(b) A deposit with the commission by any person required to be licensed pursuant to this chapter under terms and conditions as the commission may prescribe, of a like amount of lawful money of the United States or bonds or other obligations of the United States, the state of Idaho, or any county of the state.

(3) "Bulk storage tank" means a tank with a capacity of fifty-five (55) gallons capacity or more which meets any of the following criteria:

(a) It is physically attached to the real property of a purchaser of special fuels which are delivered into the tank.

(b) It is primarily used to store special fuels which are used by the purchaser of the special fuels for purposes other than propelling a motor vehicle on a highway.

(4) "Commercial motor boat" means any boat, equipped with a motor, which is wholly or partly used in a profit-making enterprise or in an enterprise conducted with the intent of making a profit.

(5) "Commission" means the state tax commission of the state of Idaho.

(6) "Distributor" means any person who receives gasoline and/or aircraft fuel in this state.

1986

LEGISLATURE OF THE STATE OF IDAHO

Forty-eighth Legislature — Second Regular Session — 1986

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 369

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO ADMINISTRATION OF WATER RIGHTS; AMENDING SECTION 42-108, IDAHO CODE, TO PROVIDE THAT ANY PERMANENT CHANGE IN PERIOD OR NATURE OF USE FOR A QUANTITY OF WATER GREATER THAN FIFTY CFS OR FOR A STORAGE VOLUME GREATER THAN FIVE THOUSAND ACRE FEET SHALL REQUIRE THE APPROVAL OF THE LEGISLATURE EXCEPT THAT ANY TEMPORARY CHANGE WITHIN THE STATE OF IDAHO FOR A PERIOD OF LESS THAN THREE YEARS MAY BE APPROVED BY THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES WITHOUT LEGISLATIVE APPROVAL; AMENDING SECTION 42-201, IDAHO CODE, TO PROHIBIT ILLEGAL APPLICATION AND USE OF PUBLIC WATERS; AMENDING SECTION 42-204, IDAHO CODE, TO PROVIDE FOR EXTENSIONS BY THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES FOR COMPLETION OF WORKS AND APPLICATION OF THE WATER TO FULL BENEFICIAL USE UNDER CERTAIN PERMITS AND TO DELETE ARCHAIC LANGUAGE; AMENDING SECTION 42-221, IDAHO CODE, TO PROVIDE A FEE FOR RECEIPT OF ALL NOTICES OF APPLICATION WITHIN A DESIGNATED AREA; AMENDING SECTION 42-222, IDAHO CODE, TO PROVIDE NOTICE OF A PROPOSED CHANGE IN WATER USE, TO PROVIDE CONDITIONS FOR TRANSFER OF THE RIGHT TO STORED WATER FOR IRRIGATION PURPOSES, TO DELETE LANGUAGE RELATING TO CHANGE OF NATURE OF USE OF A WATER RIGHT AND TO PROVIDE NOTICE OF AN APPLICATION FOR AN EXTENSION; REPEALING SECTIONS 42-240 AND 42-311, IDAHO CODE; AMENDING CHAPTER 3, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-311, IDAHO CODE, TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES THE AUTHORITY TO ISSUE ORDERS PRIOR TO LICENSURE, TO PROVIDE GROUNDS FOR THE ORDER, TO PROVIDE THAT THE ORDER BE SERVED, TO PROVIDE FOR A HEARING, TO PROVIDE FOR JUDICIAL REVIEW AND TO DEFINE PERMITTEE; AMENDING CHAPTER 3, TITLE 42, IDAHO CODE, BY THE ADDITION OF NEW SECTIONS 42-350, 42-351 AND 42-352, IDAHO CODE, TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES THE AUTHORITY TO ISSUE ORDERS AFTER LICENSURE, TO PROVIDE GROUNDS, TO PROVIDE THAT THE ORDER BE SERVED, TO PROVIDE FOR A HEARING AND JUDICIAL REVIEW, TO DEFINE LICENSEE, TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES AUTHORITY TO ISSUE ORDERS FOR ILLEGAL DIVERSION OR USE OF WATER, TO PROVIDE GROUNDS, TO PROVIDE THAT THE ORDER BE SERVED, TO PROVIDE FOR A HEARING AND JUDICIAL REVIEW AND TO PROVIDE CIVIL PENALTIES; AMENDING CHAPTER 17, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1778, IDAHO CODE, TO CREATE THE WATER RIGHTS ENFORCEMENT ACCOUNT IN THE AGENCY ASSET FUND; AND AMENDING SECTION 42-1805, IDAHO CODE, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES SHALL HAVE THE POWER AND DUTY TO SEEK AN INJUNCTION OR RESTRAINING ORDER PERTAINING TO CERTAIN VIOLATIONS OR ATTEMPTED VIOLATIONS REGARDING WATER LAW.

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

SECTION 1. That Section 42-108, Idaho Code, be, and the same is hereby amended to read as follows:

42-108. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE -- APPLICATION OF ACT. The person entitled to the use of water

or owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of the constitution and statutes of this state, may change the point of diversion, period of use, or nature of use, and/or may voluntarily abandon the use of such water in whole or in part on the land which is receiving the benefit of the same and transfer the same to other lands, if the water rights of others are not injured by such change in point of diversion, place of use, period of use, or nature of use, provided; if the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned and/or managed by an irrigation district, no change in the point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation or irrigation district~~;--provided;--any~~. Any permanent or temporary change in period or nature of use in or out-of-state for a quantity greater than fifty (50) cfs or for a storage volume greater than five thousand (5,000) acre-feet shall require the approval of the legislature~~;--Any lease~~, except that any temporary change within the state of Idaho for a ~~term~~ period of less than three (3) years may be approved by the director without legislative approval.

Any person desiring to make such change of point of diversion, place of use, period of use, or nature of use of water shall make application for change with the department of water resources under the provisions of section 42-222, Idaho Code. After the effective date of this act, no person shall be authorized to change the period of use or nature of use, point of diversion or place of use of water unless he has first applied for and received approval of the department of water resources under the provisions of section 42-222, Idaho Code.

SECTION 2. That Section 42-201, Idaho Code, be, and the same is hereby amended to read as follows:

42-201. WATER RIGHTS ACQUIRED UNDER CHAPTER -- ILLEGAL APPLICATION OF WATER. (1) All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter and not otherwise. And after the passage of this title all the waters of this state shall be controlled and administered in the manner herein provided. Such appropriation shall be perfected only by means of the application, permit and license procedure as provided in this title; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act it may be perfected under such method of appropriation.

(2) No person shall use the public waters of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists.

SECTION 3. That Section 42-204, Idaho Code, be, and the same is hereby amended to read as follows:

42-204. EXAMINATION -- PERMIT -- COMMENCEMENT OF WORK -- EXTENSIONS -- APPEAL. On receipt of the application, which shall be of a form prescribed by the department of water resources, it shall be the duty of that department to make an indorsement thereon of the date of its receipt, and to examine said application and ascertain if it sets forth all the facts necessary to show the

location, nature and amount of the proposed use. If upon such examination the application is found defective, it shall be the duty of the department of water resources to return the same for correction or to correspond with the applicant to obtain the needed information or amendments. If the application is returned to the applicant or the department shall request additional information and the applicant fails to return the corrected application or to supply the needed information within thirty (30) days, the department may void the record of said application and notify the applicant of such action. If the corrected application is returned or the information is supplied after thirty (30) days, such corrected application shall be treated in all respects as a new application, and the priority of the right initiated shall be determined by the date of receipt, in the office of the department, of the corrected application or additional information; provided, that upon request, and good cause appearing therefor, the director of the department of water resources may grant an extension of time within which to return the corrected application or supply needed information. All applications which shall comply with the provisions of this chapter and with the regulations of the department of water resources shall be numbered in such manner as will aid in their identification, and it shall be the duty of the department to approve all applications, made in proper form, which contemplate the application of water to a beneficial use: provided, that the department may deny any such application, or may partially approve and grant permit for a lesser quantity of water than applied for, or may grant permit upon conditions as provided in the preceding section.

The approval of an application shall be indorsed thereon, and a record made of such indorsement in the department of water resources. The application so indorsed shall constitute a permit, and a copy thereof shall be returned to the applicant, and he shall be authorized, on receipt thereof, to proceed with the construction of the necessary works for the diversion of such water, and to take all steps required to apply the water to a beneficial use and perfect the proposed appropriation. In its indorsement of approval on any application the department shall require that actual construction work and application of the water to full beneficial use shall be complete within a period of five (5) years from the date of such approval, but may limit the application to a less period than is named in the application, and such indorsement shall give the date when beneficial application of the water to be diverted by such works shall be made. Sixty (60) days before the date set for the completion of the appropriation of water under any permit, the department shall forward a notice to the applicant by certified mail at his address of record of the date for such completion, which said notice shall advise the applicant of the necessity of submitting an affidavit of completion or a request for an extension of time on or before said date; Provided that:

1. In cases where the applicant is prevented from proceeding with his work by his failure to obtain necessary consent or final approval or rejection from the federal government because of the pendency of an application for right of way or other matter within the jurisdiction of the United States, or by litigation of any nature which might bring his title to said water in question, the department of water resources upon proper showing of the existence of any such condition, and being convinced that said applicant is proceeding diligently and in good faith, shall extend the time so that the amount of time lost by such delays shall be added to the time given in the original permit for each and every action required.

2. The time for completion of works and application of the water to full beneficial use under any permit involving the ~~construction-of-a-reservoir-of-more-than-two-hundred-thousand-(200,000)-acre-feet-capacity-or-for-the--appro-~~

priation--of--water-to-be-impounded-in-such-reservoir-of-more-than-two-hundred thousand-(200,000)-acre-feet-capacity,-or-a diversion of more than twenty-five thousand (25,000) acre feet in one (1) irrigation season for a project of no less than five thousand (5,000) acres, may upon application to the director of the department of water resources supported by a showing that additional time is needed on account of the time required for organizing, financing and constructing works of such large size, be extended by the director of the department of water resources for an additional period of seven (7) years, but not to exceed twelve (12) years in all from the date of permit: Provided, that no such extension shall be granted unless the applicant for such extension shall show that there has been actually expended toward the construction of said reservoir--or diversion (including expenditures for the purchase of rights of way and property in connection therewith) at least one hundred thousand dollars ($100,000).

3. The time for completion of works and application of the water to full beneficial use under any permit involving the construction of a reservoir of more than ten thousand (10,000) acre feet capacity or for the appropriation of water to be impounded in such reservoir of more than ten thousand (10,000) acre feet capacity, may be extended by the director of the department of water resources upon application to the director if the permittee establishes that the permittee has exercised reasonable diligence and that good cause exists for the requested extension.

4. In connection with permits held by the United States, or the Idaho water resource board, whether acquired as the original applicant, by assignment or otherwise, the director of the department of water resources may extend the time for completion of the works and application of the water to full beneficial use for such additional period or periods of time as he may deem necessary upon application supported by a showing that such additional time is required by reason of the status of plans, authorization, construction fund appropriations, construction, or any arrangements which are found to be requisite to completion of the construction of such works.

45. In all other situations not governed by these provisions the department may grant one (1) extension of time, not exceeding five (5) years beyond the date originally set for completion of works and application of the water to full beneficial use, upon request for extension received on or before the date set for completion, provided good cause appears therefor.

Any applicant feeling himself aggrieved by the indorsement made by the department of water resources upon his application may request a hearing before the director in accordance with section 42-1701A(3), Idaho Code, for the purpose of contesting the indorsement and may seek judicial review pursuant to section 42-1701A(4), Idaho Code, of any final decision of the director following the hearing.

Every holder of a permit which shall be issued under the terms and conditions of an application filed hereafter appropriating twenty-five (25) cubic feet or less per second must, within one (1) year from the date upon which said permit issues from the office of the department of water resources, commence the excavation or construction of the works by which he intends to divert the water, and must prosecute the work diligently and uninterruptedly to completion, unless temporarily interrupted through no fault of the holder of such permit by circumstances, over which he has no control.

~~The--director--shall,--prior--to--July--1,-1982,-notify-holders-of-permits existing-on-the-effective-date-of-the-act--of--the--provisions--of--this--act. Notice--shall--be--by-mail-to-the-permit-holder's-last-known-address.-Existing permit-holders-shall-have-one-(1)-year-from-the-date-of-mailing--to--meet--the provisions-of-this-section.~~

The holder of any permit who shall fail to comply with the provisions of this section within the time or times specified shall be deemed to have abandoned all rights under his permit.

SECTION 4. That Section 42-221, Idaho Code, be, and the same is hereby amended to read as follows:

42-221. FEES OF DEPARTMENT. The department of water resources shall collect the following fees which shall constitute a fund to pay for legal advertising, the publication of public notices and for investigations required of the department in connection with the issuance of permits and licenses as provided in this chapter:

A. For filing an application for a permit to appropriate the public waters of this state:

1. For a quantity of 0.2 c.f.s. or less or for a storage volume of 20 acre feet or less $30.00

2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s. or for a storage volume greater than 20 acre feet but not exceeding 100 acre feet $45.00

3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 2,000 acre feet $45.00
plus $20.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.

4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s. or for a storage volume greater than 2,000 acre feet but not exceeding 10,000 acre feet $425.00
plus $10.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.

5. For a quantity greater than 100.0 c.f.s. but not exceeding 500.0 c.f.s., or for a storage volume greater than 10,000 acre feet but not exceeding 50,000 acre feet $1,225.00
plus $5.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 100 c.f.s. or 10,000 acre feet.

6. For a quantity greater than 500 c.f.s., or for a storage volume greater than 50,000 acre feet $3,225.00
plus $1.00 for each additional 1.0 c.f.s. or part thereof or 100 acre feet or part thereof over the first 500.0 c.f.s. or 50,000 acre feet.

B. For filing application for change of point of diversion, place, period, or nature of use of water of established rights; ~~for--exchange--of water~~; or for an extension of time within which to resume the use of water under a vested right:

1. For a quantity of 0.2 c.f.s. or less or for a storage volume of 20 acre feet or less $30.00

2. For all other amounts $50.00

C. For filing application for amendment of permit $20.00

D. For filing claim to use right under section 42-243, Idaho Code $30.00

E. For filing a late claim to use a right under section 42-243, Idaho Code, where the date filed with the department of water resources, or if mailed to the department of water resources the postmark is:

1. After June 30, 1983, but not later than June 30, 1984.....$100.00

2. After June 30, 1984, but not later than June 30, 1988.....$200.00

F. For readvertising application for permit, change, exchange, or extension to resume use $20.00

G. For certification, each document $1.00

H. For making photo copies of office records, maps and documents for public use .... A reasonable charge as determined by the department.

I. For filing request for extension of time within which to submit proof of beneficial use on a water right permit $15.00

J. For tasks requiring in excess of one (1) hour research or for computerized data provided for public use .... A reasonable charge as determined by the department.

K. For receipt of all notices of application within a designated area, a reasonable annual charge as determined by the department.

All fees received by the department of water resources under the provisions of this chapter shall be transmitted to the state treasurer for deposit in the water administration account.

SECTION 5. That Section 42-222, Idaho Code, be, and the same is hereby amended to read as follows:

42-222. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER UNDER ESTABLISHED RIGHTS -- FORFEITURE AND EXTENSION -- APPEALS. (1) Any person, entitled to the use of water whether represented by license issued by the department of water resources, by claims to water rights by reason of diversion and application to a beneficial use as filed under the provisions of this chapter, or by decree of the court, who shall desire to change the point of diversion, place of use, period of use or nature of use of all or part of the water, under the right shall first make application to the department of water resources for approval of such change. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be changed and the changes which are proposed, and shall be accompanied by the statutory filing fee as in this chapter provided. Upon receipt of such application it shall be the duty of the director of the department of water resources to examine same, obtain any consent required by section 42-108, Idaho Code, and if otherwise proper to cause provide notice of the proposed change ~~to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation within the county where the water is diverted, if there is such paper, otherwise in a newspaper of general circulation within the county~~ in the same manner as applications under section 42-203A, Idaho Code. Such notice shall advise that anyone who desires to protest the proposed change shall file notice of protests with the department within ten (10) days of the last date of publication. Upon the receipt of any protest it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed change and the watermaster shall notify the director of the department of water resources of his recommendation on the application, and the director of the department of water resources shall not finally determine the action on the application for change until he has received from such watermaster his recommendation thereof, which action of the watermaster shall be received and considered as other evidence.

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, and the change is in the local public interest as defined in section 42-203, Idaho Code; except the director shall not approve a change in the nature of use from agricultural use where such change would significantly affect the agricultural base of the local area. ~~The director shall not approve~~

~~such a change in nature of use of a water right if a change has previously been allowed except where the change is back to the original use.~~ The transfer of the right to the use of stored water for irrigation purposes shall not constitute an enlargement in use of the original right even though more acres may be irrigated, if no other water rights are injured thereby. A copy of the approved application for change shall be returned to the applicant and he shall be authorized upon receipt thereof to make the change and the original water right shall be presumed to have been amended by reason of such authorized change. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny the same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(2) All rights to the use of water acquired under this chapter or otherwise shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated and when any right to the use of water shall be lost through nonuse or forfeiture such rights to such water shall revert to the state and be again subject to appropriation under this chapter. Provided, further, that upon proper showing before the director of the department of water resources of good and sufficient reason for nonapplication to beneficial use of such water for such term of five (5) years, the director of the department of water resources is hereby authorized to grant an extension of time extending the time for forfeiture of title for nonuse thereof, to such waters for a period of not to exceed five (5) additional years. Application for an extension shall be made before the end of the five (5) year period upon forms to be furnished by the department of water resources and shall fully describe the right on which an extension of time to resume the use is requested and the reasons for such nonuse and shall be accompanied by the statutory filing fee. Upon the receipt of such application it shall be the duty of the director of the department of water resources to examine the same and to ~~cause notice to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation within the county where the water has been diverted if there is such a paper; otherwise in a newspaper of general circulation within the county~~ provide notice of the application for an extension in the same manner as applications under section 42-203A, Idaho Code. The notice shall fully describe the right, the extension for which is requested and the reason for such nonuse and shall state that any person desiring to object to the requested extension may submit a protest to the director of the department of water resources within ten (10) days of the last date of publication. Upon receipt of a protest it shall be the duty of the director of the department of water resources to investigate and conduct hearing thereon as in this chapter provided. The director of the department of water resources shall find from the evidence presented in any hearing, or from information available to the department, the reasons for such nonuse of water and where it appears to the satisfaction of the director of the department of water resources that other rights will not be impaired by granting an extension of time within which to resume the use of the water and good cause appearing for such nonuse, he may grant one (1) extension of five (5) years within which to resume such use. In his approval of the application for an extension of time under this section the director of the department of water resources shall set the date when the use of water is to be resumed. Sixty (60) days before such date the director of the department of water resources shall forward to the applicant at his address of record a notice by certified mail setting forth the date on which the use of water is to be resumed and a form for reporting the resumption of the use of the water right.

If the use of the water has not been resumed and report thereon made on or before the date set for resumption of use such right shall revert to the state and again be subject to appropriation, as provided in this section. In the event the director of the department of water resources determines that a proposed extension of time within which to resume use of a water right shall not be approved as provided in this section he shall deny same and forward notice of such action to the applicant by certified mail, which decision shall be subject to judicial review as hereafter provided.

(3) Any person or persons feeling themselves aggrieved by the determination of the department of water resources in approving or rejecting an application to change the point of diversion, place, period of use or nature of use of water under an established right or an application for an extension of time within which to resume the use of water as provided in this section, may, if a protest was filed and a hearing held thereon, seek judicial review pursuant to section 42-1701A(4), Idaho Code. If no protest was filed and no hearing held, the applicant may request a hearing pursuant to section 42-1701A(3), Idaho Code, for the purpose of contesting the action of the director and may seek judicial review of the final order of the director following the hearing pursuant to section 42-1701A(4), Idaho Code.

SECTION 6. That Sections 42-240 and 42-311, Idaho Code, be, and the same are hereby repealed.

SECTION 7. That Chapter 3, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-311, Idaho Code, and to read as follows:

42-311. CANCELLATION OF PERMIT -- GROUNDS -- HEARING -- PERMITTEE DEFINED. (1) If the director of the department of water resources finds, on the basis of available information at any time after a permit is issued but prior to license, that the permittee has wilfully and intentionally failed to comply with any of the conditions in the permit, then the director of the department of water resources may issue (a) an order to show cause before the director of the department or the director's designee on or before a date therein set, which shall be not less than thirty (30) days from the date of service, why the director of the department should not cancel said permit and declare the water subject to appropriation; or (b) an order directing the permittee to cease and desist the activity or activities alleged to be in violation of the conditions of the permit. A cease and desist order may direct compliance with the permit forthwith or may provide for a time schedule to bring the permittee into compliance with the conditions of the permit.

(2) Any order to show cause or order to cease and desist shall contain a statement of findings of fact and of conclusions of law that provide a factual and legal basis for the order of the director of the department of water resources.

(3) The director of the department of water resources shall serve forthwith, in accordance with the rules for service of a summons and complaint in the Idaho rules of civil procedure, a certified copy of any such order on the permittee.

(4) The permittee shall have a right to an administrative hearing before the department and to judicial review, all as provided in section 42-1701A, Idaho Code.

(5) The term "permittee," as used in this chapter, includes the heirs, successors, or assigns of the person to whom the department issued a water right permit.

SECTION 8. That Chapter 3, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 42-350, 42-351 and 42-352, Idaho Code, and to read as follows:

42-350. REVOCATION OF LICENSE -- GROUNDS -- HEARING -- LICENSEE DEFINED. (1) If the director of the department of water resources finds, on the basis of available information at any time after a license is issued, that the licensee has ceased to put the water to a beneficial use for a period of five (5) continuous years or that the licensee has wilfully and intentionally failed to comply with any of the conditions in the license, then the director of the department of water resources may issue (a) an order to show cause before the director of the department or the director's designee on or before a date therein set, which shall be not less than thirty (30) days from the date of service, why the director of the department should not revoke said license and declare the water subject to appropriation; or (b) an order directing the licensee to cease and desist the activity or activities alleged to be in violation of the conditions of the license. A cease and desist order may direct compliance with the license forthwith or may provide for a time schedule to bring the licensee into compliance with the conditions of the license.

(2) Any order to show cause or order to cease and desist shall contain a statement of findings of fact and of conclusions of law that provide a factual and legal basis for the order of the director of the department of water resources.

(3) The director of the department of water resources shall serve forthwith, in accordance with the rules for service of a summons and complaint in the Idaho rules of civil procedure, a certified copy of any such order on the licensee.

(4) The licensee shall have a right to an administrative hearing before the department and to judicial review, all as provided in section 42-1701A, Idaho Code.

(5) The term "licensee," as used in this chapter, includes the heirs, successors, or assigns of the person to whom the department issued a water right license.

42-351. ILLEGAL DIVERSION OR USE OF WATER -- CEASE AND DESIST ORDERS. (1) If the director of the department of water resources finds, on the basis of available information, that a person is diverting water from a natural watercourse or from a ground water source without having obtained a valid water right to do so or is applying water not in conformance with the conditions of a valid water right, then the director of the department of water resources may issue an order directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or of any existing water right. A cease and desist order may direct compliance with applicable law and with any existing water right or may provide a time schedule to bring the person's actions into compliance with applicable law and with any existing water right.

(2) Any order to cease and desist shall contain a statement of findings of fact and of conclusions of law that provide a factual and legal basis for the order or the director of the department of water resources.

(3) The director of the department of water resources shall serve forthwith, in accordance with the rules for service of a summons and complaint in the Idaho rules of civil procedure, a certified copy of any such order on the person the subject of the cease and desist order.

(4) The person who is the subject of the cease and desist order shall have a right to an administrative hearing before the department and to judicial review, all as provided in section 42-1701A, Idaho Code.

42-352. CIVIL PENALTIES. (1) Any person who wilfully violates any cease and desist order issued under chapter 3, title 42, Idaho Code, after the same has been served on that person shall be subject to a civil penalty not to exceed one hundred dollars ($100) for each day following service of the cease and desist order in which the illegal diversion or use of water occurs. The director of the department of water resources shall have the authority to file an action in the appropriate district court to impose, assess and recover said civil penalties.

(2) All civil penalties collected by the director of the department of water resources under this section shall be deposited in the state water rights enforcement account established by section 42-1778, Idaho Code.

SECTION 9. That Chapter 17, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-1778, Idaho Code, and to read as follows:

42-1778. WATER RIGHTS ENFORCEMENT ACCOUNT. (1) The water rights enforcement account is hereby created and established in the agency asset fund.

(2) All moneys in the water rights enforcement account are reserved, set aside, appropriated and made available until expended as may be directed by the director of the department of water resources in carrying out a water rights enforcement program.

SECTION 10. That Section 42-1805, Idaho Code, be, and the same is hereby amended to read as follows:

42-1805. ADDITIONAL DUTIES. In addition to other duties prescribed by law, the director of the department of water resources shall have the following powers and duties:

(1) To represent the state in all matters pertaining to interstate and international water rights affecting Idaho water resources; and to cooperate with all agencies, now existing or hereafter to be formed, within the state or within other jurisdictions, in matters affecting the development of the water resources of this state.

(2) To prepare a present and continuing inventory of the water resources of this state, ascertain means and methods of conserving and augmenting these and determine as accurately as possible the most effective means by which these water resources may be applied for the benefit of the people of this state.

(3) To conduct surveys, tests, investigations, research, examinations, studies, and estimates of cost relating to availability of unappropriated water, effective use of existing supply, conservation, storage, distribution and use of water.

(4) To prepare and compile information and data obtained and to make the same available to interested individuals or agencies.

(5) To cooperate with and coordinate activities with the administrator of the division of environmental protection of the department of health and welfare as such activities relate to the functions of either or both departments concerning water quality. Such cooperation and coordination shall specifically require that:

(a) The director meet at least quarterly with the administrator and his

staff to discuss water quality programs. A copy of the minutes of such meeting shall be transmitted to the governor.

(b) The director transmit to the administrator, reports and information prepared by him pertaining to water quality programs, and proposed rules and regulations pertaining to water quality programs.

(c) The director shall make available to the administrator and the administrator shall make available to the director all notices of hearings relating to the promulgation of rules and regulations relating to water quality, waste discharge permits, and stream channel alteration, as such directly affect water quality, and notices of any other hearings and meetings which relate to water quality.

(6) To perform administrative duties and such other functions as the board may from time to time assign to the director to enable the board to carry out its powers and duties.

(7) After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of minimum flow provisions of the state water plan.

(8) To promulgate, adopt, modify, repeal and enforce rules and regulations implementing or effectuating the powers and duties of the department.

(9) To seek a preliminary or permanent injunction, or both, or a temporary restraining order restraining any person from violating or attempting to violate (a) those provisions of law relating to all aspects of the appropriation of water, distribution of water, headgates and measuring devices; or (b) the administrative or judicial orders entered in accordance with the provisions of law.

IN THE SENATE
SENATE AMENDMENTS TO H.B. NO. 369

AMENDMENTS TO SECTION 8

On page 9 of the printed bill, following line 30, insert:

"(5) If the director of the department of water resources has issued an order to show cause why the director should not revoke a license, the licensee may, within twenty-one (21) days from the date of service of the order, notify the director in writing of the intent of the licensee to waive the right to an administrative hearing before the department and to file a complaint in the district court for a determination of the validity of the license. The complaint shall name the director of the department of water resources as a defendant and shall be filed either in the county where the point of diversion or the place of use under the license is located, or in the county where the director issued the order to show cause. The complaint shall be filed within forty-two (42) days of the date of service of the order to show cause by the director.".

On page 9 of the printed bill, in line 31, delete: "(5)" and insert: "(6)".

CORRECTION TO TITLE

On page 1 of the printed bill, in line 28, delete: "AND JUDICIAL REVIEW" and insert: ", JUDICIAL REVIEW OR RIGHT OF ACTION IN DISTRICT COURT".

1986

STATEMENT OF PURPOSE

RS 11737C1

Amends Title 42, Idaho Code, in several instances providing for better administration, more consideration of permittee making application for water rights, provides for legislative overview, allows for the Director of the Department to permit temporary change in the period of use for less than three years. Provides for an extension of time by the Director to an applicant for the development of a reservoir site and the completion of the work thereof if the applicant has exhibited reasonable deligence in the development of the project.

Provides the Department may make a reasonable charge for Notice of Application to be presented to interested parties. It stipulates that the transfer of a storage right for irrigation does not constitute an enlargement of that original right.

Provides for the cancellation of a permit and for hearings for those individuals who are affected. Allows the Department to issue Cease and Desist orders and provides for civil penalities. Sets up a water right enforcement account to be used by the Director for administration.

FISCAL NOTE

No fiscal impact.

STATEMENT OF PURPOSE/FISCAL NOTE H 369

1986 FINAL DAILY DATA

3/3 Pres signed
3/4 To Governor
3/4 Governor signed
Session Law Chapter 22
Effective: 7-1-86

H367..... By State Affairs
EMPLOYMENT SECURITY LAW - Amends existing law to establish a new rate class of deficit employers under the Employment Security Law and to also establish the contribution rates for such employers.

1/9 House intro - 1st rdg - to printing
1/10 Rpt prt - to St Aff
1/30 Rpt out - rec d/p - to 2nd rdg
1/31 2nd rdg - to 3rd rdg
2/3 3rd rdg - PASSED - 62-0-2
NAYS -- none.
Absent and excused -- Adams, Chadband.
Title apvd - to Senate
2/4 Senate intro - 1st rdg - to Comm/Lab
2/21 Rpt out - rec d/p - to 2nd rdg
2/24 2nd rdg - to 3rd rdg
2/26 3rd rdg - PASSED - 40-0-2
NAYS -- none.
Absent and excused -- Beitelspacher, McLaughlin.
Title apvd - to House
2/27 To enrol
2/28 Rpt enrol - Sp signed
3/3 Pres signed
3/4 To Governor
3/4 Governor signed
Session Law Chapter 23
Effective: 7-1-86

H368..... By Loveland, et al
ECONOMIC RECOVERY ACT - Amends, repeals and adds to existing law to enact the Idaho Economic Recovery Act of 1986, to raise the sales and use tax to 5%, to allow cities and counties to impose a local sales and use tax, to add state income tax brackets, to provide for the collection of corporate and self-employment income taxes quarterly, to lift the cap on property tax increases, and to appropriate moneys for education, the Permanent Building Account, the Revenue Sharing Account, the Budget Reserve Account, the State Board of Examiners for personnel costs, and the State Tax Commission.

1/10 House intro - 1st rdg - to printing
1/13 Rpt prt - to Rev/Tax

H369aaS..... By Resources & Conservation
WATER RIGHTS - Amends, repeals and adds to existing law to establish a system for the marketing of water rights in the state.

1/10 House intro - 1st rdg - to printing
1/13 Rpt prt - to Res/Con
1/22 Rpt out - rec d/p - to 2nd rdg
1/23 2nd rdg - to 3rd rdg
1/27 3rd rdg - PASSED - 61-0-2
NAYS -- none.
Absent and excused -- Kellogg, McDermott.
Title apvd - to Senate
1/28 Senate intro - 1st rdg - to Res/Env
3/18 Rpt out - to 14th Ord
3/21 Rpt out amen - to 1st rdg as amen
3/22 1st rdg - to 2nd rdg as amen
3/24 2nd rdg - to 3rd rdg as amen
3/24 3rd rdg as amen - PASSED - 33-8-1
NAYS -- Batt, Beck, Bray, Calabretta, Fairchild, Kiebert, Smyser, Thorne.
Absent and excused -- Watkins.

--CONTINUED--

Title apvd - to House
3/25 House concur in Senate amens - to engros
3/25 Rpt engros - 1st rdg - to 2nd rdg as amen
3/26 2nd rdg - to 3rd rdg as amen
3/27 3rd rdg as amen - PASSED - 60-0-4
NAYS -- none.
Absent and excused -- Bateman, Crane, Haagenson, Hansen.
Title apvd - to enrol
3/27 Rpt enrol - Sp signed - Pres signed
4/1 To Governor
4/4 Governor signed
Session Law Chapter 313
Effective: 7-1-86

H370..... By Revenue & Taxation
BEER - WINE - Repeals existing law to eliminate conflicting provisions in law relating to penalties and interest on beer and wine taxes.

1/10 House intro - 1st rdg - to printing
1/14 Rpt prt - to Rev/Tax
1/20 Rpt out - rec d/p - to 2nd rdg
1/21 2nd rdg - to 3rd rdg
1/22 3rd rdg - PASSED - 68-0-5
NAYS -- none.
Absent and excused -- Farrey, Johnson (6), Jones (23), Lucas, McDermott.
Title apvd - to Senate
1/23 Senate intro - 1st rdg - to Loc Gov
3/13 Rpt out - rec d/p - to 2nd rdg
3/14 2nd rdg - to 3rd rdg
3/24 3rd rdg - PASSED - 37-3-2
NAYS -- Risch, Smyser, Staker.
Absent and excused -- Chapman, Watkins.
Title apvd - to House
3/25 To enrol - rpt enrol - Sp signed
3/26 Pres signed - to Governor
4/1 Governor signed
Session Law Chapter 176
Effective: 7-1-86

H371..... By Revenue & Taxation
INCOME TAX, STATE - CORPORATIONS - Amends existing law to exempt nonprofit corporations from the minimum corporate state income tax.

1/10 House intro - 1st rdg - to printing
1/13 Rpt prt - to Rev/Tax
1/27 Rpt out - rec d/p - to 2nd rdg
1/28 2nd rdg - to 3rd rdg
1/29 3rd rdg - PASSED - 72-9-2
NAYS -- Bayer, Black, Hill, Infanger, Johnson (6), Jones (29), McCann, McDermott, Stoker.
Absent and excused -- Givens, Hawkins.
Title apvd - to Senate
1/30 Senate intro - 1st rdg - to Loc Gov
2/20 Rpt out - rec d/p - to 2nd rdg
2/21 2nd rdg - to 3rd rdg
2/25 3rd rdg - PASSED - 34-0-8
NAYS -- none.
Absent and excused -- Anderson, Beck, Calabretta, Crapo, Horsch, Noh, Rydalch, Tominaga.
Title apvd - to House
2/26 To enrol
2/27 Rpt enrol - Sp signed - Pres signed
2/28 To Governor
2/28 Governor signed
Session Law Chapter 18
Effective: 1-1-86

H372aa..... By Education
ELECTIONS - SCHOOL - Amends existing law to require that a

--CONTINUED--

(House)

MINUTES

RESOURCES AND CONSERVATION COMMITTEE

January 9, 1986

TIME: 1:40 p.m.

PLACE: Room 412 - Statehouse

PRESENT: Chairman Chatburn, Representatives Edwards, Bateman, Crozier, Duffin, Echohawk, Hansen, Hawkins, Jones, Linford, Little, Stanger, Steicheff Stucki, Sutton and Wood

EXCUSED: Representatives Haagenson and A. Johnson

ABSENT: Representatives Brackett and Winchester

GUESTS: Mr. Kenneth Dunn, Director , Department of Water Resources and Mr. Dick Gardner, Department of Financial Management.

Chairman Chatburn called the meeting to order.

MOTION: Representative Stucki moved and Representative Sutton seconded that the Minutes of January 7, 1986, be approved.

MOTION CARRIED.

AMENDS TITLE 42, IDAHO CODE, IN SEVERAL INSTANCES PROVIDING FOR BETTER ADMINISTRATION, MORE CONSIDERATION OF PERMITTEE MAKING APPLICATION FOR WATER RIGHTS, PROVIDES FOR LEGISLATIVE OVERVIEW, ALLOWS FOR THE DIRECTOR OF THE DEPARTMENT TO PERMIT TEMPORARY CHANGE IN THE PERIOD OF USE FOR LESS THAN THREE YEARS. PROVIDES FOR AN EXTENSION OF TIME BY THE DIRECTOR TO AN APPLICANT FOR THE DEVELOPMENT OF A RESERVOIR SITE AND THE COMPLETION OF THE WORK THEREOF IF THE APPLICANT HAS EXHIBITED REASONABLE DELIGENCE IN THE DEVELOPMENT OF THE PROJECT.

PROVIDES THE DEPARTMENT MAY MAKE A REASONABLE CHARGE FOR NOTICE OF APPLICATION TO BE PRESENTED TO INTERESTED PARTIES. IT STIPULATES THAT THE TRANSFER OF A STORAGE RIGHT FOR IRRIGATION DOES NOT CONSTITUTE AN ENLARGEMENT OF THAT ORIGINAL RIGHT.

PROVIDES FOR THE CANCELLATION OF A PERMIT AND FOR HEARINGS FOR THOSE INDIVIDUALS WHO ARE AFFECTED. ALLOWS THE DEPARTMENT TO ISSUE CEASE AND DESIST ORDERS AND PROVIDES FOR CIVIL PENALITIES. SETS UP A WATER RIGHT ENFORCEMENT ACCOUNT TO BE USED BY THE DIRECTOR FOR ADMINISTRATION.

Chairman Chatburn reminded the Committee that the legislation before them does not change the law as it currently stands relative to water marketing, rather it speaks specifically to administrative procedures.

Mr. Dunn and Mr. Gardner were introduced and asked to answer questions posed by the Committee prior to printing and circulation of the legislation. Discussion and clarification on the amendatory matter included:

Section 1

42-108. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, NATURE OF USE -- APPLICATION OF ACT.
The authority given to the Department Director to issue temporary permits for a period of less than three years without legislative approval. Mr. Dunn explained that extensions to the three year period will be allowed but are not beneficial to the user.

Section 2.
42-201. WATER RIGHTS ACQUIRED UNDER CHAPTER -- ILLEGAL APPLICATION OF WATER. Mr. Stucki questioned the Chapter number being referred to in this title. Mr. Little referred to the Code Book for clarification of said title and reported to the Committee that the Code reads and is printed exactly as above. It is the Chairman's opinion that the word "this" is implied between the words "under" and "chapter".

Section 2 - Item 2.
The present law states that users must have a permit to appropriate water but it doesn't say it is against the law to appropriate water without the permit. This legislation makes it clear that no person shall divert water without having a permit to do so.

The constitutionally of this language was questioned by Representatives Little but Mr. Dunn explained to the Committee that the State Supreme Court has upheld the appropriation document as constitutional.

Section 3
42-204. EXAMINATION -- PERMIT -- COMMENCEMENT OF WORK -- EXTENSIONS -- APPEAL. - Item 3.
Allows for a person constructing a reservoir of more than 10,000 acre feet capacity, more time for completion of works. The old statute allows for 20,000 acre feet.

Section 3 - Item 5.
Strikes archaic language.

Section 4
42-221. FEES OF DEPARTMENT. Item K.
Allows the Director authorization to set fees annually to recover costs of notification of application within a designated area.

Secton 5
42-222. CHANGE IN POINT OF DIVERSION, PLACE OF USE, PERIOD OF USE, OR NATURE OF USE OF WATER UNDER ESTABLISHED RIGHTS -- FORFEITURE AND EXTENSION --APPEALS.
Provides for consistancy of language to comply with Section 42-203A, Idaho Code.

Section 7
42-311. CANCELLATION OF PERMIT -- GROUNDS -- HEARING -- PERMITTEE DEFINED.
Mr. Dunn explained that this section provides for the method of cancellation of permit based on specific grounds and describes the procedure the Director must follow. It provides the method of removing from the files permits that people have not developed and gives the Director the authority to have people comply with the conditions set forth in the permit.

Section 8
42-350. REVOCATION OF LICENSE -- GROUNDS -- HEARING -- LICENSEE DEFINED.
Sets the procedure the Director will follow to revoke a license that has not been used. In response to Mrs. Wood's questions regarding leased water, Mr. Dunn responded that leased water constitutes a use. This legislation does not apply to owners who are leasing their water rights.

Mr. Sutton asked the difference between a "permit" and a "license". Mr. Dunn explained that a permit is issued by the Director to develop the water and a license is the confirmation that the water was put to use.

At this point of the presentation, Mrs. Stanger brought up water rights within an irrigation district and Mr. Dunn explained that these rights are classified as irrigation district rights and operate within a different set of circumstances than everyone else in the State. Irrigation districts describe specific boundaries and for the right to use the water on a specified number of acres within the district. Most irrigation districts have contracts with the Federal Government for storage and those contracts place a lien on that specific piece of property and, therefore, all parties within said boundary are charged. Mr. Dunn said there is a procedure under law which allows property owners to petition out of a district but it is expensive and time consuming and that some districts cooperate but that many do not.

Section 8
42-351. ILLEGAL DIVERSION OR USE OF WATER -- CEASE AND DESIST ORDERS.
Allows the Director the responsibility to stop any person from diverting water without having obtained a valid water right.

Section 9
42-1778. WATER RIGHTS ENFORCEMENT ACCOUNT.
Allows the Director to seek an injunction or temporary restraining order against persons violating the law. Mr. Linford asked about the timing of such injunction or restraining order. Mr. Dunn explained illegal diversion and the fact that people found doing so are informed of its illegality and that most file for water rights. In order to continue to operate for the season they must purchase storage water from the District. If they refuse to cooperate, the pump will be shut off. Full cooperation has always been reached with the Department according to Mr. Dunn.

At this point of the presentation, there being no further questions or discussion, the Chairman asked for a motion on the legislation before the Committee.

MOTION: Representative Stucki moved and Representative Edwards seconded that RS 11737C1 be introduced.

MOTION CARRIED.

The meeting was adjourned at 2:20 p.m.

J. Vard Chatburn
J. VARD CHATBURN, Chairman

Linda Hildeman
Linda Hildeman, Secretary

(House)

MINUTES

RESOURCES AND CONSERVATION COMMITTEE

January 21, 1986

TIME: 2 p.m.

PLACE: Room 412 - Statehouse

PRESENT: Chairman Chatburn, Representatives Bateman, Brackett, Duffin, Echohawk, Edwards, Haagenson, Hansen, Hawkins, A. Johnson, Jones, Linford, Little, Stanger, Stoicheff, Stucki, Winchester, Wood.

EXCUSED: Representative Crozier and Sutton.

GUESTS: Mr. Kenneth Dunn, Director, Department of Water Resources, Mr. Dick Gardner, Department of Financial Management, and Mr. Sherl Champan, Executive Director, Idaho Water Users Association, Inc.

Chairman Chatburn called the meeting to order.

MOTION: Representative Stucki moved and Representative Stanger seconded that the Minutes of January 17, be approved.

RS 12018: TO EXPEDITE CONSIDERATION OF WATER RIGHT FILINGS BY CLARIFYING THE LOCATION AND NATURE OF WATER CONSIDERED AS TRUST WATER SUBJECT TO THE PUBLIC INTEREST REVIEW CRITERIA AND BY LIMITING THE REVIEW OF UNDEVELOPED EXISTING PERMITS TO THE PUBLIC INTEREST CRITERIA FOR THOSE PERMITS SEEKING TO DEVELOP TRUST WATER.

Mr. Dunn explained to the Committee that this legislation will change the language that was adopted last year as far as the Swan Falls agreement to make clear exactly what the Legislature intended. It also allows the Director to review only those outstanding undeveloped permits that are going to appropriate trust water. Mr. Jones asked for the definition of trust water and Mr. Dunn replied it was that water which becomes available for appropriation as a result of an agreement reached between the State and a utility that has a water right to make available for appropriation.

MOTION: Mr. Hawkins moved and Mr. Jones seconded that RS 12018 be introduced.

MOTION CARRIED.

RS 12020: TO EXPEDITE WATER RIGHT LICENSING. HOLDERS OF EXISTING PERMITS TO APPROPRIATE WATER WOULD BE REQUIRED TO SUBMIT TO THE DEPARTMENT OF WATER RESOURCES THE INFORMATION NECESSARY FOR CONFIRMING THE DEVELOPMENT ACCOMPLISHED UNDER THE PERMIT TO ALLOW A LICENSE TO BE ISSUED. ENGINEERS AND GEOLOGISTS QUALIFIED TO MAKE THE FIELD EXAMINATIONS WOULD BE CERTIFIED BY THE DEPARTMENT. A BACK-LOG EXISTS OF FIELD EXAMINATIONS FOR PERMITS UPON WHICH PROOF OF BENEFICIAL USE HAS BEEN SUBMITTED. THIS REPRESENTS A FOUR YEAR DELAY IN ISSUING LICENSES.

Mr. Dunn told the Committee that this legislation will provide that field examinations for a water right would be done by a consultant hired by the owner of the permit. Currently the State does the exams and has a backlog of approximately 4,000. Mr. Dunn's Department is able to complete between 600 to 700 per year. Exemptions are made in the legislation for single-family, domestic and stock watering permits and the State will continue to do the small exams. Individuals qualified to complete exams would be certified by the Department and registered in the State.

MOTION: Representative Winchester moved and Mrs. Wood seconded that RS 12020 be returned to sponsor.

SUBSTITUTE MOTION: Representative Johnson moved and Mr. Hansen seconded that RS 12020 be introduced.

SUBSTITUTE MOTION CARRIED.

RS 12017C1: THE PURPOSE OF THIS LEGISLATION IS TO KEEP THE STATE'S WATER RIGHT RECORDS CURRENT AND CORRECT. HOLDERS OF WATER RIGHTS WOULD BE REQUIRED TO NOTIFY THE DEPARTMENT OF WATER RESOURCES OF CHANGES IN OWNERSHIP OF WATER RIGHTS AND CHANGES OF ADDRESS OF WATER RIGHTS OWNERS.

Mr. Dunn explained that this legislation was drafted in response to comments received from legislators last year. Presently there is no requirement for people to notify the Department of a change of address or ownership changes. A fee up to $25.00 would be required when filing a change. Both Mrs. Stanger and Mr. Hansen told the Committee that their counties are in the process of re-numbering and all residents would be issued a new address. They asked if, in these cases, it would be necessary to file a change of address and Mr. Dunn applied in the affirmative.

Representative Johnson moved and Mrs. Edwards seconded that RS 12017C1 be returned to sponsor.

MOTION CARRIED.

H369: PROVIDES FOR BETTER ADMINISTRATION, MORE CONSIDERATION OF PERMITTEE MAKING APPLICATION FOR WATER RIGHTS, PROVIDES FOR LEGISLATIVE OVERVIEW, ALLOWS FOR THE DIRECTOR OF THE DEPARTMENT TO PERMIT TEMPORARY CHANGE IN THE PERIOD OF USE FOR LESS THAN THREE YEARS. PROVIDES FOR AN EXTENSION OF TIME BY THE DIRECTOR TO AN APPLICANT FOR THE DEVELOPMENT OF A RESERVOIR SITE AND THE COMPLETION OF THE WORK THEREOF IF THE APPLICANT HAS EXHIBITED REASONABLE DELIGENCE IN THE DEVELOPMENT OF THE PROJECT.

Mr. Gardner told the Committee this bill will give the Director the tools to better enforce the water rights we now have. Long term leasing language is clarified and Mr. Gardner encourages a "Do Pass" recommendation.

Mr. Dunn reviewed the changes in the bill as previously covered in the January 9, 1986 minutes.

MOTION: Representative Johnson moved and Mr. Stucki moved that H369 be sent to the floor with a DO PASS recommendation.

MOTION CARRIED. Representative Johnson will sponsor.

The meeting adjourned at 4:10 p.m.

J. Vard Chatburn

J. Vard Chatburn, Chairman

Linda Hildeman

Linda Hildeman, Secretary

1986 House Journal

SEIZURE, AND TO PROVIDE FOR DESTRUCTION OF DRUG AND NONDRUG EVIDENCE ON-SITE; AMENDING CHAPTER 27, TITLE 37, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 37-2744A, IDAHO CODE, TO PROVIDE AUTHORITY TO THE DEPARTMENT OF LAW ENFORCEMENT TO RECEIVE DONATIONS FROM FEDERAL ENFORCEMENT AGENCIES AND OTHER PERSONS OR ENTITIES FOR DEPOSIT INTO THE DRUG ENFORCEMENT DONATION ACCOUNT IF THE ACCEPTANCE OF THE DONATIONS IS LAWFUL; AND PROVIDING SEVERABILITY.

HOUSE BILL NO. 489
BY REVENUE AND TAXATION COMMITTEE
AN ACT

RELATING TO SNOWMOBILES AND ALL TERRAIN VEHICLES; AMENDING SECTION 49-2603, IDAHO CODE, TO DEFINE ALL TERRAIN VEHICLES; AMENDING SECTION 49-2605, IDAHO CODE, TO INCREASE CERTAIN FEES REGARDING REGISTRATION OF SNOWMOBILES, TO STRIKE LANGUAGE RELATING TO RENEWAL FOR A CERTIFICATE OF NUMBER, AND TO PROVIDE THAT THE ANNUAL FEES FOR CERTIFICATES OF NUMBER ISSUED TO DEALERS SHALL BE TEN DOLLARS; AMENDING SECTION 49-2608, IDAHO CODE, TO PROVIDE THAT AUTHORIZED AGENTS AND COUNTY ASSESSORS SHALL BE ENTITLED TO CHARGE AN ADDITIONAL ONE DOLLAR HANDLING FEE PER REGISTRATION FOR THE DISTRIBUTION OF CERTIFICATES OF NUMBER; AMENDING SECTION 49-2613, IDAHO CODE, TO INCREASE THE AMOUNT OF ESTIMATED PROPERTY DAMAGE INCURRED IN A SNOWMOBILE ACCIDENT BEFORE A PROPER LAW ENFORCEMENT AGENCY MUST BE NOTIFIED REGARDING THE FACTS OF THE ACCIDENT; AND AMENDING CHAPTER 26, TITLE 49, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 49-2616, IDAHO CODE, TO PROVIDE THAT ANY ALL TERRAIN VEHICLES OPERATING ON GROOMED SNOWMOBILE TRAILS DURING THE WINTER SNOWMOBILING SEASON SHALL BE REGISTERED, AND TO PROVIDE THAT COUNTIES SHALL HAVE THE OPTION TO ALLOW ALL TERRAIN VEHICLES, IF REGISTERED, TO USE SNOWMOBILE TRAILS IN THE COUNTY.

HOUSE BILL NO. 490
BY REVENUE AND TAXATION COMMITTEE
AN ACT

RELATING TO INCOME TAXES; AMENDING SECTION 63-3024, IDAHO CODE, TO PROVIDE A SCHEDULE OF RATES AND BRACKETS FOR INCOME TAX ON INDIVIDUALS, TRUSTS AND ESTATES; DECLARING AN EMERGENCY AND PROVIDING FOR RETROACTIVE APPLICATION.

H 485, H 486, H 487, H 488, H 489 and **H 490** were introduced, read the first time by title and referred to the Judiciary, Rules and Administration Committee for printing.

There being no objection, the House advanced to the Tenth Order of Business.

Second Reading of Bills and Joint Resolutions

H 403, by Business Committee, was read the second time by title and filed for third reading.

H 420, by State Affairs Committee, was read the second time by title and filed for third reading.

Third Reading of Bills and Joint Resolutions

H 369 was read the third time at length, section by section, and placed before the House for final consideration.

The question being, "Shall **H 369** pass?"

Roll call resulted as follows:
AYES -- Adams, Allan, Antone, Bateman, Bayer, Bengson, Black, Boyd, Brackett, Braun, Brimhall, Brocksome, Brown, Burt, Callen, Chadband, Chatburn, Childers, Crane, Crow, Davis, Duffin, EchoHawk, Edwards, Field, Forrey, Fry, Geddes, Givens, Gurnsey, Haagenson, Hale, Hansen, Harris, Hawkins, Hay, Herndon, Hill, Hoagland, Hooper, Horvath, Infanger, Johnson (27), Johnson (6), Jones (23), Jones (29), Judd, Keeton, Kennevick, Linford, Little, Loveland, Lucas, Martens, McCann, Meline, Montgomery, Neibaur, Parks, Reid, Reynolds, Robbins, Scates, Schaefer, Scott, Sessions, Simpson, Slater, Smock, Sorensen, Speck, Stanger, Stoicheff, Stoker, Strasser, Stucki, Sutton, Tucker, Winchester, Wood, Mr. Speaker. Total -- 81.
NAYS — none.
Absent and excused -- Kellogg, McDermott. Total -- 2.
Total -- 83.

Whereupon the Speaker declared **H 369** passed the House. Title was approved and the bill ordered transmitted to the Senate.

Mr. Chatburn asked unanimous consent that the following letter of legislative intent be printed in the House Journal and that the legislative intent is expressed as the decision of the House of Representatives. There being no objection, it was so ordered.

LETTER OF INTENT
H 369

It is the intent of the Legislature that the historical use of the flood waters of any stream for irrigation is a beneficial use and may not be denied, provided no other water rights are injured thereby.

It is the intent that the five-year forfeiture statute for non-use of a water right shall not apply in the event the water is not available or the season is such that the water cannot be applied beneficially.

H 377 was read the third time at length, section by section, and placed before the House for final consideration.

The question being, "Shall **H 377** pass?"

Roll call resulted as follows:
AYES -- Adams, Allan, Antone, Bateman, Bayer, Bengson, Black, Boyd, Brackett, Braun, Brimhall, Brocksome, Brown, Burt, Callen, Chadband, Chatburn, Childers, Crane, Crow, Davis, Duffin, EchoHawk, Edwards, Field, Forrey, Fry, Geddes, Givens, Gurnsey, Haagenson, Hale, Hansen, Harris, Hawkins, Hay, Herndon, Hill, Hoagland, Hooper, Horvath, Infanger, Johnson (27), Johnson (6), Jones (23), Jones (29), Judd, Keeton, Kennevick, Linford, Little, Loveland, Lucas, Martens, McCann, Meline, Montgomery, Neibaur, Parks, Reid, Reynolds, Robbins, Scates, Schaefer, Scott, Sessions, Simpson, Slater, Smock, Sorensen, Speck, Stanger, Stoicheff, Stoker, Strasser, Stucki, Sutton, Tucker, Wood, Mr. Speaker. Total — 80.
NAYS — Winchester. Total — 1.
Absent and excused -- Kellogg, McDermott. Total — 2.
Total -- 83.

Whereupon the Speaker declared **H 377** passed the House. Title was approved and the bill ordered transmitted to the Senate.

(SENATE)
MINUTES

RESOURCES AND ENVIROMENT COMMITTEE

MARCH 12, 1986 Rm 433, 1:30 pm

PRESENT: All members of the committee were present.

Chairman Noh called the meeting to order.

MOTION: Senator Little moved and Senator Beitelspacher seconded the minutes be approved.

Chairman Noh called the Committee's attention to the latest letter in their file from the Bergs on the Coeur d'Alene property.

SB 1404 REQUIRE F&G COMMISSION TO SET ASIDE A CERTAIN NUMBER OF NONRESIDENT DEER AND ELK TAGS FOR LICENSED OUTFITTERS AND GUIDES

Senator Beitelspacher explained the legislation and presented an amendment to the bill which is basicly the context of the legislation. The amendment would enable the Commission to set aside 25% of the nonresident deer and elk tags to be sold on a first-come, first-served basis. These tags would be only for people who have entered into an agreement for that year to utilize the services of an outfitter who is licensed. This 25% is established after the F&G Commission has established the number of nonresident tags for the year. If there are some tags not sold by July 1, they will be sold to the general public. The Outfitters and Guides marketing season is later in the year and often by this time, the deer and elk tags have been sold out for the season.

Senator Ringert asked what would happen to a tag if the client of an outfitter backed out of his committment and is there getting to be "traffic" in these tags?

Ken Norrie, F&G, said in cases where a person does not use a tag, he still has to pay for them so no loss monetarily. The individual may turn the tag back to the F&G Department and designate someone to use the tag or the tag is offered for sale to the next one on the list. There really isn't a way to make sure they aren't sold again as there always seems to be a way to get around something. It is hoped the wording in the bill will prevent this from happening.

Senator Beitelspacher commented this problem has existed for sometime and whether this bill exists or not, it will not add to the problem we already have.

Ken Norrie, F&G, stated the sponsor had come to them and asked for their input on the legislation. He said they did have some question about how the individual would take care of the game once killed, but assume someone would be along with them to take care of the game.

MOTION: Senator Peavey moved and Senator Beitelspacher seconded the bill go out with a "do pass" recommendation. Motion carried.

Representative Winchester, sponsor in the House, briefly spoke to the bill and how it had come about.

A short discussion followed on just "who" could hunt. The bill stipulates F&G will have the latitude to decide this after a person is determined to be physically handicapped.

HB 369 ADMINISTRATION OF WATER RIGHTS

The legislation would provide for better administration, more consideration of permitee making application for water rights, provides for legislative overview, allows for the Director of the Department to permit temporary change in the period of use for less than three years. Also provisions for an extension of time by the Director to an applicant for the development of a reservoir site and the completion of the work thereof if the applicant has exhibited reasonable deligence in the development of the project. There are provisions for the Department to make a reasonable charge for Notice of Application to be presented to interested parties. It stipulates that the transfer of a storage right for irrigation does not constitute an enlargement of that original right. Provides for the cancellation of a permit and for hearings for those individuals who are affected. Allows the Department to issue Cease and Desist orders and provides for civil penalities. Sets up a water right enforcement account to be used by the Director for administration.

Ken Dunn, Director, Water Resources, went through the bill explaining the changes and additions. The bill is the result of an interim committee making changes to a bill that was before the House last year.

Senator Ringert asked unanimous consent this bill be held until Friday for further discussion due to the Committee's time being up for the day. HB 369 will be first on the agenda for Friday.

Laird Noh, Chairman

Bev Mullins, Secretary

(SENATE)
MINUTES

RESOURCES AND ENVIRONMENT COMMITTEE

MARCH 14, 1986 Rm 433, 1:30 pm

PRESENT: All members were present except Senator Beitelspacher

Chairman Noh called the meeting to order.

MOTION: Senator Little moved and Senator Budge seconded the minutes of the last meeting be approved. Motion carried.

HB 369 ADMINISTRATION OF WATER RIGHTS

Ken Dunn, Water Resources, briefly summarized the intent of the legislation, which was before the committee for the second time.

A short discussion took place on the right to use stored water for irrigation purposes. The question was asked if this provided for the sale of this water. Mr. Dunn said a person could sell the water or lease it. Whichever he desired to do, but probably most of this would be done on a lease basis.

Senator Crapo wanted to know what was to stop someone with money from coming in and buying storage rights and taking water out of agriculture? Mr. Dunn replied that would mean a change of use. In the legislation this has to have approval of the Department and it is hoped this will take take of that situation.

Senator Ringert asked what was the Department's reasons for the Section 8 of the legislation?

Mr. Dunn, said it provides for cancelling a license after five years of continuous non-use. The Walker case, which was before the Supreme Court, spoke to this issue. They said the right was there and it was the duty of the Director to take some action. This section sets up a very precise procedure for revoking a license. It makes sure the Director of the Department does things as set up by the statutes.

Senator Ringert said he did not recall all of the Walker case but did not believe it gave this power to the Director.

Chairman Noh asked Senator Crapo if the Interim Committee addressed this point. Senator Crapo said he shared Senator Ringert's concerns of the Director having this power. The committee did consider the matter and decided to keep this section in the bill, though it was not a unanimous decision.

Mr. Dunn believes since the Jenkins case, the Director can by forfeiture cancel a license and that is the way the Department has operated.

Senator Crapo commented the question seems to be, do we want the Department to adjudicate the question or have the court determine this?

Senator Ringert commented there does seem to be a difference in philosophies here on Section 8.

Mr. Dunn stated he did not see Section 7 & 8 as changing the Department's authority but merely sets up a procedure for them to follow if action is needed.

Senator Crapo asked if a farmer sets aside some land for longer than five years, how would the five year continuous use point come into action?

Mr. Dunn replied there is a statute that allows another five years if a person asks for an extension before the first five year period is up.

A discussion followed on if lines 40-44 were in conflict with the Constitution. Mr. Dunn does not believe so, but Senator Ringert feels it may and that some of the language may be questioned.

Sherl Chapman, Water Users, said they have reviewed the concerns expressed here but do not know what the solution is. They do feel the section pertaining to the water bank needs to be taken care of. Above Milner there have been problems of water being diverted during low water. These concerns can be settled with some language in the bill and it is a situation that is badly in need of settlement. This legislation could be useful to the water using community.

Senator Crapo said there is much in this bill that is good and is needed. He noted there were two things he had a problem with when working on the legislation; the creation of a special account and solving problems in the Department rather than through the court system. However, he said he was voted down on both issues in the Interim Committee.

Chairman Noh suggested this be held over until Monday so Senators Crapo, Ringert and Horsch could work with Mr. Dunn on amendments for the Committee to consider. This was agreed to by the committee.

SB 1440 VOTING ON THE ACREAGE BASIS IN IRRIGATION DISTRICT ELECTIONS

Senator Ringert explained the bill would allow irrigation districts dectors, either at the time of organizing the district or by special election in an organized district, to adopt the acreage basis of voting. A 2/3 majority would be required to adopt the acreage basis. He noted there were some technical concerns with the bill as well as the language, so would like for it to go to the 14th order.

MOTION: Senator Ringert moved and Senator Crapo seconded the bill go to the 14th order. Motion carried.

(SENATE)

MINUTES

RESOURCES AND ENVIRONMENT COMMITTEE

MARCH 17, 1986 Rm 433, 1:30 PM

PRESENT: All members of the committee were present.

Chairman Noh called the meeting to order.

MOTION: Senator Ringert moved and Senator Chapman seconded the minutes of the last meeting be approved as written. Motion carried.

HB 369 ADMINISTRATION OF WATER RIGHTS

Chairman Noh said he had talked to the Co-Chairman of the Interim Committee, Mr. Chatburn, regarding this legislation and he would like to see the bill left as is as the majority of the committee did vote to support this bill as is and the issues raised in our committee had been discussed in the Interim Committee.

Senator Chapman, Co-Chairman of the Committee that worked on the legislation agreed with Mr. Chatburn that this bill was a compromise and concern was expressed in the Interim Committee regarding the Director having so much authority, but the majority of the subcommittee did vote for that concept.

Senator Ringert said there was talk about the Jenkins decision on Friday and that he felt the decision was limited to transfer proceedings and after reading it again, he still feels that way. He does not feel the Director has been told to undertake a survey to see what licenses might be in forfeiture and believes this bill goes far beyond his authority and for this reason, he strongly opposes this legislation. He also said he had some problems with 42-351, line 3 of the bill. He would like to see something added to make an exception when vested water rights are at issue. He would like the issue to go through administrative procedures but if the user is not satisfied with the administrative hearing, it should be spelled out that he has a evidentiary hearing in the court.

Mr. Dunn believes a better decision would be reached by the Department than before the court as they have more experience in dealing with matters concerning water. He would recommend the bill in its present form without amendments.

Sherly Chapman, Water Users, commented that some water users have some concerns with the Director having the power to deny a right. This issue is of lesser importance to the users than the storage water section in the bill and the illegal diversion of water.

Senator Crapo remarked there is a definite difference in philosophies. People in the private sector do have concerns with the Director having this power. He sees two ways to go; (1) directly to court or (2) go through administrative procedures first, and then to court with provision that new evidence could not be presented in court without strict justification.

Senator Ringert wanted to clarify that he was speaking only to existent or non-existence of a property right.

MOTION: Senator Beitelspacher moved and Senator Little seconded the bill go to the 14th order. Motion carried.

HB 673 PROVIDE A NONRESIDENT THREE DAY FISHING LICENSE

Mr. Barton, F&G, explained the legislation is to provide a three day nonresident fishing license entitling a person to fish in the waters of the state for a period of 3 consecutive days. The fee for this license would be $10. He said the private vendors had requested this legislation as presently they feel there is alot of unnecessary paper work.

A short discussion followed on the fee and how it was arrived at for this license.

MOTION: Senator Beitelspacher moved and Senator Sverdsten seconded that this bill to go the floor with a "do pass" recommendation. Motion carried.

HB 555 PROVIDE FOR THE PAYMENT OF TRANSFER & INHERITANCE TAX REFUNDS FROM THE STATE REFUND ACCOUNT

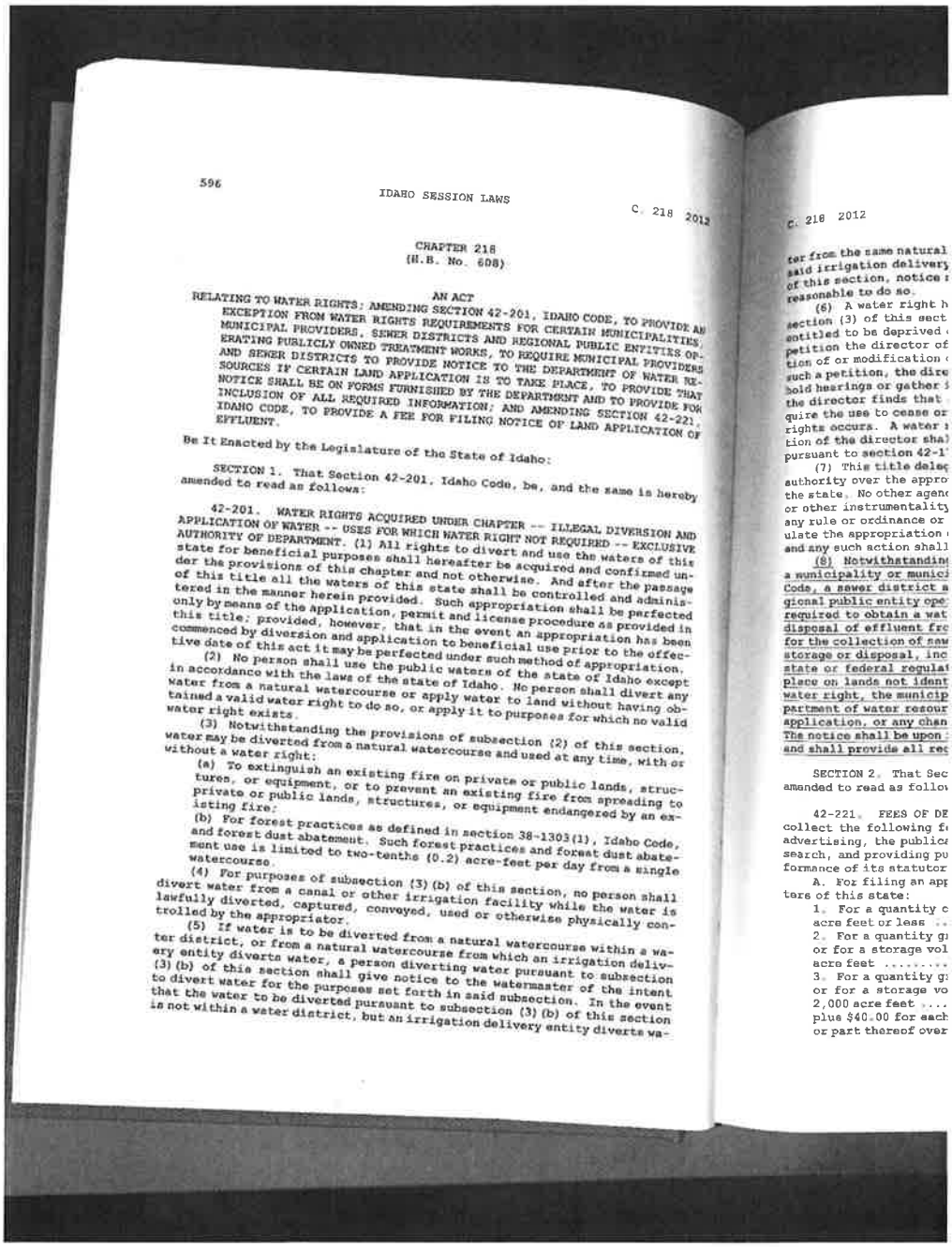
Dave Bivens, Farm Bureau, explained the legislation would create a funding source for the revolving fund to implement the Resource Conservation and Rangeland Development program. A diversion of 10% from the inheritance tax collection will generate an amount adequate to finance some pilot projects which qualify under the provisions of the program. He said approximately $150,000 would go into this revolving fund. He feels a conservation dollar invested in these areas will return many times that amount in prevention of erosion and pollution downstream and still have the initial dollar left to invest again.

Senator Sverdsten noted the interest rate on these loans was only 6%. He feels the rate should reflect the current rates.

Wayne Faude, Dept of Lands, said this interest rate came about as a result of the depressed conditions. The rate would be set through administrative procedures by the Commission.

Addendum C — H.B. 608, 2012 IDAHO SESS. LAWS, CH. 218 (CODIFIED AT IDAHO CODE §§ 42-201(8), 42-221(P)) AND ITS LEGISLATIVE HISTORY

1. 2012 Idaho Sess. Laws, ch. 218.
2. H.B. 608.
3. Statement of Purpose and Fiscal Note (RS 21325).
4. Final Daily Data 2012 (H.B. 608).
5. Agenda and Minutes, House State Affairs Committee (Feb. 28, 2012).
6. Agenda and Minutes, House Resources & Conservation Committee (Mar. 5, 2012).
7. Testimony of Lindley Kirkpatrick, McCall City Manager (Mar. 5, 2012).
8. Agenda and Minutes, Senate Resources & Environment Committee (Mar. 14, 2012).
9. Letter of Lindley Kirkpatrick, McCall City Manager (Mar. 14, 2012).
10. Memo of Ken Harward, Executive Director, Association of Idaho Cities (Mar. 14. 2012).
11. Agenda and Minutes, Senate Resources & Environment Committee (Mar. 16, 2012).
12. Testimony of Chris Meyer, counsel for McCall (Mar. 16. 2012).



596 IDAHO SESSION LAWS C. 218 2012

CHAPTER 218
(H.B. No. 608)

AN ACT

RELATING TO WATER RIGHTS; AMENDING SECTION 42-201, IDAHO CODE, TO PROVIDE AN EXCEPTION FROM WATER RIGHTS REQUIREMENTS FOR CERTAIN MUNICIPALITIES, MUNICIPAL PROVIDERS, SEWER DISTRICTS AND REGIONAL PUBLIC ENTITIES OPERATING PUBLICLY OWNED TREATMENT WORKS, TO REQUIRE MUNICIPAL PROVIDERS AND SEWER DISTRICTS TO PROVIDE NOTICE TO THE DEPARTMENT OF WATER RESOURCES IF CERTAIN LAND APPLICATION IS TO TAKE PLACE, TO PROVIDE THAT NOTICE SHALL BE ON FORMS FURNISHED BY THE DEPARTMENT AND TO PROVIDE FOR INCLUSION OF ALL REQUIRED INFORMATION; AND AMENDING SECTION 42-221, IDAHO CODE, TO PROVIDE A FEE FOR FILING NOTICE OF LAND APPLICATION OF EFFLUENT.

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

SECTION 1. That Section 42-201, Idaho Code, be, and the same is hereby amended to read as follows:

42-201. WATER RIGHTS ACQUIRED UNDER CHAPTER -- ILLEGAL DIVERSION AND APPLICATION OF WATER -- USES FOR WHICH WATER RIGHT NOT REQUIRED -- EXCLUSIVE AUTHORITY OF DEPARTMENT. (1) All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter and not otherwise. And after the passage of this title all the waters of this state shall be controlled and administered in the manner herein provided. Such appropriation shall be perfected only by means of the application, permit and license procedure as provided in this title; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act it may be perfected under such method of appropriation.

(2) No person shall use the public waters of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists.

(3) Notwithstanding the provisions of subsection (2) of this section, water may be diverted from a natural watercourse and used at any time, with or without a water right:

(a) To extinguish an existing fire on private or public lands, structures, or equipment, or to prevent an existing fire from spreading to private or public lands, structures, or equipment endangered by an existing fire;

(b) For forest practices as defined in section 38-1303(1), Idaho Code, and forest dust abatement. Such forest practices and forest dust abatement use is limited to two-tenths (0.2) acre-feet per day from a single watercourse.

(4) For purposes of subsection (3) (b) of this section, no person shall divert water from a canal or other irrigation facility while the water is lawfully diverted, captured, conveyed, used or otherwise physically controlled by the appropriator.

(5) If water is to be diverted from a natural watercourse within a water district, or from a natural watercourse from which an irrigation delivery entity diverts water, a person diverting water pursuant to subsection (3) (b) of this section shall give notice to the watermaster of the intent to divert water for the purposes set forth in said subsection. In the event that the water to be diverted pursuant to subsection (3) (b) of this section is not within a water district, but an irrigation delivery entity diverts wa-

C. 218 2012

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of this section, notice
reasonable to do so.

(6) A water right h
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(7) This title dele
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(8) Notwithstandin
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3. For a quantity g
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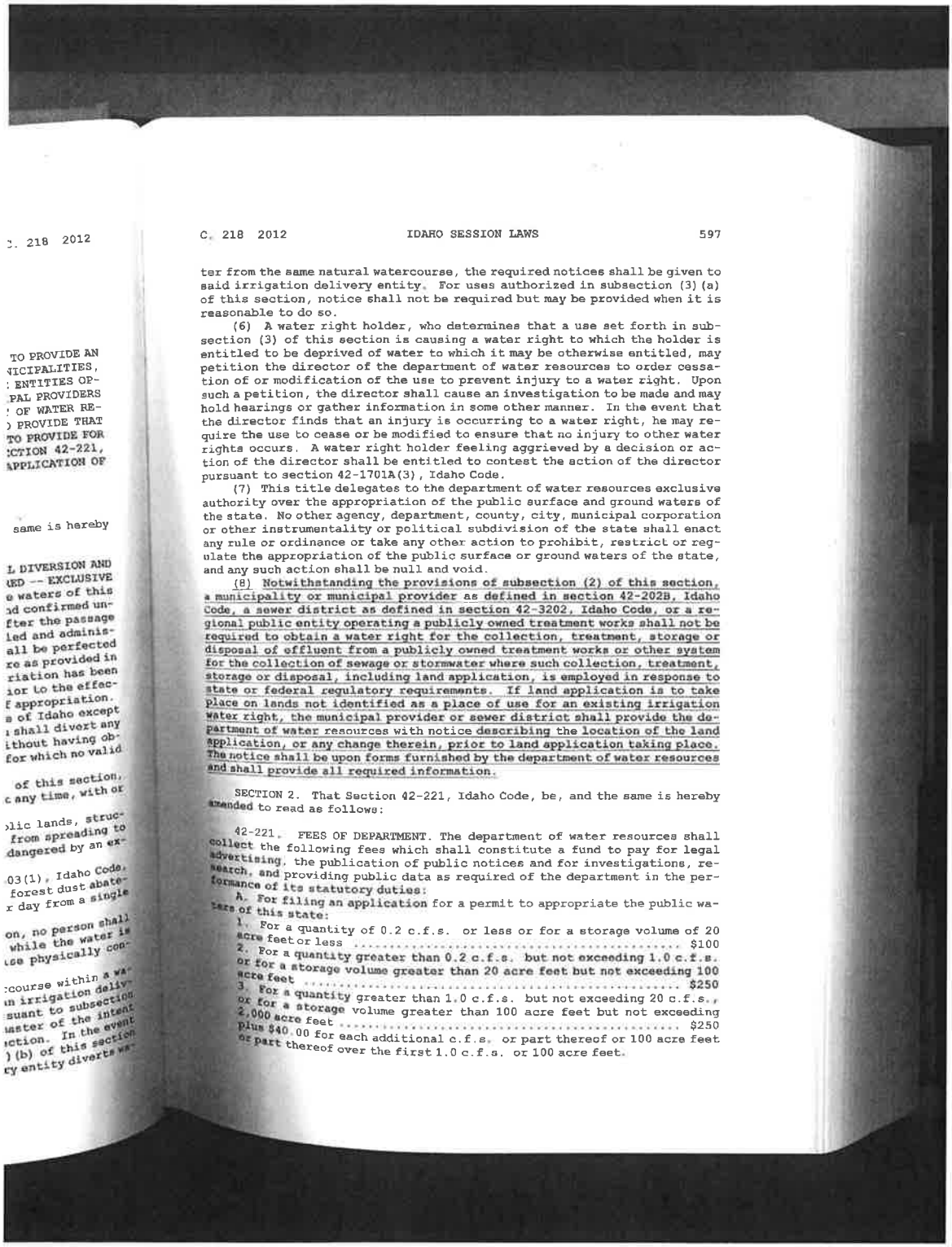
2,000 acre feet ....
plus $40.00 for each
or part thereof over



C. 218 2012 IDAHO SESSION LAWS 597

ter from the same natural watercourse, the required notices shall be given to said irrigation delivery entity. For uses authorized in subsection (3)(a) of this section, notice shall not be required but may be provided when it is reasonable to do so.

(6) A water right holder, who determines that a use set forth in subsection (3) of this section is causing a water right to which the holder is entitled to be deprived of water to which it may be otherwise entitled, may petition the director of the department of water resources to order cessation of or modification of the use to prevent injury to a water right. Upon such a petition, the director shall cause an investigation to be made and may hold hearings or gather information in some other manner. In the event that the director finds that an injury is occurring to a water right, he may require the use to cease or be modified to ensure that no injury to other water rights occurs. A water right holder feeling aggrieved by a decision or action of the director shall be entitled to contest the action of the director pursuant to section 42-1701A(3), Idaho Code.

(7) This title delegates to the department of water resources exclusive authority over the appropriation of the public surface and ground waters of the state. No other agency, department, county, city, municipal corporation or other instrumentality or political subdivision of the state shall enact any rule or ordinance or take any other action to prohibit, restrict or regulate the appropriation of the public surface or ground waters of the state, and any such action shall be null and void.

(8) Notwithstanding the provisions of subsection (2) of this section, a municipality or municipal provider as defined in section 42-202B, Idaho Code, a sewer district as defined in section 42-3202, Idaho Code, or a regional public entity operating a publicly owned treatment works shall not be required to obtain a water right for the collection, treatment, storage or disposal of effluent from a publicly owned treatment works or other system for the collection of sewage or stormwater where such collection, treatment, storage or disposal, including land application, is employed in response to state or federal regulatory requirements. If land application is to take place on lands not identified as a place of use for an existing irrigation water right, the municipal provider or sewer district shall provide the department of water resources with notice describing the location of the land application, or any change therein, prior to land application taking place. The notice shall be upon forms furnished by the department of water resources and shall provide all required information.

SECTION 2. That Section 42-221, Idaho Code, be, and the same is hereby amended to read as follows:

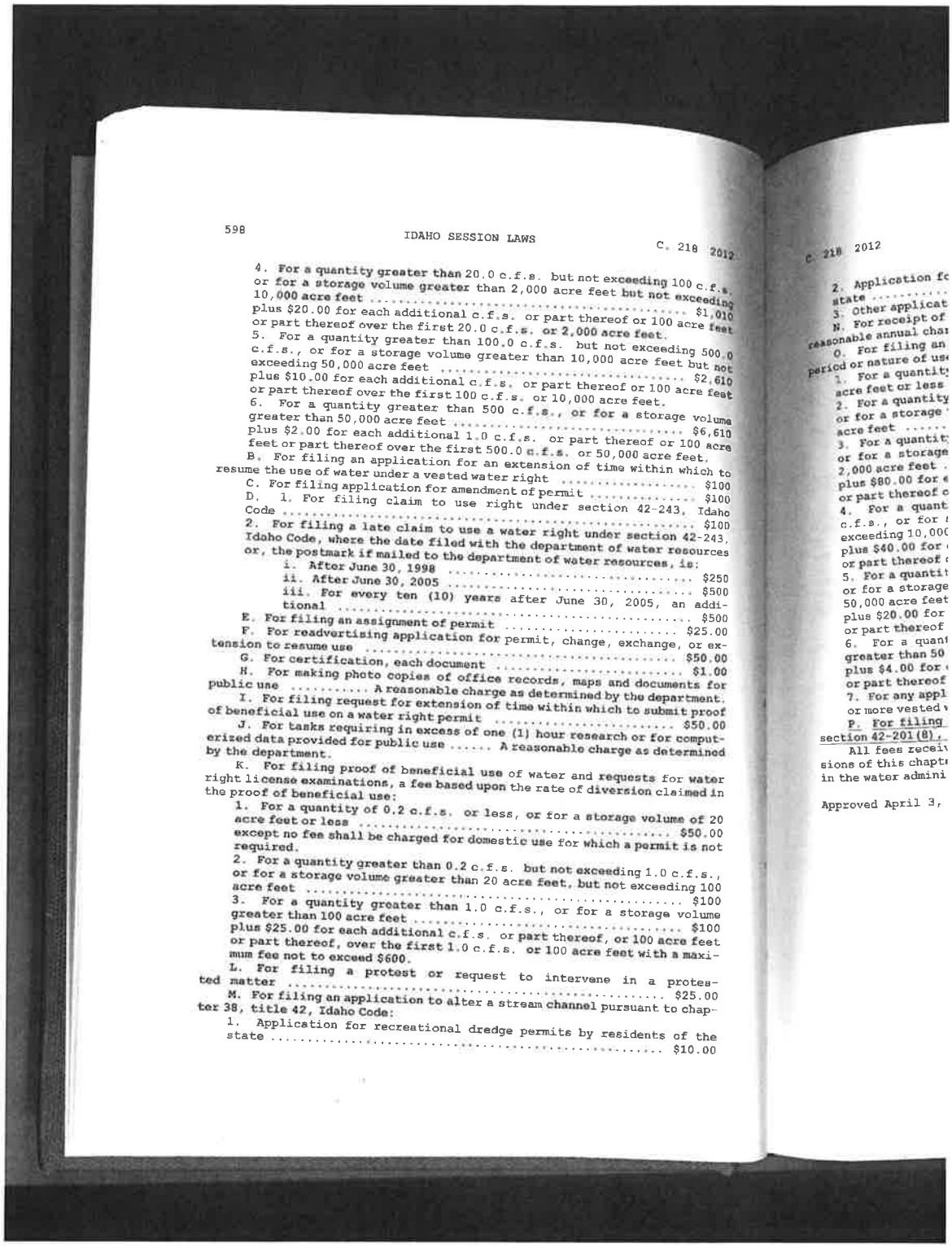
42-221. FEES OF DEPARTMENT. The department of water resources shall collect the following fees which shall constitute a fund to pay for legal advertising, the publication of public notices and for investigations, research, and providing public data as required of the department in the performance of its statutory duties:

A. For filing an application for a permit to appropriate the public waters of this state:

1. For a quantity of 0.2 c.f.s. or less or for a storage volume of 20 acre feet or less $100

2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s. or for a storage volume greater than 20 acre feet but not exceeding 100 acre feet $250

3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 2,000 acre feet ..... $250 plus $40.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.



598 IDAHO SESSION LAWS C. 218 2012

4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s. or for a storage volume greater than 2,000 acre feet but not exceeding 10,000 acre feet ..... $1,010 plus $20.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.

5. For a quantity greater than 100.0 c.f.s. but not exceeding 500.0 c.f.s., or for a storage volume greater than 10,000 acre feet but not exceeding 50,000 acre feet ..... $2,610 plus $10.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 100 c.f.s. or 10,000 acre feet.

6. For a quantity greater than 500 c.f.s., or for a storage volume greater than 50,000 acre feet ..... $6,610 plus $2.00 for each additional 1.0 c.f.s. or part thereof or 100 acre feet or part thereof over the first 500.0 c.f.s. or 50,000 acre feet.

B. For filing an application for an extension of time within which to resume the use of water under a vested water right $100

C. For filing application for amendment of permit $100

D. 1. For filing claim to use right under section 42-243, Idaho Code $100

2. For filing a late claim to use a water right under section 42-243, Idaho Code, where the date filed with the department of water resources or, the postmark if mailed to the department of water resources, is:

i. After June 30, 1998 ..... $250

ii. After June 30, 2005 ..... $500

iii. For every ten (10) years after June 30, 2005, an additional $500

E. For filing an assignment of permit $25.00

F. For readvertising application for permit, change, exchange, or extension to resume use $50.00

G. For certification, each document $1.00

H. For making photo copies of office records, maps and documents for public use ..... A reasonable charge as determined by the department.

I. For filing request for extension of time within which to submit proof of beneficial use on a water right permit $50.00

J. For tanks requiring in excess of one (1) hour research or for computerized data provided for public use ..... A reasonable charge as determined by the department.

K. For filing proof of beneficial use of water and requests for water right license examinations, a fee based upon the rate of diversion claimed in the proof of beneficial use:

1. For a quantity of 0.2 c.f.s. or less, or for a storage volume of 20 acre feet or less ..... $50.00 except no fee shall be charged for domestic use for which a permit is not required.

2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s., or for a storage volume greater than 20 acre feet, but not exceeding 100 acre feet $100

3. For a quantity greater than 1.0 c.f.s., or for a storage volume greater than 100 acre feet ..... $100 plus $25.00 for each additional c.f.s. or part thereof, or 100 acre feet or part thereof, over the first 1.0 c.f.s. or 100 acre feet with a maximum fee not to exceed $600.

L. For filing a protest or request to intervene in a protested matter $25.00

M. For filing an application to alter a stream channel pursuant to chapter 38, title 42, Idaho Code:

1. Application for recreational dredge permits by residents of the state $10.00

C. 218 2012

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3. Other applicat
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Approved April 3,

2. Application for recreational dredge permits by nonresidents of the state $30.00
3. Other applications $20.00

N. For receipt of all notices of application within a designated area, a reasonable annual charge as determined by the department.

O. For filing an application to change the point of diversion, place, period or nature of use of water under a vested water right:

1. For a quantity of 0.2 c.f.s. or less, or for a storage volume of 20 acre feet or less $200
2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s., or for a storage volume greater than 20 acre feet but not exceeding 100 acre feet $500
3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 2,000 acre feet $500
plus $80.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.
4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s., or for a storage volume greater than 2,000 acre feet but not exceeding 10,000 acre feet $2,020
plus $40.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.
5. For a quantity greater than 100 c.f.s. but not exceeding 500 c.f.s., or for a storage volume greater than 10,000 acre feet but not exceeding 50,000 acre feet $5,220
plus $20.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 100 c.f.s. or 10,000 acre feet.
6. For a quantity greater than 500 c.f.s., or for a storage volume greater than 50,000 acre feet $13,220
plus $4.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 500 c.f.s. or 50,000 acre feet.
7. For any application to change the nature of use of water under one (1) or more vested water right(s), an additional fee of $250 shall apply.

P. For filing a notice of land application of effluent as required by section 42-201(8), Idaho Code $150

All fees received by the department of water resources under the provisions of this chapter shall be transmitted to the state treasurer for deposit in the water administration account.

Approved April 3, 2012.

2012

LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature Second Regular Session - 2012

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 608

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO WATER RIGHTS; AMENDING SECTION 42-201, IDAHO CODE, TO PROVIDE AN EXCEPTION FROM WATER RIGHTS REQUIREMENTS FOR CERTAIN MUNICIPALITIES, MUNICIPAL PROVIDERS, SEWER DISTRICTS AND REGIONAL PUBLIC ENTITIES OPERATING PUBLICLY OWNED TREATMENT WORKS, TO REQUIRE MUNICIPAL PROVIDERS AND SEWER DISTRICTS TO PROVIDE NOTICE TO THE DEPARTMENT OF WATER RESOURCES IF CERTAIN LAND APPLICATION IS TO TAKE PLACE, TO PROVIDE THAT NOTICE SHALL BE ON FORMS FURNISHED BY THE DEPARTMENT AND TO PROVIDE FOR INCLUSION OF ALL REQUIRED INFORMATION; AND AMENDING SECTION 42-221, IDAHO CODE, TO PROVIDE A FEE FOR FILING NOTICE OF LAND APPLICATION OF EFFLUENT.

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

SECTION 1. That Section 42-201, Idaho Code, be, and the same is hereby amended to read as follows:

42-201. WATER RIGHTS ACQUIRED UNDER CHAPTER -- ILLEGAL DIVERSION AND APPLICATION OF WATER -- USES FOR WHICH WATER RIGHT NOT REQUIRED -- EXCLUSIVE AUTHORITY OF DEPARTMENT. (1) All rights to divert and use the waters of this state for beneficial purposes shall hereafter be acquired and confirmed under the provisions of this chapter and not otherwise. And after the passage of this title all the waters of this state shall be controlled and administered in the manner herein provided. Such appropriation shall be perfected only by means of the application, permit and license procedure as provided in this title; provided, however, that in the event an appropriation has been commenced by diversion and application to beneficial use prior to the effective date of this act it may be perfected under such method of appropriation.

(2) No person shall use the public waters of the state of Idaho except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists.

(3) Notwithstanding the provisions of subsection (2) of this section, water may be diverted from a natural watercourse and used at any time, with or without a water right:

(a) To extinguish an existing fire on private or public lands, structures, or equipment, or to prevent an existing fire from spreading to private or public lands, structures, or equipment endangered by an existing fire;

(b) For forest practices as defined in section 38-1303(1), Idaho Code, and forest dust abatement. Such forest practices and forest dust abatement use is limited to two-tenths (0.2) acre-feet per day from a single watercourse.

(4) For purposes of subsection (3)(b) of this section, no person shall divert water from a canal or other irrigation facility while the water is lawfully diverted, captured, conveyed, used or otherwise physically controlled by the appropriator.

(5) If water is to be diverted from a natural watercourse within a water district, or from a natural watercourse from which an irrigation delivery entity diverts water, a person diverting water pursuant to subsection (3)(b) of this section shall give notice to the watermaster of the intent to divert water for the purposes set forth in said subsection. In the event that the water to be diverted pursuant to subsection (3)(b) of this section is not within a water district, but an irrigation delivery entity diverts water from the same natural watercourse, the required notices shall be given to said irrigation delivery entity. For uses authorized in subsection (3)(a) of this section, notice shall not be required but may be provided when it is reasonable to do so.

(6) A water right holder, who determines that a use set forth in subsection (3) of this section is causing a water right to which the holder is entitled to be deprived of water to which it may be otherwise entitled, may petition the director of the department of water resources to order cessation of or modification of the use to prevent injury to a water right. Upon such a petition, the director shall cause an investigation to be made and may hold hearings or gather information in some other manner. In the event that the director finds that an injury is occurring to a water right, he may require the use to cease or be modified to ensure that no injury to other water rights occurs. A water right holder feeling aggrieved by a decision or action of the director shall be entitled to contest the action of the director pursuant to section 42-1701A(3), Idaho Code.

(7) This title delegates to the department of water resources exclusive authority over the appropriation of the public surface and ground waters of the state. No other agency, department, county, city, municipal corporation or other instrumentality or political subdivision of the state shall enact any rule or ordinance or take any other action to prohibit, restrict or regulate the appropriation of the public surface or ground waters of the state, and any such action shall be null and void.

(8) Notwithstanding the provisions of subsection (2) of this section, a municipality or municipal provider as defined in section 42-202B, Idaho Code, a sewer district as defined in section 42-3202, Idaho Code, or a regional public entity operating a publicly owned treatment works shall not be required to obtain a water right for the collection, treatment, storage or disposal of effluent from a publicly owned treatment works or other system for the collection of sewage or stormwater where such collection, treatment, storage or disposal, including land application, is employed in response to state or federal regulatory requirements. If land application is to take place on lands not identified as a place of use for an existing irrigation water right, the municipal provider or sewer district shall provide the department of water resources with notice describing the location of the land application, or any change therein, prior to land application taking place. The notice shall be upon forms furnished by the department of water resources and shall provide all required information.

SECTION 2. That Section 42-221, Idaho Code, be, and the same is hereby amended to read as follows:

42-221. FEES OF DEPARTMENT. The department of water resources shall collect the following fees which shall constitute a fund to pay for legal advertising, the publication of public notices and for investigations, research, and providing public data as required of the department in the performance of its statutory duties:

A. For filing an application for a permit to appropriate the public waters of this state:

1. For a quantity of 0.2 c.f.s. or less or for a storage volume of 20 acre feet or less $100

2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s. or for a storage volume greater than 20 acre feet but not exceeding 100 acre feet $250

3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 2,000 acre feet ..... $250 plus $40.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.

4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s. or for a storage volume greater than 2,000 acre feet but not exceeding 10,000 acre feet ..... $1,010 plus $20.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.

5. For a quantity greater than 100.0 c.f.s. but not exceeding 500.0 c.f.s., or for a storage volume greater than 10,000 acre feet but not exceeding 50,000 acre feet ..... $2,610 plus $10.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 100 c.f.s. or 10,000 acre feet.

6. For a quantity greater than 500 c.f.s., or for a storage volume greater than 50,000 acre feet .....$6,610 plus $2.00 for each additional 1.0 c.f.s. or part thereof or 100 acre feet or part thereof over the first 500.0 c.f.s. or 50,000 acre feet.

B. For filing an application for an extension of time within which to resume the use of water under a vested water right $100

C. For filing application for amendment of permit $100

D. 1. For filing claim to use right under section 42-243, Idaho Code $100

2. For filing a late claim to use a water right under section 42-243, Idaho Code, where the date filed with the department of water resources or, the postmark if mailed to the department of water resources, is:

i. After June 30, 1998 ..... $250

ii. After June 30, 2005 ..... $500

iii. For every ten (10) years after June 30, 2005, an additional $500

E. For filing an assignment of permit $25.00

F. For readvertising application for permit, change, exchange, or extension to resume use $50.00

G. For certification, each document $1.00

H. For making photo copies of office records, maps and documents for public use ..... A reasonable charge as determined by the department.

I. For filing request for extension of time within which to submit proof of beneficial use on a water right permit $50.00

J. For tasks requiring in excess of one (1) hour research or for computerized data provided for public use ..... A reasonable charge as determined by the department.

K. For filing proof of beneficial use of water and requests for water right license examinations, a fee based upon the rate of diversion claimed in the proof of beneficial use:

1. For a quantity of 0.2 c.f.s. or less, or for a storage volume of 20 acre feet or less ..... $50.00 except no fee shall be charged for domestic use for which a permit is not required.

2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s., or for a storage volume greater than 20 acre feet, but not exceeding 100 acre feet $100

3. For a quantity greater than 1.0 c.f.s., or for a storage volume greater than 100 acre feet ..... $100 plus $25.00 for each additional c.f.s. or part thereof, or 100 acre feet or part thereof, over the first 1.0 c.f.s. or 100 acre feet with a maximum fee not to exceed $600.

L. For filing a protest or request to intervene in a protested matter $25.00

M. For filing an application to alter a stream channel pursuant to chapter 38, title 42, Idaho Code:

1. Application for recreational dredge permits by residents of the state $10.00

2. Application for recreational dredge permits by nonresidents of the state $30.00

3. Other applications $20.00

N. For receipt of all notices of application within a designated area, a reasonable annual charge as determined by the department.

O. For filing an application to change the point of diversion, place, period or nature of use of water under a vested water right:

1. For a quantity of 0.2 c.f.s. or less, or for a storage volume of 20 acre feet or less $200

2. For a quantity greater than 0.2 c.f.s. but not exceeding 1.0 c.f.s., or for a storage volume greater than 20 acre feet but not exceeding 100 acre feet $500

3. For a quantity greater than 1.0 c.f.s. but not exceeding 20 c.f.s., or for a storage volume greater than 100 acre feet but not exceeding 2,000 acre feet .....$500 plus $80.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 1.0 c.f.s. or 100 acre feet.

4. For a quantity greater than 20.0 c.f.s. but not exceeding 100 c.f.s., or for a storage volume greater than 2,000 acre feet but not exceeding 10,000 acre feet .....$2,020 plus $40.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 20.0 c.f.s. or 2,000 acre feet.

5. For a quantity greater than 100 c.f.s. but not exceeding 500 c.f.s., or for a storage volume greater than 10,000 acre feet but not exceeding 50,000 acre feet ..... $5,220 plus $20.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 100 c.f.s. or 10,000 acre feet.

6. For a quantity greater than 500 c.f.s., or for a storage volume greater than 50,000 acre feet ..... $13,220 plus $4.00 for each additional c.f.s. or part thereof or 100 acre feet or part thereof over the first 500 c.f.s. or 50,000 acre feet.

7. For any application to change the nature of use of water under one (1) or more vested water right(s), an additional fee of $250 shall apply.

P. For filing a notice of land application of effluent as required by section 42-201(8), Idaho Code $150

All fees received by the department of water resources under the provisions of this chapter shall be transmitted to the state treasurer for deposit in the water administration account.

2012

STATEMENT OF PURPOSE

RS21325

The purpose of this legislation is to clarify that a separate water right is not required for the collection, treatment storage or disposal storage, including land application, of the effluent from publicly owned treatment works. Effluent is water that has already been diverted under an existing right and has not been returned to the waters of the state. If the land application is to be on land for which there is not already identified a place of use for an existing water right, notice of the place of use will be provided to the department of water resources to allow the department to have complete records of where the water is being used.

FISCAL NOTE

This bill, if passed, will have a positive fiscal impact to both the state and to local jurisdictions. The local jurisdictions will no longer incur the costs associated with the application process and the filing fee for a new water right application for water that has previously been appropriated. The department of water resources will no longer incur the expense in personnel time, and other overhead costs, associated with processing of those water right applications.

Contact:
Name: Representative John A. Stevenson
Phone: (208) 332-1000
Ken Harward
Association of Idaho Cities
(208) 344-8594

Statement of Purpose / Fiscal Note **H0608**

H0604 .....by EDUCATION

EDUCATION - Amends existing law relating to education to revise provisions relating to the adoption of curricular materials, to provide for certain fees, to provide that the board shall, by rule, determine the process by which the department of Education reviews and approves online courses and the fees necessary to defray the department's cost of such review and approval process.

02/28 House intro - 1st rdg - to printing
02/29 Rpt prt - to Educ
03/02 Rpt out - rec d/p - to 2nd rdg
03/05 2nd rdg - to 3rd rdg
03/06 3rd rdg - **PASSED - 65-0-5**
AYES -- Andrus, Barbieri, Barrett, Batt, Bayer, Bedke, Bell, Bilbao, Black, Block(Block), Bolz, Boyle, Buckner-Webb, Burgoyne, Chadderdon, Chew, Collins, Crane, Cronin, DeMordaunt, Ellsworth, Eskridge, Gibbs, Guthrie, Hagedorn, Hart, Hartgen, Harwood(DeVries), Henderson, Higgins, Jaquet, Killen, King, Lacey, Loertscher, Luker, Marriott, McGeachin, McMillan, Moyle, Nesset, Nielsen, Nonini, Palmer, Patrick, Pence, Perry, Raybould, Ringo, Roberts, Rusche, Schaefer, Shirley, Sims, Smith(30), Smith(24), Stevenson, Thayn, Trail, Vander Woude, Wills, Wood(27), Wood(35), Mr. Speaker
NAYS -- None
Absent and excused -- Anderson, Bateman, Lake, Shepherd, Simpson
Floor Sponsor - Pence
Title apvd - to Senate
03/07 Senate intro - 1st rdg - to Educ
03/14 Rpt out - rec d/p - to 2nd rdg
03/15 2nd rdg - to 3rd rdg
03/20 3rd rdg - **PASSED - 33-0-2**
AYES -- Andreason, Bair, Bilyeu, Bock, Broadsword, Cameron, Corder, Darrington, Davis, Fulcher, Goedde, Hammond, Heider, Hill, Johnson, Keough, LeFavour, Lodge, Malepeai, McKague, McKenzie, Mortimer, Nuxoll, Rice, Schmidt, Siddoway, Smyser, Stennett, Tippets, Toryanski, Vick, Werk, Winder
NAYS -- None
Absent and excused -- Brackett, Pearce
Floor Sponsor - Goedde
Title apvd - to House
03/21 To enrol
03/22 Rpt enrol - Sp signed
Pres signed
03/23 To Governor
03/26 Rpt delivered to Governor on 03/23
03/29 Governor signed
Session Law Chapter 189
Effective: 07/01/12

H0605 .....by EDUCATION

EDUCATION - Amends existing law relating to education to revise provisions relating to a fee for a criminal history check; to provide that the school districts shall provide the State Department of Education certain electronic mail addresses of all certificated employees and to provide for a notification.

02/28 House intro - 1st rdg - to printing
02/29 Rpt prt - to Educ
03/02 Rpt out - rec d/p - to 2nd rdg
03/05 2nd rdg - to 3rd rdg
Ret'd to Educ

H0606aa .....by REVENUE AND TAXATION

AGRICULTURE - TAX CREDIT - Adds to existing law to provide the agricultural business investment tax credit against state income tax.

02/29 House intro - 1st rdg - to printing
03/01 Rpt prt - to Rev/Tax
03/12 Rpt out - to Gen Ord
03/19 Rpt out amen - to engros
Rpt engros - 1st rdg - to 2nd rdg as amen
03/20 2nd rdg - to 3rd rdg as amen
Rls susp - **PASSED - 62-6-2**
AYES -- Anderson, Andrus, Bateman, Batt, Bayer, Bedke, Bell, Bilbao, Black, Block(Block), Bolz, Boyle, Buckner-Webb, Burgoyne, Chadderdon, Chew, Collins, Crane, Cronin, DeMordaunt, Ellsworth, Eskridge, Gibbs, Guthrie, Hagedorn, Hart, Hartgen, Henderson, Jaquet, Killen, King, Lacey, Loertscher, McGeachin, McMillan, Moyle, Nesset, Nielsen, Nonini, Palmer, Patrick, Pence, Perry, Raybould, Ringo, Roberts, Rusche, Schaefer, Shepherd, Shirley, Simpson, Smith(30), Smith(24), Stevenson, Thayn, Thompson, Trail, Vander Woude, Wills, Wood (27), Wood(35), Mr. Speaker
NAYS -- Barbieri, Barrett, Harwood, Luker, Marriott, Sims
Absent and excused -- Higgins, Lake
Floor Sponsors - Lacey & Pence
Title apvd - to Senate
03/22 Senate intro - 1st rdg - to Loc Gov

H0607 .....by STATE AFFAIRS

PUBLIC EMPLOYEE RETIREMENT SYSTEM - Amends existing law relating to the Public Employee Retirement System to revise provisions relating to those that do not meet the definition of "employee."

02/29 House intro - 1st rdg - to printing
03/01 Rpt prt - to Com/ReRes
03/08 Rpt out - rec d/p - to 2nd rdg
03/09 2nd rdg - to 3rd rdg
Rls susp - **PASSED - 65-0-5**
AYES -- Andrus, Barbieri, Barrett, Bateman, Batt, Bayer, Bell, Bilbao, Black, Block(Block), Bolz, Boyle, Buckner-Webb, Burgoyne, Chadderdon, Chew, Collins, Crane, Cronin, DeMordaunt, Ellsworth, Eskridge, Gibbs, Guthrie, Hagedorn, Hart, Hartgen, Harwood(DeVries), Henderson, Higgins, Jaquet, Killen, King, Lacey, Lake, Loertscher, Luker, Marriott, McMillan, Moyle, Nesset, Nielsen, Nonini, Palmer, Patrick, Pence, Perry, Raybould, Ringo, Roberts, Rusche, Schaefer, Shepherd, Shirley, Simpson, Sims, Smith(30), Smith(24), Stevenson, Thayn, Trail, Vander Woude, Wills, Wood(27), Wood (35)
NAYS -- None
Absent and excused -- Anderson, Bedke, McGeachin, Thompson, Mr. Speaker
Floor Sponsor - Stevenson
Title apvd - to Senate
03/12 Senate intro - 1st rdg - to Com/ReRes
03/16 Rpt out - rec d/p - to 2nd rdg
03/19 2nd rdg - to 3rd rdg
03/21 3rd rdg - **PASSED - 35-0-0**
AYES -- Andreason, Bair, Bilyeu, Bock, Brackett, Broadsword, Cameron, Corder, Darrington, Davis, Fulcher, Goedde, Hammond, Heider, Hill, Johnson, Keough, LeFavour, Lodge, Malepeai, McKague, McKenzie, Mortimer, Nuxoll, Pearce, Rice, Schmidt, Siddoway, Smyser, Stennett, Tippets, Toryanski, Vick, Werk, Winder
NAYS -- None
Absent and excused -- None
Floor Sponsor - Tippets
Title apvd - to House
03/22 To enrol
03/23 Rpt enrol - Sp signed
03/26 Pres signed
To Governor
03/27 Rpt delivered to Governor on 03/26
04/03 Governor signed
Session Law Chapter 217
Effective: 04/03/12

H0608 .....by STATE AFFAIRS

WATER RIGHTS - Amends existing law relating to water rights to provide an exception from water rights requirements for certain municipalities, municipal providers, sewer districts and regional public entities operating publicly owned treatment works, to require municipal providers and sewer districts to provide notice to the Department of Water Resources if certain land application is to take place, to provide that notice shall be on forms furnished by the department, to provide for inclusion of all required information; and to provide a fee for filing notice of land application of effluent.

02/29 House intro - 1st rdg - to printing
03/01 Rpt prt - to Res/Con
03/06 Rpt out - rec d/p - to 2nd rdg
03/07 2nd rdg - to 3rd rdg
03/08 3rd rdg - **PASSED - 62-0-8**
AYES -- Anderson, Andrus, Bateman, Batt, Bedke, Bell, Bilbao, Black, Bolz, Boyle, Buckner-Webb, Burgoyne, Chadderdon, Chew, Collins, Crane, Cronin, DeMordaunt, Ellsworth, Eskridge, Gibbs, Guthrie, Hagedorn, Hart, Hartgen, Harwood(DeVries),

2012 FINAL DAILY DATA

Henderson, Higgins, King, Lacey, Loertscher, Luker, Marriott, McGeachin, McMillan, Moyle, Nesset, Nielsen, Nonini, Palmer, Patrick, Pence, Perry, Raybould, Ringo, Roberts, Rusche, Schaefer, Shepherd, Shirley, Simpson, Sims, Smith(30), Smith (24), Stevenson, Thayn, Thompson, Trail, Vander Woude, Wills, Wood(27), Mr. Speaker
NAYS -- None
Absent and excused -- Barbieri, Barrett, Bayer, Block(Block), Jaquet, Killen, Lake, Wood(35)
Floor Sponsor - Stevenson
Title apvd - to Senate

03/09 Senate intro - 1st rdg - to Res/Env
03/19 Rpt out - rec d/p - to 2nd rdg
03/20 2nd rdg - to 3rd rdg
03/22 3rd rdg - **PASSED - 33-0-2**
AYES -- Andreason, Bair, Bilyeu, Bock, Brackett, Broadsword, Cameron, Corder, Darrington, Davis, Fulcher, Goedde, Heider, Hill, Johnson, Keough, LeFavour, Lodge, Malepeai, McKague, McKenzie, Nuxoll, Pearce, Rice, Schmidt, Siddoway, Smyser, Stennett, Tippets, Toryanski, Vick, Werk, Winder
NAYS -- None
Absent and excused -- Hammond, Mortimer
Floor Sponsor - Heider
Title apvd - to House
03/23 To enrol
Rpt enrol - Sp signed
03/26 Pres signed
To Governor
03/27 Rpt delivered to Governor on 03/26
04/03 Governor signed
Session Law Chapter 218
Effective: 07/01/12

H0609 .....by STATE AFFAIRS
PUBLIC ASSISTANCE LAW - Amends existing law relating to Public Assistance Law to revise provisions relating to dental services for certain Medicaid participants and to revise provisions relating to the rulemaking authority of the Department of Health and Welfare.

02/29 House intro - 1st rdg - to printing
03/01 Rpt prt - to Health/Wel
03/07 Rpt out - rec d/p - to 2nd rdg
03/08 2nd rdg - to 3rd rdg
Rls susp - **PASSED - 65-0-5**
AYES -- Anderson, Andrus, Barbieri, Barrett, Bateman, Batt, Bayer, Bedke, Bell, Bilbao, Black, Bolz, Boyle, Buckner-Webb, Burgoyne, Chadderdon, Chew, Collins, Crane, Cronin, DeMordaunt, Ellsworth, Eskridge, Gibbs, Guthrie, Hagedorn, Hart, Hartgen, Harwood(DeVries), Henderson, Higgins, King, Lacey, Lake, Loertscher, Luker, Marriott, McGeachin, McMillan, Moyle, Nesset, Nielsen, Nonini, Palmer, Patrick, Pence, Perry, Raybould, Ringo, Roberts, Rusche, Schaefer, Shepherd, Shirley, Sims, Smith(30), Smith(24), Stevenson, Thayn, Thompson, Trail, Vander Woude, Wood(27), Wood(35), Mr. Speaker
NAYS -- None
Absent and excused -- Block(Block), Jaquet, Killen, Simpson, Wills
Floor Sponsor - McGeachin
Title apvd - to Senate
03/09 Senate intro - 1st rdg - to Health/Wel
03/15 Rpt out - rec d/p - to 2nd rdg
03/16 2nd rdg - to 3rd rdg
03/20 3rd rdg - **PASSED - 35-0-0**
AYES -- Andreason, Bair, Bilyeu, Bock, Brackett, Broadsword, Cameron, Corder, Darrington, Davis, Fulcher, Goedde, Hammond, Heider, Hill, Johnson, Keough, LeFavour, Lodge, Malepeai, McKague, McKenzie, Mortimer, Nuxoll, Pearce, Rice, Schmidt, Siddoway, Smyser, Stennett, Tippets, Toryanski, Vick, Werk, Winder
NAYS -- None
Absent and excused -- None
Floor Sponsor - Lodge
Title apvd - to House
03/21 To enrol
03/22 Rpt enrol - Sp signed
Pres signed
03/23 To Governor
03/26 Rpt delivered to Governor on 03/23
03/29 Governor signed
Session Law Chapter 190
Effective: 07/01/12

H0610 .....by WAYS AND MEANS
FIRE PROTECTION DISTRICTS - Amends existing law relating to fire protection districts to establish provisions relating to the deannexation of certain territory from a fire protection district.

02/29 House intro - 1st rdg - to printing
03/01 Rpt prt - to Loc Gov

H0611 .....by WAYS AND MEANS
LIVESTOCK LIENS - Amends existing law relating to livestock liens to revise provisions relating to the sale of certain livestock at public auction.

02/29 House intro - 1st rdg - to printing
03/01 Rpt prt - to Agric Aff
03/09 Rpt out - rec d/p - to 2nd rdg
03/12 2nd rdg - to 3rd rdg
03/13 3rd rdg - **PASSED - 62-0-8**
AYES -- Anderson, Andrus, Barbieri, Barrett, Bateman, Bayer, Bedke, Bell, Block(Block), Bolz, Boyle, Buckner-Webb, Burgoyne, Chadderdon, Chew, Collins, Cronin, DeMordaunt, Ellsworth, Eskridge, Gibbs, Guthrie, Hagedorn, Hart, Hartgen, Harwood, Henderson, Jaquet, Killen, King, Lacey, Lake, Loertscher, Luker, Marriott, McMillan(McMillan), Moyle, Nesset, Nielsen, Nonini, Patrick, Pence, Perry, Raybould, Ringo, Roberts, Rusche, Schaefer, Shepherd, Simpson, Sims, Smith(30), Smith(24), Stevenson, Thayn, Thompson, Trail, Vander Woude, Wills, Wood(27), Wood(35), Mr. Speaker
NAYS -- None
Absent and excused -- Batt, Bilbao, Black, Crane, Higgins, McGeachin, Palmer, Shirley
Floor Sponsor - Boyle
Title apvd - to Senate
03/14 Senate intro - 1st rdg - to Agric Aff
03/22 Rpt out - rec d/p - to 2nd rdg
03/23 2nd rdg - to 3rd rdg
03/27 3rd rdg - **PASSED - 33-0-2**
AYES -- Andreason, Bair, Bilyeu, Bock, Broadsword, Cameron, Corder, Darrington, Davis, Fulcher, Goedde, Hammond, Heider, Hill, Johnson, Keough, LeFavour, Lodge, Malepeai, McKague, Mortimer, Nuxoll, Pearce, Rice, Schmidt, Siddoway, Smyser, Stennett, Tippets, Toryanski, Vick, Werk, Winder
NAYS -- None
Absent and excused -- Brackett, McKenzie
Floor Sponsor - Smyser
Title apvd - to House
03/28 To enrol
Rpt enrol - Sp signed
03/29 Pres signed
To Governor
Rpt delivered to Governor on 03/29
Law without signature
Session Law Chapter 341
Effective: 07/01/12

H0612 .....by WAYS AND MEANS
ENDOWMENT LANDS - Amends existing law relating to endowment lands to revise the powers and duties of the State Land Board to provide requirements associated with the exchange of endowment lands or the use of proceeds from the sale at public auction of endowment lands.

02/29 House intro - 1st rdg - to printing
03/01 Rpt prt - to Res/Con

H0613 .....by WAYS AND MEANS
IDAHO TRAVEL AND CONVENTION INDUSTRY COUNCIL - Amends existing law relating to the Idaho Travel and Convention Industry Council to revise provisions relating to the term of office and removal of members of the Idaho Travel and Convention Industry Council.

02/29 House intro - 1st rdg - to printing
03/01 Rpt prt - to St Aff
03/13 Rpt out - rec d/p - to 2nd rdg
03/14 2nd rdg - to 3rd rdg
Rls susp - **PASSED - 68-0-2**
AYES -- Anderson, Andrus, Barbieri, Barrett, Bateman, Batt, Bayer, Bedke, Bell, Bilbao (Reynoldson), Black, Block(Block), Bolz, Boyle, Buckner-Webb, Burgoyne, Chadderdon, Chew, Collins, Crane, Cronin, DeMordaunt, Ellsworth, Eskridge, Gibbs, Guthrie, Hagedorn, Hart, Hartgen, Harwood, Henderson, Higgins, Jaquet, Killen, King, Lacey,

AGENDA

HOUSE STATE AFFAIRS COMMITTEE

8:30 A.M.
Room EW40
Tuesday, February 28, 2012

SUBJECT	DESCRIPTION	PRESENTER
RS 21366	Public Assistance Law	Rep. McGeachin
RS 21324	PERSI / Employee Defined	Rep. Stevenson
RS 21325	Water Rights	Rep. Stevenson
H 478	Sale of Liquor by the Drink	Bill Roden
HJM 11	Amendments Convention	Rep. Nielsen

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Loertscher
Vice Chairman Crane
Rep Stevenson
Rep Black
Rep Anderson(Keough)
Rep Andrus
Rep Bilbao
Rep Luker
Rep Palmer
Rep Simpson
Rep Guthrie
Rep Henderson
Rep McGeachin
Rep Sims
Rep Batt
Rep Smith(30)
Rep King
Rep Higgins
Rep Buckner-Webb

COMMITTEE SECRETARY

Lissa Cochrane
Room: EW46
Phone: (208) 332-1145
email: lcochrane@house.idaho.gov

MINUTES

HOUSE STATE AFFAIRS COMMITTEE

DATE:	Tuesday, February 28, 2012
TIME:	8:30 A.M.
PLACE:	Room EW40
MEMBERS:	Chairman Loertscher, Vice Chairman Crane, Representative(s) Stevenson, Black, Anderson (Keough), Andrus, Bilbao, Luker, Palmer, Simpson, Guthrie, Henderson, McGeachin, Sims, Batt, Smith(30), King, Higgins, Buckner-Webb
ABSENT/ EXCUSED:	Representative(s) Henderson, Buckner-Webb
GUESTS:	Curtis Kemp, Ketchum City Council; Russell Westerberg, Hagadone Hospitality; Elizabeth Criner, Idaho State Dental Association (ISDA); Bill Roden, Knob Hill Inn; Brett Matteson, Knob Hill Inn; Sarah Fuhriman, Roden Law Office; Tony Smith, Benton Ellis; Kerry Ellen Elliott, Idaho Association of Counties; Ken Burgess, Idaho Licensed Beverage Association.

Chairman Loertscher called the meeting to order at 8:35 a.m.

Rep. Batt made a motion to approve the minutes of February 21, 2012 as written. **Motion carried by voice vote.**

Rep. Higgins made a motion to approve the minutes of February 17 and 20, 2012 as written. **Motion carried by voice vote.**

RS 21366: **Rep. McGeachin** presented **RS 21366**, proposed legislation to restore cuts to Medicaid made during the 2011 Legislation Session in **H 260.** Rep. McGeachin explained that **RS 21366** will restore $1.5 million to the State's General Fund. The three programs targeted for restoration include preventive dental services, duplicative skill treatment for individuals with mental health and developmental disabilities, and removal of the individualized tiered budgets for adults.

MOTION: **Rep. Bilbao** made a motion to introduce **RS 21366. Motion carried by voice vote.**

RS 21324: **Rep. Stevenson** presented **RS 21324**, proposed legislation to replace **H 445.** Rep. Stevenson stated that **H 445** inadvertently included school bus drivers and librarians in the revised definition of "employee". Rep. Stevenson explained that **RS 21324** came about because cemetery districts requested exemptions for their employees, but PERSI stated they did not qualify. **RS 21324** will provide an exemption for cemetery districts and mosquito abatement districts. Currently, Idaho Code requires certification that the position is seasonal and affected by weather and the growing season. Cities such as Rexburg had seasonal employees working on projects outside of the growing season and they were not able to exempt them. **RS 21324** resolves this and removes this requirement.

MOTION: **Rep. Smith** made a motion to introduce **RS 21324. Motion carried by voice vote.**

RS 21325: **Rep. Stevenson** presented **RS 21325**, proposed legislation to clarify that a separate water right is not required for the collection, treatment storage or disposal storage, including land application, of the effluent from publicly owned treatment works. Rep. Stevenson stated this legislation was brought by the Association of Cities due to a situation that arose in McCall. They were combining wastewater from the city with a sewer district and realized each individual entity did not require a permit, but when combined, there was ambiguity. **RS 21325** makes it clear that when you combine these two sources, if a land application is to take place, this will not require a permit. There will be a filing fee for a notice of land application of effluent.

MOTION: **Rep. Higgins** made a motion to introduce **RS 21325. Motion carried by voice vote.**

H 478: **Bill Roden**, representing Knob Hill Inn of Ketchum, presented **H 478**, legislation to authorize the issuance of a state retail license to resort city inns situated in a resort city with a population not in excess of 10,000 for the retail sale of liquor-by-the-drink. Mr. Roden explained that ten (10) resort cities such as Sandpoint, Riggins, McCall, Lava Hot Springs, Ketchum and others have local-option taxes that allow an occupancy tax on lodging accommodations, and a tax upon liquor-by-the-drink, wine and beer sold at retail for consumption on the licensed premises. **H 478** will allow for the issuance of a license for liquor-by-the-drink for resort inns subject to the approval of the city council and the mayor. The resort must have a minimum of 15 guest rooms, a number lessened to accommodate the smaller cities. The license is not transferable and cannot be sold to other locations unlike other liquor licenses in Idaho. Mr. Roden noted that **H 478** will allow resorts to offer products to attract guests and encourage further investment in these kinds of facilities.

In response to questions, **Mr. Roden** explained that while current licenses are transferable and have been sold in excess of $200,000 or more, **H 478** provides for a liquor-by-the-drink license that is not transferable. A person would have to buy the business in its entirety. Mr. Roden noted that these resort inns, with a minimum requirement of 15 guest rooms, provide an attraction for the area and jobs for the local economy. It gives people a reason to visit the area and **H 478** may attract more investments in the community. While it is not the intent of **H 478** to have resorts sell their more expensive license to obtain a non-transferable license; Mr. Roden acknowledged it is possible. Mr. Roden stated that **H 478** will not take funds away from the General Fund. The State will receive funds from annual license renewals.

Chairman Loertscher turned the gavel over to **Vice-Chairman Crane.**

Rep. Jaquet spoke **in support of H 478.** She acknowledged that the market rate for liquor licenses has been in excess of $300,000. Rep Jaquet noted that under **H 478**, the mayor and the city council would have to agree to grant the license and the city has to charge the occupancy and liquor-by-the-drink tax.

Curtis Kemp, Ketchum City Council, testified **in support of H 478** at the request of **Mayor Hall**. Mr. Kemp stated that **H 478** would allow a small hotel to be successful in a competitive environment. **H 478** is economic development.

In response to questions, **Mr. Kemp** advised that it is possible that it might be effective to place an upper limit on the number of guest rooms a resort city inn can have, but he would be grateful to have a "Holiday Inn" or another large hotel. Ketchum has projects in the pipeline, but they haven't broken ground as of yet. They are looking for the smallest improvement.

Brett Matteson, Columbia Hospitality for the Knob Hill Inn, testified **in support of H 478.** Mr. Matteson noted the partners of Knob Hill Inn bought the failing property at an auction. Mr. Matteson stated that to be a world-class destination, a resort needs all the products and services that other properties have to offer. **H 478** would generate more profit for the owners, but it would also bring more jobs and improvements for the community. It might fuel other developments.

In response to questions, **Mr. Matteson** stated that **H 478** would provide an economic benefit. They would be able to compete with other destinations and spend more money on marketing.

Ken Burgess, Idaho Licensed Beverage Association, testified **in support of H**

AGENDA

HOUSE RESOURCES & CONSERVATION COMMITTEE

1:30 p.m. or Upon Adjournment
Room EW40
Monday, March 05, 2012

SUBJECT	DESCRIPTION	PRESENTER
	Fire Protection and Timber Harvest	Mark Woods, SITPA, Fire Warden Howard Weeks, CPTPA, Fire Warden
H 608	Water rights	Ken Harward, Assoc. of Idaho Cities
H 542	Motorized vehicles, hunting from	Rep. Boyle

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Stevenson
Vice Chairman Shepherd
Rep Wood(35)
Rep Barrett
Rep Moyle
Rep Eskridge
Rep Raybould
Rep Bedke
Rep Andrus
Rep Wood(27)
Rep Boyle
Rep Hagedorn
Rep Harwood
Rep Vander Woude
Rep Gibbs
Rep Pence
Rep Higgins
Rep Lacey

COMMITTEE SECRETARY

Susan Werlinger
Room: EW62
Phone: (208) 332-1136
email: swerlinger@house.idaho.gov

MINUTES

HOUSE RESOURCES & CONSERVATION COMMITTEE

DATE: Monday, March 05, 2012

TIME: 1:30 p.m. or Upon Adjournment

PLACE: Room EW40

MEMBERS: Chairman Stevenson, Vice Chairman Shepherd, Representative(s) Wood(35), Barrett, Moyle, Eskridge, Raybould, Bedke, Andrus, Wood(27), Boyle, Hagedorn, Harwood (DeVries), Vander Woude, Gibbs, Pence, Higgins, Lacey

ABSENT/ EXCUSED: Representatives Moyle, Gibbs and Lacey

GUESTS: Mark Woods, SITPA; Lindley Kirkpatrick, Christopher Meyer, City of McCall; Sandra Mitchell, IRC; Jeff Peppersack, IDWR; John Homan, AG IDWR; Craig Mickelson, Joie McGarvin, Russell Westerberg, ICOA; Marie Kellner, Johathan Oppenheimer, Idaho Conservation League, Benjamin Davenport, Risch Pisca; Andy Brunelle, US Forest Services, Jim Unsworth, IDFG; Elizabeth Criner, NWFPA

A quorum being present, **Chairman Stevenson** called the meeting to order at 2:52 p.m.

MOTION: **Rep. Raybould** made a motion to approve the minutes of Wednesday, February 29, 2012. **Motion carried by voice vote.**

Mark Woods, Southern Idaho Timber Protective Association (SITPA), said the Timber Protection Association's history is long in Idaho. He said cooperative fire protection is still in use today and is the core of the Association. He said anyone owning forest lands can become a member of the Association. It is voluntary and open to all forest landowners. He reviewed the three methods that private forest landowners can choose to meet Idaho's Association membership requirements. He reviewed the membership rates. He stated the Associations are organized as private non-profit organizations. He gave an overview of the organization. He explained his duties as forest warden. He said they have a history that is long and efficient and cost effective. He reviewed the number of fires in the districts in the last 20 years. He said the concept of cooperative fire management is the key to success. He said their mission is the preservation, perpetuation and protection of the forest and of the forest lands of Idaho. He thanked the legislators for the opportunity to speak to them.

Howard Weeks, Clearwater-Potlatch Timber Protective Association, thanked the members for the opportunity to share their presentation. He said in the 1900's fire protection associations began to be established. In 1925 the Idaho Forestry Act was established and fire prevention codes were added. He reviewed the Association's vision, concerns and efforts through the years. He reviewed the first decade of fire operation and said through the next three decades there was a decline. He said they now maintain a minimum level of fire losses. Mr. Weeks reviewed suppression capabilities and what they have to work with to protect the forest. He explained their work on the health of forests using prescribed fires, site preparation, and hazard reduction. He explained their concerns for Airsheds and smoke dispersion. He said they have a plan when doing prescribed burning to minimize the impact to the public. He reviewed some numbers for fire preparedness funding.

→ **H 608:** Ken Harward, Idaho Association of Cities, yielded to **Mr. Lindley Kirkpatrick** to explain the legislation.

Lindley Kirkpatrick, City of McCall, spoke in **support of H 608**. He said this bill will clarify that cities and sewer districts are not required to obtain a water right for distribution of waste water on land. He said they worked with the Department of Water Resources and the Association of Cities and both support this measure. He said this doesn't change anything about DEQ's reuse tools, it only allows cities to use wastewater on growing crops. He said McCall has a water treatment plant and a wastewater treatment plant. He said Water Resources has assured the city they can reuse waste water when they have a municipal water right. He said it is not clear that the city can reuse waste water from a plant that does not have a municipal water right. Mr. Kirkpatrick said McCall contracts from an irrigation district that does not have a water right. He said the bill is crafted narrowly. He reviewed the new language in the bill.

Christopher Meyer, Givens Pursley, representing the City of McCall, reviewed the legislation. He said it is a simple measure of whether cities must first obtain a water right for land application of waste water reuse. He said they approached Water Resources on the issue and there were a number of circumstances where there is a question of whether it is lawful or not. He said getting a water right could be a lengthy and contentious process. He said this measure would answer a simple question. He said they have worked closely with the Dept. of Water Resources and with the Idaho Water Users Association. He said they do not oppose this bill.

In response to Committee questions, **Mr. Meyer** said this legislation would not authorize or prohibit the city from having storm water run off processed through the wastewater treatment plant and discharge back into a canal. He also said this legislation does not apply any new authorities to cities for depositing affluent on growing crops. He said those situations are covered by DEQ rules and are separate from this legislation.

MOTION: **Rep. Raybould** made a motion to send **H 608** to the floor with a **DO PASS** recommendation. **Motion carried by voice vote. Rep. Stevenson** will sponsor the bill on the floor.

H 542: **Craig Mickelson**, ICOA, said he represents game wardens around the state. He said he strongly opposes **H 542**. He said the bill would reduce the ability for conservation offices to do their job. He reviewed the adverse effects of the bill.

Johathan Oppenheimer, Idaho Conservation League, said this bill removes the Fish and Game's ability to manage wildlife. He said it is appropriate for the Department to regulate hunters and those not pursuing game are not effected by the regulation. He said this is more about fair game hunting than it is about access. He encourage the Committee to withdraw the bill and work with Fish and Game on this issue.

Angela Rossmann, Idaho Wildlife Federation, said their issues have been addressed and they support the Fish and Game Commission and their ability to regulate hunting in certain units.

Benjamin Davenport, Idaho Outfitters and Guides Assoc., said this is not an anti-OHV issue. He said the issue has been more polarized since the last Session. He said the Association still has some concerns that this may potentially force the Fish and Game to use other tools to manage game. He said there is concern with the potential of a reduction in hunting opportunity.

HOUSE RESOURCES AND CONSERVATION COMMITTEE

Sign-In Sheet

Date: March 5, 2012

PLEASE PRINT Name	Phone	Representing Company/Organization	Legislation Interested In	Wish To Testify	Pro	Con
MARK WOODS	208-634-2268	SITPA	Presenter			
Lindley Kirkpatrick	208-634-1003	City of McCall	HB608	Y	Y	
Christopher M. Meyer	208-388-1236	City of McCall	HB608	Y	Y	
Sandra Mitchell	208-424-3870	IRC	542	Y	Y	
JEFF Peppersack	208-287-4948	IDWR	HB608	N		
JOHN HOMAN	208-287-4812	Atty Gen - represent IDWR	HB608	N		
Craig Nickelson	208-860-8757	ICOA	HB542	Yes		X
Joie McGarvin		ICOA	542	NO		X
Russell Westerberg		ICOA	HB542	NO		X
Marie Callaway Kellner	423.75-6966	Idaho Conservation League	H608	No		
Jonathan Oppenheimer	208-345-6442 ext. 26	Idaho Conservation League	HB 542	Yes		X
Benjamin Davenport		Risch Pisca	H542	yes		X
Andy Brunelle		US Forest Service	H542	No		
Jim Unsworth		IDFG	542	No		

HOUSE RESOURCES AND CONSERVATION COMMITTEE

Sign-In Sheet

Date: March 5, 2012

PLEASE PRINT Name	Phone	Representing Company/Organization	Legislation Interested In	Wish To Testify	Pro	Con
Elizabeth Criner	385-7070	NWFPA	HB608	No		

House Bill 608
March 5, 2012

Chairman Stevenson and members of the Committee,

My name is Lindley Kirkpatrick and I am the McCall City Manager.

I am here today to testify in support of House Bill 608.

The purpose of this legislation is to clarify that cities and sewer districts are not required to obtain a water right for the treatment – and especially disposal – of wastewater effluent.

We have worked closely with the Department of Water Resources, the Department of Environmental Quality, and the Idaho Water Users Association to develop the language in the bill before you today. We also worked with the Association of Idaho Cities, and this bill has their support. Ken Harward and Nancy Stricklin are here today on behalf of AIC. I am advised that the Department of Water Resources also supports this proposal. I believe that Shelly Keen and John Homan of IDWR are here today to express the Department's support and answer any questions you may have from the Department's perspective. Finally, the City's special water counsel, Chris Meyer, is also here and will say a few words about the measure.

I want to be clear up front: this doesn't change anything about DEQ's reuse rules. It only addresses the authority to use treated effluent to grow crops or for another beneficial use.

The issue here is the ability to land apply treated effluent that does not originate from a municipal water right. Like many cities, McCall has a water treatment plant and a wastewater treatment plant. We have a municipal water right for the water which we treat and deliver to our residents. We eventually collect and treat that water again, and dispose of the wastewater effluent by land applying it.

We have received assurances from IDWR that cities and sewer district's can land apply their own effluent – water that comes from their own water right. What is not clearly authorized is the land application of treated effluent when there isn't a municipal water right for the original, source drinking water. An example of that situation is in McCall, where we treat wastewater from a sewer district, located outside the city limits. That sewer district does not have a water right. They collect wastewater which was initially diverted by numerous private landowners each operating their own domestic wells or other water sources. They deliver that wastewater to us, we treat it, and land apply it. It is that land application which is of concern here.

We've tried to craft this proposal narrowly to apply to only cities, sewer districts and other publicly-owned treatment works. We don't want to get tangled up with any industrial users or private environmental remediation efforts.

There are already specific exemptions in Idaho Law – at 42-201. For example, you don't need a water right for fire fighting activities and for forest management practices. This proposal simply adds a similar exemption for the land application of treated wastewater by cities and sewer districts. The new language appears as a new section 8, and can be seen on page two of the Bill. Additionally, 42-221 is also amended to require that notice be provided to the Department of Water Resources and establish a fee of $150. We worked with the Department closely to come up with that provision. It will allow the Department to monitor and track any use of this exemption.

Mr. Chairman, I'll stand for any questions, and I hope that the Committee will support this proposal.

Thank you.

AMENDED #1 AGENDA
SENATE RESOURCES & ENVIRONMENT COMMITTEE
1:30 P.M.
Room WW55
Wednesday, March 14, 2012

SUBJECT	DESCRIPTION	PRESENTER
APPROVAL OF MINUTES	Minutes of March 2, 2012	Senator Werk
H 495	Continuation of Hearing Relating to State Endowment Lands	Representative John Vander Woude
H 494	Continuation of Hearing Relating to the Idaho Board of Scaling Practices	Representative Scott Bedke
H 496	Continuation of Hearing Relating to Exemption of Members of Armed Forces, Reserves, National Guard by Fish & Game, and Veterans from Hunter Education Requirements	Representative Lynn M. Luker
→ **H 608***	Relating to Water Rights	Ken Harward, Association of Idaho Cities

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chairman Bair
Sen Cameron
Sen Siddoway
Sen Brackett
Sen Heider
Sen Tippets
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW37
Phone: (208) 332-1323
email: sres@senate.idaho.gov

* H 608 - AGENDA ONLY. THE BILL WAS NOT DISCUSSED THIS DAY.

CITY OF MCCALL

March 14, 2012

Senator Monty Pearce, Chair
Senate Resources & Environment Committee
State Capitol Building
PO Box 83720
Boise, ID 83720-0081

re: House Bill 608

Dear Senator Pearce and Members of the Committee:

The City of McCall strongly supports House Bill 608. The purpose of this bill is to clarify that cities and sewer districts are not required to obtain a water right for the treatment and disposal of wastewater effluent.

This bill makes no changes to any water quality requirements imposed by the Department of Environmental Quality. It only addresses the authority to use treated effluent to grow crops or for another beneficial use. Specifically, the issue here is the ability to land apply treated effluent that does not originate from a municipal water right.

We have received assurances from the Department of Water Resources that cities and sewer districts can land apply their own effluent – water that comes from their own water right. What is not clearly authorized is the land application of treated effluent when there isn't a municipal water right for the original, source drinking water. There are many situations around the state where publicly owned treatment facilities accept wastewater from sewer districts or other entities which do not have water rights. This bill addresses those situations.

For example, the City of McCall treats wastewater from a sewer district, located outside the city limits. That sewer district does not have a water right. They collect wastewater which was initially diverted by numerous private landowners each operating their own domestic wells or other water sources. They deliver that wastewater to us, we treat it, and then land apply it, all in conformance with DEQ's water quality standards.

We have worked closely with the Department of Water Resources, the Department of Environmental Quality, and the Association of Idaho Cities to develop this proposal. This bill reflects the concerns of those agencies, and has their support. Further, we have coordinated with the Idaho Water Users Association, and have addressed their concerns in this proposal.

The City appreciates the Committee's consideration, and respectfully urges the Committee to support the bill.

Sincerely,

Lindley Kirkpatrick, AICP
City Manager

216 East Park Street • McCall, Idaho 83638 • (208) 634-7142 • Fax (208) 634-3038

Association of Idaho Cities
3100 South Vista, Suite 310, Boise, Idaho 83705
Telephone (208) 344-8594
Fax (208) 344-8677
www.idahocities.org

4908

Wednesday, March 14, 2012

To: Senate Resources & Environment Committee

Sen. Monty Pearce, Chair	**Sen. Steve Bair, Vice Chair**
Sen. Dean Cameron	**Sen. Jeff Siddoway**
Sen. Bert Brackett	**Sen. Lee Heider**
Sen. John Tippets	**Sen. Elliot Werk**
Sen. Michelle Stennett	

From: Ken Harward, Executive Director

Re: AIC Supports House Bill 608 on Water Rights for Land Application of Effluent

The Association of Idaho Cities strongly supports House Bill 608, which would clarify that a separate water right is not required for the collection, treatment, storage, or disposal of effluent from publicly owned treatment works when wastewater is treated and disposed on behalf of entities that do not have a municipal water right.

Currently, municipalities that land apply treated effluent are not required to obtain water rights when the water is diverted under an existing right. However, there are many situations where publicly owned treatment facilities accept wastewater from sewer districts and other entities which do not have water rights.

For example, the City of McCall accepts wastewater from a sewer district located outside of city limits. The sewer district does not have a water right—they collect wastewater which was initially diverted by a number of private landowners each with their own well. The City of McCall treats the wastewater and land applies the treated effluent to comply with federal regulations.

Another example is the Hayden Area Regional Sewer Board (HARSB). The city of Hayden does not provide municipal water service and thus does not have a municipal water right, but the city does collect wastewater which is then transmitted into a regional sewer treatment system. HARSB also receives wastewater from Kootenai County and Hayden Lake Recreational Water and Sewer District. The treated effluent is then land applied during certain times of the year.

In the event that land application is to occur on land for which there is not already identified a place of use for an existing water right, notice of the place of use will be provided to the Department of Water Resources to ensure the department is informed about where water is being used.

House Bill 608 will benefit communities around the state that are working to provide wastewater treatment and disposal as efficiently and effectively as possible, while complying with a myriad of federal water quality requirements. We appreciate the committee's consideration of this bill and respectfully ask for your support.

AGENDA

SENATE RESOURCES & ENVIRONMENT COMMITTEE

1:00 P.M.
Room WW55
Friday, March 16, 2012

	DESCRIPTION	PRESENTER
APPROVAL OF MINUTES	February 20 and March 12, 2012	Senator Brackett Senator Tippets
H495	Discussion	
H 494	Continuation of Hearing Relating to the Idaho Board of Scaling Practices	Representative Scott Bedke
H 496	Continuation of Hearing Relating to Exemption of Members of Armed Forces, Reserves, National Guard by Fish and Game, and Veterans from Hunter Education Requirements	Representative Lynn M. Luker
→ **H 608**	Continuation of Hearing Relating to Water Rights	Ken Harward, Association of Idaho Cities

If you have written testimony, please provide a copy of it to the committee secretary to ensure accuracy of records.

COMMITTEE MEMBERS

Chairman Pearce
Vice Chairman Bair
Sen Cameron
Sen Siddoway
Sen Brackett
Sen Heider
Sen Tippets
Sen Werk
Sen Stennett

COMMITTEE SECRETARY

Linda Kambeitz
Room: WW37
Phone: (208) 332-1323
email: sres@senate.idaho.gov

MINUTES Bair OK

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE:	Friday, March 16, 2012
TIME:	1:00 P.M.
PLACE:	Room WW55
MEMBERS PRESENT:	Chairman Pearce, Vice Chairman Bair, Senators Cameron, Siddoway, Heider, Tippets, and Stennett
ABSENT/ EXCUSED:	**Senators Werk** and **Brackett.**
NOTE:	The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CALL TO ORDER:	**Chairman Pearce** called the meeting to order at 1:05 p.m.
H 494:	Continuation of Hearing Relating to the Idaho Board of Scaling Practices. **Tom Schultz**, Director, Department of Lands, presented this bill to the Committee.

Mr. Schultz said this bill would amend membership requirements of the Idaho Board of Scaling Practices and would create one new Board member position. He said current statute provisions require two Board members be appointed by the Governor from nominees provided by Intermountain Forest Association (IFA). He further stated that due to the dissolution of the IFA in Idaho, amendments to the statute addressing Sealing Board membership were necessary. The proposed amendments set requirements for gubernatorial appointments intended to reflect balanced representation on the Scaling Board with equal opportunity for nominations from a broad spectrum of the timber community. **Mr. Schultz** said the bill contained an emergency clause to provide for gubernatorial appointments on a current IFA member term expiration as well as a new member appointment, before the Scaling Board budget and assessment-setting meeting conducted prior to the start of fiscal year 2013.

Mr. Schultz said the Scaling Board did vote on this bill at a board meeting in support of this bill. A copy of his talking points is attached to the minutes.

There was no one who wanted to testify.

MOTION: **Senator Siddoway** made a motion, **seconded** by **Senator Heider**, to send H 494 to the floor with a **"do pass".** The motion **carried** by a **voice vote**. **Senator Siddoway** will carry this bill on the floor.

H 608: Continuation of Hearing Relating to Water Rights. **Chris Meyer**, Attorney with Givens-Pursley and representing the City of McCall, presented this bill on behalf of **Representative Stevenson** and **Ken Harward**, Association of Idaho Cities. **Mr. Meyer** said the purpose of this legislation was to clarify that a separate water right was not required for the collection, treatment storage or disposal storage, including land application, of the effluent from publicly owned treatment works. He said effluent was water that had already been diverted under an existing right and had not been returned to the waters of the state. **Mr. Meyer** further pointed out, that if the land application was to be on land which was not already identified as a place of use for an existing water right, notice of the place of use would be provided to the Department of Water Resources. This would allow the Department

to have complete records of where the water was to be used. He said this bill resolved this question.

Mr. Meyer passed out two letters in support of H 608. One letter was from the Association of Idaho Cities and the other one was from the City of McCall, copies of which are attached to the minutes. He said the City of McCall faced a zero phosphorous limit at Lake Cascade. As a consequence, putting that water back onto the lake, no matter how well treated, was a physical and financial impossibility. He indicated he was not aware of a city or sewer district that had ever obtained a water right in connection with such land application or other disposal place. He had received assurances that obtaining an additional water right would not be a requirement from the Department of Water Resources. Based on his own research, to the extent the municipality land applied water that was traceable to its own municipal water right, that municipality didn't need to do anything further and that it was covered by that initial water right.

Mr. Meyer said, in many instances, though, the cities "land apply" water that came from sources that were other than its own municipal water right, which raised a question. For example, the City of McCall accepts sewage water from outside the city limits, collected by a sewer district. This is a cooperative venture that makes a lot of sense economically and environmentally when it applies that water altogether. They are not the only ones who face this question. He cited the City of Boise as another example. The water doesn't come from its own municipal water rights because it doesn't own any. He said there were probably others. The purpose of this legislation, he said, was to get the water lawyers out of this business and to allow municipalities to spend their dollars and focus their attention on the issue at hand, which was the water quality side of the equation. The Department of Water Resources was involved in drafting this legislation and added some provisions to it, notably, a provision requiring notification of the Department of Water Resources when there is a land application and the payment of a small fee to cover their administrative costs.

MOTION: **Senator Heider** made a motion, **seconded** by **Senator Bair,** to send H 608 to the floor with a **"do pass"** recommendation. The motion **carried** by a voice vote. **Senator Heider** will carry this bill on the floor.

APPROVAL OF MINUTES: **Senator Heider** made a motion, **seconded** by **Senator Siddoway**, to approve the minutes of February 20, 2012. The motion **carried** by a **voice vote.**

Senator Tippets made a motion, **seconded** by **Senator Heider**, to approve the minutes of March 12, 2012. The motion **carried** by a **voice vote.**

DISCUSSION OF H 495: Relating to State Endowment Lands. Chairman **Pearce** said the testimony had been heard and the hearing was closed.

SENATE RESOURCES AND ENVIRONMENT COMMITTEE

Sign-In Sheet

March 16, 2012

PLEASE PRINT Name	Phone	Representing Company/Organization	Legislation Interested In	Wish To Testify	Pro	Con	
Rhett Moore	562-9660	Hunter Ed Instructor Assoc	H496	Y		X	-
Sharon Kiefer	334-3771	IDFG	H496	Y		X	+
Laurie Boeckel	409-5805	Idaho PTA	H 495	N			
Jan Schultz	334-0280	IDL	494	Y	✓		+
JAN SILVESTER	890 2291		495			X	
ROBIN NETTINGA	344-1341	IEA	495			X	
Chris Meyer	388-1236	City of McCall	608	Y	✓		+
Bill Loudon	939-0398	ID Conservation Officers	H496	yes		✓	+
Max Greenlee		Rush Pisca	H0494	N			+
GARRICK BAXTER	297-4811	IDWR	H6008	N			
Shelley Keen	287-4947	IDWR	H608	N			
Scott Phillips		SLO		No			
Bruno Bennett	208-819-0095			No			
Jay Stark	208-866-3613	Idaho Hunter Ed. IHEA	H496	yes		X	+
Emily Anderson		Idaho Dept of Lands		No			
Ron Galloway	208 602 0213	HEd	496	Yes		X	+
Larry Johnson	334-3312	Investment Board	495	No			

Senate Resources and Environment Committee

Hearing on H.B. 608

March 16, 2012

Republicans	Democrats
Chair Monty J. Pearce	Elliot Werk
Vice Chair Steve Bair	Michelle Stennett
Dean L. Cameron	
Jeff C. Siddoway	
Bert Brackett	
Lee Heider	
John Tippets	

Chairman Pearce and members of the Committee, good afternoon. I am Chris Meyer with the law firm of Givens Pursley. I thank you for the opportunity to speak with you today.

Garrick Baxter and Shelly Keen of the Idaho Department of Water Resources are here as well and available for questions.

Ken Harward of the Association of Idaho Cities and Lindley Kirkpatrick, City Manager of the City of McCall, had hoped to present as well, but they are out of town and unable to attend today's rescheduled hearing.

I serve as special water counsel to the City of McCall. I also represent a number of other municipal entities on water rights matters, but am here today on behalf of the City of McCall.

H.B. 608 is a simple measure. It resolves the question of whether cities and other public entities engaged in land application of wastewater must first obtain a water right for what they do.

Years ago, back in the day, cities collected sewage, treated it minimally, and discharged it to rivers, lakes, and drains. As federal environmental regulations have tightened in recent years, this is often no longer an option. The City of McCall, for instance, faces a zero phosphorous limit in Lake Cascade. In order to comply with increasingly strict environmental requirements, McCall and others are turning more and more to land application of wastewater.

I am not aware of any city or sewer district that has ever obtained a water right for that purpose. Of those that I have spoken to, I hear over and over that this is an issue they just try to ignore.

But, as Cities are now being called upon to invest millions and millions of dollars in water quality strategies, my advice to them is that they should not just ignore this issue.

I made inquiries at IDWR to see if we could resolve this issue without the sometimes costly and contentious process of securing a new water right. The legal team at IDWR agreed that, based on common law principles, it is clear that a city can treat and dispose of water it diverts under its municipal water rights, and it doesn't need a new water right to do so. A question arises, however, as to the treatment and disposal of water that is not part of a municipal water right.

As Mr. Kirkpatrick explained, the City of McCall land applies not only its own municipal water, but water collected outside the city.

McCall is the example that brings us here today, but they are not alone. Another example is the City of Boise which manages wastewater but does not own municipal water rights. Another is the Hayden Area Regional Sewer Board (HARSB). Another is the North Kootenai Water and Sewer District. Undoubtedly there are others. This really is a state-wide issue.

Sorting out whether the molecules in the sewage effluent can be traced to a municipal water right or really came from somewhere else (such as a can of Pepsi) would be a bonanza for water lawyers. It could send many kids to college. But it would accomplish nothing for the People of Idaho.

This bill is the opposite of a "Full Employment Act for Water Lawyers." It eliminates uncertainty. It eliminates the basis for litigation. And it allows cities and other public entities to focus on what they should be focused on: Developing the most efficient, lowest cost solutions to meet water quality requirements. In short, it allows cities to spend their resources on engineers rather than lawyers. And that is a good thing. There will always be work for the lawyers. They don't need this to keep them busy.

It also allows the Department of Water Resources to devote its scarce resources to tackling the important water issues facing the State.

As Mr. Kirkpatrick mentioned in his testimony, the City of McCall has reached out to a broad range of affected interests including other cities, sewer districts and operators of publicly owned treatment works.

The first thing we did was to meet with the legislative committee of Idaho Water Users Association, where we secured a "neutral" or "do not oppose" position on the bill.

There is strong support for this, across the board. The Association of Idaho Cities is firmly behind it. Both IDWR and DEQ favor the measure.

In short, this is a simple bill that provides a simple answer to a simple question. It doesn't solve the world's problems. It certainly doesn't solve the enormous challenge of water quality regulation. All those requirements remain in place and are unaffected by this bill. What it does is ensure that cities can focus on water quality without having to worry about yet another problem.

Addendum D — COMMUNICATIONS WITH IDWR REGARDING BLACK ROCK UTILITIES, INC.

1. Letter from Christopher Meyer to Gary Spackman re water right nos. 95-9055 and 95-9248 (Sept. 2, 2008) (with four enclosures).
2. Review Memo by Mat Weaver re water right nos. 95-9055 and 95-9248 (Sept. 23, 2008).
3. Letter from Mat Weaver to Christopher Meyer re water right nos. 95-9055 and 95-9248 (Sept. 29, 2008).

GIVENS PURSLEY LLP

CHRISTOPHER H. MEYER
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September 2, 2008

Gary L. Spackman
Administrator
Water Management Division
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

Re: *Water Right Nos. 95-9055 and 95-9248 – Land Application of Treated Effluent*

Dear Mr. Spackman:

I am writing on behalf of my client, Black Rock Utilities, Inc. ("Black Rock"), owner of the above-captioned water right permits. Both permits are for municipal use of ground water. I spoke on Friday with Bob Haynes, and he suggested that I write to you.

The purpose of this letter is to inquire as to whether any amendment of these permits is required in order for Black Rock to apply treated effluent derived from these rights to golf courses within The Club at Black Rock and Black Rock North (collectively the "Project"). As you may recall, The Club at Black Rock is the original project, now nearly complete, and Black Rock North is the adjacent expansion.

Black Rock's Application for Amendment of Permit to Water Right No. 95-9045 (Application No. 74780) is now pending before the Idaho Department of Water Resources ("IDWR" or the "Department"). In our settlement conference last week, the Protestants urged Black Rock to expedite its plans to land apply treated effluent from its municipal ground water rights to golf courses within the Project. This would reduce, but not replace, the need for surface irrigation on that property. Black Rock believes that this is an environmentally sound water conservation practice and wishes to do so. Black Rock has been working with the Idaho Department of Environmental Quality to obtain the appropriate environmental permits. Black Rock previously obtained informal assurance from the Northern Regional Office that no

amendment of its water right permits would be required. I am writing to you seeking confirmation of that conclusion.

I believe the general rule is clear that a municipal provider may land apply treated effluent derived from its municipal water rights to land within its expanding municipal service area without any amendment of its water rights.[1] However, there are special considerations here. Specifically, we wish to confirm that following statements are true, without any amendment of the current permits:

1. The condition on Water Right No. 95-9055 stating "Place of use is within the service area of CAG Investments, LLC." will be understood to apply to the service area of the current owner and municipal provider, Black Rock Utilities, Inc.

2. The place of use for Water Right No. 95-9055 describes an expanding municipal service area and is not limited to the specific forty-acre tracts identified in the Water Permit Report.

3. The condition on Water Right No. 95-9055 prohibiting use of this ground water right for irrigation of land to which surface rights are available does not prohibit land application of treated municipal effluent on such land.

4. The condition on Water Right No. 95-9248 stating "Place of use is within the area served by the public water supply system of The Ridge at Blackrock Bay Homes, Inc. The place of use is generally located within Government Lot Numbers 1, 2, and 3 of Section 9, Township 48N, Range 4W." will be understood to apply to the service area of the current owner and municipal provider, Black Rock Utilities, Inc.

5. The place of use for Water Right No. 95-9248 describes an expanding municipal service area and is not limited to the lots identified in the condition quoted above.

I offer the following additional information and explanation.

---

[1] "The service area need not be described by legal description nor by description of every intended use in detail, but the area must be described with sufficient information to identify the general location where the water under the water right is to be used and the types and quantity of uses that generally will be made." Idaho Code § 42-202(2) (application requirements for municipal service providers). "'Service area' means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes. . . . For a municipal provider that is not a municipality, the service area shall correspond to the area that it is authorized or obligated to serve, including changes therein after the permit or license is issued." Idaho Code § 42-202B(9) (definition of "service area").

Water Right No. 95-9055

Water Right No. 95-9055 contains a "condition of approval" stating: "Place of use is within the service area of CAG Investments, LLC." This is listed as Condition No. 6 on the Water Permit Report.

First, Black Rock seeks assurance that there is no need to amend the permit to change the reference in the condition from the former owner, CAG Investments, LLC, to the current owner, Black Rock. The permit was assigned to Black Rock Utilities, Inc. on January 11, 2006 and the assignment was approved by the Department on January 20, 2006.

Second, Black Rock seeks assurance that the referenced condition describes an expanding municipal service area under Idaho Code § 42-202B(9) and is not limited to the forty-acre tracts listed on the water right. This condition appears on the Water Permit Report available on IDWR's website, but not on the original hard copy of the permit (copies of each are enclosed). Apparently the Department initially took the position that the place of use should be described by forty-acre tracts. Indeed, the Water Permit Report continues to list a series of forty-acre tracts, which are no longer representative of Black Rock's current Project boundary (which has expanded to include Black Rock North). An IDWR internal memorandum to the file from Sharla [Curtis?] dated July 25, 2001 states: "The applicant is a development company which does not serve as a typical water provider with a service area. This application is for a specific development and the place of use to be covered by the municipal permit was listed by ¼¼. Therefore, the permit will be issued with the place of use spelled out like the application instead of with a general remark allowing the use within a service area." Apparently, the Department later determined that this was incorrect and added the above-quoted condition describing the place of use based on the municipal provider's service area. Black Rock seeks confirmation that the place of use description set out in the above-quoted condition establishes an expanding municipal service area, that the list of forty-acre tracts on the permit is not controlling, and that there is no need to amend the Permit to describe land within Black Rock North.

Third, Black Rock seeks your advice as to the effect of the condition which states: "The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping." This is listed as Condition No. 5 on the Water Permit Report and Condition No. 7 on the original Permit.

This provision appears to have been inspired by Idaho Code § 67-6537 enacted in 2005. This statute, which is directed to local land use entities, not IDWR, requires land use applicants under the Local Land Use Planning Act to use surface water as the primary source of supply if it is "reasonably available." It is my understanding that the Department does not view this statute

as prohibiting land application of municipal effluent from ground water to land where surface water is available, so long as the ground water was first used for in-house culinary purposes. Accordingly, we trust that the referenced condition is intended to prohibit only the use of this ground water right for direct irrigation, and does prohibit the environmentally desirable goal of land application of treated effluent.

Water Right No. 95-9248

Black Rock also owns Water Right No. 95-9248, which it acquired from the prior owner, The Ridge at Black Rock Bay Homes, Inc., via an Assignment of Permit dated October 11, 2007.[2]

Unlike Water Right No. 95-9055, this water right does not identify any place of use on its face. Instead, it contains a condition stating: "Place of use is within the area served by the public water supply system of The Ridge at Blackrock Bay Homes, Inc. The place of use is generally located within Government Lot Numbers 1, 2, and 3 of Section 9, Township 48N, Range 4W." This is displayed as Condition No. 4 of the Water Permit Report and Condition No. 6 on the original Permit.

Black Rock seeks assurance that the reference to the service area of the former owner, The Ridge at Black Rock Bay Homes, Inc., will be understood to apply to the entire service area of the current owner and municipal provider, Black Rock Utilities, Inc. Black Rock also seeks assurance that the reference to three specific lots does not limit the place of use, and that the municipal service area may change (without need for amendment or transfer) in accordance with Idaho Code § 42-202B(9). This way, if it becomes practicable, treated effluent from this right could be incorporated into a common land application program with effluent from Water Right No. 95-9055.

I thank you for your consideration and attention. If Kyle Capps or I can provide additional information, we would be pleased to do so. My direct dial is provided above. You may reach Kyle on his cell phone at 208-755-4744. We look forward to your guidance.

Sincerely,

Christopher H. Meyer

[2] Upon purchase of this separate development, The Ridge at Black Rock Bay was folded into The Club at Black Rock for development purposes. However, the homes and lawns served by this water right are served by a physically separate ground water system under Water Right No. 95-9248. Since no surface water right was available for this ground water right when it was permitted, the permit does not contain a condition similar that that included for No. 95-9055 prohibiting irrigation of lands to which surface rights are available.

Encl: Water Permit Report for Water Right No. 95-9055
Original Permit for Water Right No. 95-9055
Water Permit Report for Water Right No. 95-9248
Original Permit for Water Right No. 95-9248

cc: Robert G. Haynes, Regional Manager, Northern Regional Office, IDWR
Kyle Capps, Vice President, Black Rock Development
John R. Layman, Layman, Layman & Robinson
Amie L. Anderson, Layman, Layman & Robinson
Scott N. King, Senior Project Engineer, SPF Water Engineering, LLC
Barry Rosenberg, Executive Director, Kootenai Environmental Alliance
Jai K. Nelson, Coordinator, Coalition for Positive Rural Growth

CHM:ch
S:\CLIENTS\8928\1\CHM Ltr to Gary Spackman re 95-9055 and 95-9248.DOC

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit Report

09/02/2008

WATER RIGHT NO. 95-9055

Owner Type	Name and Address
Current Owner	BLACK ROCK UTILITIES INC KYLE CAPPS, CGCS PO BOX 3070 COEUR D ALENE, ID 83816 (208) 665-2005
Original Owner	CAG INVESTMENTS LLC 210 SHERMAN AVE STE 117 COEUR D ALENE, ID 83814 (208)676-8696

Priority Date: 11/13/2000
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
MUNICIPAL	01/01	12/31	1 CFS	
Total Diversion			1 CFS	

Location of Point(s) of Diversion:

GROUND WATER	NENW	Sec. 16	Township 48N	Range 04W	KOOTENAI County
GROUND WATER	SWNW Lt 2	Sec. 16	Township 48N	Range 04W	KOOTENAI County
GROUND WATER	SWNW Lt 2	Sec. 16	Township 48N	Range 04W	KOOTENAI County
GROUND WATER	SWNW Lt 2	Sec. 16	Township 48N	Range 04W	KOOTENAI County

GROUND WATER	SENW Lt 3	Sec. 16	Township 48N	Range 04W	KOOTENAI County
GROUND WATER	SENW Lt 3	Sec. 16	Township 48N	Range 04W	KOOTENAI County
GROUND WATER	SENW Lt 3	Sec. 16	Township 48N	Range 04W	KOOTENAI County

Place(s) of use:

Place of Use Legal Description: MUNICIPAL KOOTENAI County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
48N	04W	8		SWNE			SENE							
				NESW			NWSW			SESW				
				NESE			NWSE			SWSE			SESE	
		9		NENW			NWNW			SWNW			SENW	
				NESW			NWSW			SWSW			SESW	
		16		NWNE										
				NENW			NWNW			SWNW			SENW	
		17		NENE										

Conditions of Approval:

1.	26A	Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
2.	004	The issuance of this right does not grant any right-of-way or easement across the land of another.
3.	046	Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
4.	01M	After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.
5.	102	The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.
6.		Place of use is within the service area of CAG Investments, LLC.

Dates:
Proof Due Date: 08/01/2011
Proof Made Date:
Approved Date: 08/08/2001
Moratorium Expiration Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Application Received Date: 11/13/2000

Protest Deadline Date: 02/05/2001
Number of Protests: 0
Field Exam Date::
Date Sent to State Off:
Date Received at State Off:

Other Information:
State or Federal:
Owner Name Connector:
Water District Number:
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False
Close

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 95-09055

Priority: 11/13/2000 Maximum Diversion Rate: 1.00 CFS

This is to certify, that CAG INVESTMENTS LLC
210 SHERMAN AVE STE 117
COEUR D ALENE ID 83814

has applied for a permit to appropriate water from:

Source: GROUND WATER

and a permit is APPROVED for development of water as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
MUNICIPAL	01/01 to 12/31	1.00 CFS

LOCATION OF POINT(S) OF DIVERSION:

GROUND WATER		NE¼NW¼	Sec. 16, Twp 48N, Rge 04W, B.M.	KOOTENAI County
GROUND WATER	L2	SW¼NW¼	Sec. 16, Twp 48N, Rge 04W, B.M.	KOOTENAI County
GROUND WATER	L2	SW¼NW¼	Sec. 16, Twp 48N, Rge 04W, B.M.	KOOTENAI County
GROUND WATER	L2	SW¼NW¼	Sec. 16, Twp 48N, Rge 04W, B.M.	KOOTENAI County
GROUND WATER	L3	SE¼NW¼	Sec. 16, Twp 48N, Rge 04W, B.M.	KOOTENAI County
GROUND WATER	L3	SE¼NW¼	Sec. 16, Twp 48N, Rge 04W, B.M.	KOOTENAI County
GROUND WATER	L3	SE¼NW¼	Sec. 16, Twp 48N, Rge 04W, B.M.	KOOTENAI County

PLACE OF USE: MUNICIPAL

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
48N 04W 8			X	X					X	X		X	X	X	X	X	
48N 04W 9					X	X	X	X	X	X	X	X					
48N 04W 16		X			X	X	X	X									
48N 04W 17	X																

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **August 1, 2006.**
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which permit holder had no control.
4. The issuance of this right does not grant any right-of-way or easement across the land of another.
5. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.
6. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.

Scan from this point down.

MICROFILMED
OCT 13 2006

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 95-09055

CONDITIONS OF APPROVAL

7. The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 8th day of August, 2001.

for KARL J DREHER, Director

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Permit Report

09/02/2008

WATER RIGHT NO. 95-9248

Owner Type	Name and Address
Current Owner	BLACK ROCK UTILITIES INC KYLE CAPPS, CGCS PO BOX 3070 COEUR D ALENE, ID 83816 (208) 665-2005
Original Owner	THE RIDGE AT BLACKROCK BAY HOMES INC 10636 N GOVERNMENT WAY HAYDEN, ID 83835 (208)772-5121

Priority Date: 10/25/2004
Status: Active

Source	Tributary
GROUND WATER	

Beneficial Use	From	To	Diversion Rate	Volume
MUNICIPAL	01/01	12/31	0.25 CFS	
Total Diversion			0.25 CFS	

Location of Point(s) of Diversion:

GROUND WATER	NENE Lt 1	Sec. 09	Township 48N	Range 04W	KOOTENAI County

Place(s) of use:

Place of Use Legal Description: MUNICIPAL KOOTENAI County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
48N	04W	9	1	NENE		2	NWNE							
			3	NENW										

Conditions of Approval:

1.	26A	Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
2.	046	Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
3.	134	Prior to or in connection with the proof of beneficial use statement to be submitted for municipal water use under this right, the right holder shall provide the department with documentation showing that the water supply system is being regulated by the Idaho Department of Environmental Quality as a public water supply and that it has been issued a public water supply number.
4.	128	Place of use is within the area served by the public water supply system of The Ridge at Blackrock Bay Homes, Inc. The place of use is generally located within Government Lot Numbers 1, 2, 3 and 4, Section 9, Township 48N, Range 4W.
5.	01M	After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.

Dates:
Proof Due Date: 03/01/2010
Proof Made Date:
Approved Date: 03/09/2005
Moratorium Expiration Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Application Received Date: 10/25/2004
Protest Deadline Date: 02/07/2005
Number of Protests: 0
Field Exam Date::
Date Sent to State Off:
Date Received at State Off:

Other Information:
State or Federal:
Owner Name Connector:

Water District Number:
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False
Close

State of Idaho
Department of Water Resources

Permit to Appropriate Water

NO. 95-09248

Priority: October 25, 2004 Maximum Diversion Rate: 0.25 CFS

This is to certify, that THE RIDGE AT BLACKROCK BAY HOMES INC
10636 N GOVERNMENT WAY
HAYDEN ID 83835

has applied for a permit to appropriate water from:

Source: GROUND WATER

and a permit is APPROVED for development of water as follows:

BENEFICIAL USE	PERIOD OF USE	RATE OF DIVERSION
MUNICIPAL	01/01 to 12/31	0.25 CFS

LOCATION OF POINT(S) OF DIVERSION:
GROUND WATER L1 (NE¼ NE¼) Sec. 9, Twp 48N, Rge 04W, B.M. KOOTENAI County

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **March 01, 2010.**
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
5. Prior to or in connection with the proof of beneficial use statement to be submitted for municipal water use under this right, the right holder shall provide the department with documentation showing that the water supply system is being regulated by the Idaho Department of Environmental Quality as a public water supply and that it has been issued a public water supply number.
6. Place of use is within the area served by the public water supply system of The Ridge at Blackrock Bay Homes, Inc. The place of use is generally located within Government Lot Numbers 1, 2, and 3 of Section 9, Township 48N, Range 4W.
7. After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to determine the amount of water diverted from power records and shall annually report the information to the Department.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 9th day of March, 20 05.

Gary Spackman

for KARL J DREHER, Director

REVIEW MEMO

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
322 E. FRONT STREET, P.O. BOX 83720, BOISE, IDAHO 83720-0098
PHONE: (208) 287-4800 FAX: (208) 287-6700

DATE: SEPTEMBER 23, 2008

TO: Jeff Peppersack

FROM: Mat Weaver MW

CC: GARY SPACKMAN

SUBJECT: REVIEW OF PERMITS 95-9055 AND 95-9248 AND GENERATION OF RESPONSES TO QUESTIONS PERTAINING TO THESE PERMITS FROM CHRISTOPHER MEYER OF GIVEN PURSLEY, LLP RECEIVED IN A LETTER DATED SEPTEMBER 2, 2008.

INTRODUCTION

On September 3, 2008 the Idaho Department of Water Resources (IDWR) received a letter from Christopher Meyer pertaining to the status and conditions of permits 95-9055 and 95-9248 and the impact, if any, that the current state of the permits will have on the Permit Holder's desired ability to land apply treated wastewater resulting from water previously diverted and used for municipal purposes under these permits. This memorandum is an attempt to summarize the state of the permits, specifically address Mr. Meyer's questions, and provide background on the suitability and legality of the land application of wastewater generated under the permits in question.

PERMIT 95-9055

Permit 95-9055 was approved on August 8, 2001 with a priority date of November 13, 2000 for the diversion of 1.00 CFS of groundwater for municipal use on ground specifically identified by quarter-quarter description on the permit. The permit described seven different points of diversion. The application indicates that the desired uses included the following: domestic use in 381 homes, potable services to a golf course clubhouse and restrooms, potable services to an equestrian center, potable services to a maintenance center, potable services to the subdivision's sales center, potable services to a fire station, and potables services to the subdivision's recreation areas. Irrigation was not requested as a beneficial use. On January 12, 2006 the permit was assigned to Black Rock Utilities, Inc. from the applicant CAG Investments, LLC. On September 20, 2006

an extension of time was awarded to the permit holder extending the proof of beneficial use due date to August 1, 2011.

A review of the place of use (POU) shape in the Water Rights data base indicates a discrepancy between the description on the permit and the shape file. The shape file does not include the NW quarter of the NE quarter of Section 16, T48N, R04W, but is the same in all other regards. Further confusion in the POU is found when comparing the POU description of the "proof report" (Water Permit Report) to the description of the actual permit. The POU legal descriptions are identical between the two documents, however, the proof report contains a condition not found on the actual permit stating, *"Place of use is within the service area of CAG Investments, LLC"*. In a memo to the file dated July 25, 2001 Sharla Curtis specifically states that *"the permit will be issued with the place of [use] spelled out like the application instead of with a general remark allowing the use with in a service area."* From this memo is seems clear that the intent at the time the permit was issued and approved was to describe the POU for permit 95-9055 specifically by quarter-quarter legal description and not generally by "service area".

PERMIT 95-9248

Permit 95-9248 was approved on March 9, 2005 with a priority date of October 25, 2004 for the diversion of 0.25 CFS of groundwater for municipal use on ground described by condition six as, *"Place of use is within the area served by the public water supply system of The Ridge of Blackrock Bay Homes, Inc. The place of use is generally located within Government Lot Numbers 1, 2, and 3 of section 9, T48N, R04W."* The permit described a single point of diversion. The only use described on the approved application is municipal. However, the original application[1] that was submitted indicates domestic, fire protection, and irrigation as the requested beneficial uses. On October 11, 2007 the permit was assigned to Black Rock Utilities, Inc. from the applicant Ridge at Black Rock Bay Homes, Inc.

Review of the POU shape file in the Water Rights data base and on the POU described by the proof report indicates a slight discrepancy in regards to the proof report. Unlike the actual permit, and the POU shape file, the proof report includes government lot 4 as part of the general description in condition one (128).

Refer to Exhibit 1, attached, for a graphical depiction of permits 95-9055 and 95-9248.

BACKGROUND AND DISCUSSION

Municipal Purpose and Municipal Provider

The beneficial use described under both permits is for "municipal purposes". Municipal Purposes as defined in Idaho Statute § 42-202B (6) refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purpose, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a "municipal provider". Idaho Statute § 42-202B (5, c) recognizes any corporation or association which supplies water for municipal purposes, through a water system regulated by the state of Idaho as a "public water supply" as described in section 39-

103(12), Idaho Code, as a Municipal Provider. Review of the permits and the permit holder indicates that it is justifiable and appropriate to call the permit holder a Municipal Provider and to describe the beneficial use as for municipal purposes.

Review of the files associated with both permits and the letter sent by Mr. Meyer, makes obvious that one of the municipal purposes that will be provided for under these permits is irrigation. Idaho Statute § 42-219 (2) has the following to say in regards to irrigation under municipal rights, *"If the [irrigation] use is for municipal purposes, the license shall describe the service area and shall state the planning horizon for that portion of the right, if any, to be used for reasonably anticipated future needs."* This statute would seem to place requirements regarding the inclusion of the delineation of the place of use on the issuance of future licenses. In the case of municipal uses the place of use is synonymous with the "service area", Idaho Statute § 42-202B (9) describes the service area for a municipal provider that is not a municipality, as the area that it is authorized or obligated to serve, including changes therein after the permit or license is issued. If we recognize the permit holder as a Municipal Provider, and in light of the municipal use authorized under the permits, it would seem that the permit holder is within their rights as described under the law to irrigate anywhere within their place of use, even if that place of use is modified after the issuance of a permit or the license. Provided the place of use is within the area that the permit holder is "authorized or obligated to serve" and is seemingly described in some manner under the planning horizon for reasonably anticipated future needs.

Land Application and the Reuse of Municipal Water

In regards to the land application of treated municipal waters to the Black Rock project I have recognized and addressed two issues: (1) is this use allowed for under the municipal use umbrella, and (2) would the land application represent a historical enlargement of actual consumptive use associated with the permit.

In regards to issue number one, Idaho Statute § 42-202(2) states the following, *"The service area need not be described by legal description nor by description of every intended use in detail, but the area must be described with sufficient information to identify the general location where the water under the water right is to be used and the types and quantity of uses that generally will be made."* It seems clear from this language that every intended use need not be described in the application. In addition, the land application of wastewater is going to be used as a source of irrigation for the golf course and irrigation is expressly listed as a municipal purpose under § 42-202B (6). It therefore can be concluded that land application for the intent of irrigation can and should be allowed for under the general heading of municipal purposes.

The second issue deals with the enlargement of the historical consumptive use of the water diverted under the permit. The municipal use is recognized by IDWR as being completely consumptive, in actuality this may or may not be the case. Certainly the uses of water under the general heading of municipal use are varied enough that it is not unreasonable to assume that some of that water is in fact returned to the surrounding environment. Especially in the instance of the Black Rock project which is a stand alone

community with water treatment, wastewater treatment, and irrigation all occurring and being contained within the development. By this reasoning land application, a fully consumptive process, would represent some additional volume of consumption, or loss of water from the development, over and above the historical quantity of water lost from the development under the previous practices, which did not include land application. So should this enlargement of consumptive water be allowed?

If we consider the Administrator's Application Processing Memorandum No. 61 regarding industrial waste water and take forward the reasoning and direction put forth in that memo and apply it to municipal waste water, then the "consumptive use" associated with the use can increase (over the historical base line value) up to the amount determined to be consistent with the original water rights as reasonably necessary to meet treatment (land application) requirements. In addition, the reuse of this water may represent an increase in actual water depletion from the system, but were it not used the irrigation would still take place, simply under another permit (95-9045) applied for expressly for that use, which would divert surface water. Finally, the permit holder has not submitted proof of beneficial use to IDWR, and is not required to do so for some 2-3 years, so it would seem premature to evaluate the total beneficial use of water at this interim time. For all these reasons it would seem that any enlargement of the consumptive component of the permit associated with the new practice of land application, can and should be allowed by IDWR.

QUESTIONS

In Mr. Meyer's letter dated September 2, 2008 there were five explicit questions put to IDWR for response. Find below the questions recreated from his letter in italics followed by my response based upon the finding outlined above and my experience at IDWR.

1. *The condition on Water Right No. 95-5055 stating "Place of use is within the service area of CAG Investments, LLC." will be understood to apply to the service area of the current owner and municipal provider, Black Rock Utilities, Inc.*

   A basic premise at IDWR is that the Water Right database is a representation of the actual records it reflects and is not in actuality an official record in it of itself. Ideally, the data base would be an exact simulacrum of the official record. However, this is not always the case, as is illustrated with permit 95-9055. As explained above in detail there is a discrepancy between the place of use described upon the actual signed permit and the proof report document generated from information contained in the data base. The signed permit represents the governing document in describing the nature of the permit, and as such there is currently no recognized "service area" associated with this permit. Instead the place of use is described in full on the permit by the traditional means of a specific quarter-quarter delineation. Due to this fact, IDWR does not recognize any service area associated with this permit, in the name of Black Rock Utilities, Inc. or otherwise.

2. *The place of use for Water Right No. 95-9055 describes an expanding municipal service area and is not limited to the specific forty-acre tracts identified in the Water Permit Report.*
   No, the place of use described on permit 95-9055 does not describe an expanding municipal service area; instead it delineates a specific place of use by quarter-quarter description.

3. *The condition of Water Right No. 95-9055 prohibiting use of this ground water right for irrigation of land to which surface rights are available does not prohibit land application of treated municipal effluent on such land.*
   Mr. Meyer is correct in this regard. This condition is speaking to the primary or first use the diverted groundwater is put to. IDWR recognizes Municipal Use as being fully consumptive, as such, once the groundwater has served its initial purpose the Municipal Provider is free to use or reuse the reclaimed water at their discretion[2].

4. *The condition on Water Right No. 95-9248 stating "Place of use is within the area served by the public water supply system of the Ridge at Blackrock Bay Homes, Inc. The place of use is generally located within Government Lot Numbers 1, 2, and 3 of section 9, Township 48N, Range 4W." will be understood to apply to the service area of the current owner and municipal provider, Black Rock Utilities, Inc..*
   Permit 95-9248 is clear in its recognition of a service area as the beneficial place of use of the water diverted under the permit. With the assignment of the permit from The Ridge at Blackrock Bay Homes, Inc. to Black Rock Utilities, Inc., and with the understanding that the intent to beneficially use the water under the new ownership is at essence the same as under the previous ownership, it seems reasonable and prudent that the purpose of the permit is to serve the service area associated with the physical lands that comprise the Black Rock project, regardless of the name attached to the service area or Municipal Provider on the permit.

5. *The place of use for Water right No. 95-9248 describes an expanding municipal service area and is not limited to the lots identified in the condition quoted above.*
   Based upon Idaho Statutes § 42-202(B) and § 42-219, as previously described in greater detail in the BACKGROUND section of this memo, the place of use for Water Right 95-9248 describes and expanding municipal service area and is not limited to the lots identified in condition number six of the actual water permit.

GENERAL QUESTIONS

The expressed purpose of Mr. Meyer's letter is to determine whether any amendment of permits 95-9055 and 95-9248 are required in order for the Black Rock development to apply treated effluent derived from these rights to golf courses within The Club at Black Rock and Black Rock North projects. The essence of this question is two fold, one is land application a use recognized under the current municipal use umbrella, and two do either permits need to be amended to accommodate this goal.

LAND APPLICATION

Based upon my discussion in the BACKGROUND section of this memo it seems to me that not only is the land application of treated wastewater allowed for under the municipal use general heading, but should be encouraged as a valid and worth while conservation effort.

PERMIT AMENDMENTS

As addressed earlier permit 95-9055 does not have a general "service area" description of its place of use. With this understanding any land application of treated wastewater would have to be applied to those portions of the golf course(s) that are within the described place of use on the actual permit document. A cursory review of aerial imagery from 2006 associated with the place of use of permit 95-9055 seems to indicate that the existing golf course at that time was completely contained within the boundary. However, I'm not sure where the "Black Rock North" development or any future golf course expansions may be in respect to the permit's place of use.

In the event that the permit holder desires to land apply water outside the current place of use, a permit amendment would be required to modify the place of use. Rather than modify the existing delineation it would be recommended that the permit holder amend their permit so that the place of use is described generally by a "service area". In regards to public advertisement of the proposed amendment, it is at the discretion of the Director. In light of the fact that the original public notice for this permit used the language *"municipal use is within the service area of the applicant"* it does not seem necessary for IDWR to require an additional public advertisement of the amendment, assuming the only change would be in describing the place of use by a service area.

In the case of permit 95-9248 the place of use is generally described as a "service area" and as such the place of use may be modified as needed by the permit holder at any time. Therefore an amendment for this permit would not be required to accommodate the land application of reclaimed municipal water.

[1] Review of the file indicates two applications were submitted. One was submitted by Blue Diamond Investment, LLC on June 9, 2004 and does not appear to have been the basis of the permit. The second was also submitted on June 9, 2004 by The Ridge at Black Rocks Bay Homes, Inc. and appears to be the basis of the issued permit. To my knowledge there is no discussion or indication in the file as to why there were two applications or why the Blue Diamond application was not used.

[2] This position does not seem to be explicitly articulated in any Idaho Statute or IDWR Administrator's Memorandum that I reviewed. However, this position does seem to have been regularly upheld in case law, although not completely with out rulings in the opposite, and is well summarized by Mr. Phil Rassier in his Memo to Norm Young from September 5, 1996 titled "Land Application of Industrial Effluent".

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C. L. "BUTCH" OTTER
Governor
DAVID R. TUTHILL, JR.
Director

September 29, 2008

CHRISTOPHER H MEYER
GIVENS PURSLEY LLP
601 W BANNOCK ST
PO BOX 2720
BOISE ID 83701-2720

RE: Water Right Nos. 95-9055 and 95-9248 – Land Application of Treated Effluent

Dear Mr. Meyer:

This letter responds to your written correspondence dated September 2, 2008 regarding water right permits nos. 95-9055 and 95-9248. Your letter posed the general question of whether either permit must be amended to land apply treated wastewater to golf courses within The Club at Black Rock and Black Rock North (collectively the "Project"). In addition, you asked five specific questions pertaining to this issue. Please find below each of your questions restated in italics followed by my response.

1. *The condition on Water Right No. 95-9055 stating "Place of use is within the service area of CAG Investments, LLC." will be understood to apply to the service area of the current owner and municipal provider, Black Rock Utilities, Inc.*

The water right database is a representation of the actual water right documents and is not an official record. Ideally, the data base would be an exact simulacrum of the official record. Nonetheless, there is a discrepancy between the place of use described upon the actual signed permit and the proof report document generated from information contained in the data base. The signed permit establishes the terms of the permit. Permit no. 95-9055 does not describe a "service area" place of use. Instead, the permit describes the place of use by the traditional means of a specific quarter-quarter delineation.

2. *The place of use for Water Right No. 95-9055 describes an expanding municipal service area and is not limited to the specific forty-acre tracts identified in the Water Permit Report.*

Unfortunately, the place of use identified on the official record of permit no. 95-9055 does not describe an expanding municipal service area but delineates a specific place of use by quarter-quarter description.

3. *The condition of Water Right No. 95-9055 prohibiting use of this ground water right for irrigation of land to which surface rights are available does not prohibit land application of treated municipal effluent on such land.*

You are correct. This condition addresses the primary or first use of the diverted groundwater. IDWR recognizes municipal use as being fully consumptive. Once the

groundwater has been used for its initial purpose, the municipal provider may reuse the reclaimed water within its place of use for other purposes that are defined as specific uses of water within the broader municipal purpose.

4. The condition on Water Right No. 95-9248 stating "Place of use is within the area served by the public water supply system of the Ridge at Blackrock Bay Homes, Inc. The place of use is generally located within Government Lot Numbers 1, 2, and 3 of section 9, Township 48N, Range 4W." will be understood to apply to the service area of the current owner and municipal provider, Black Rock Utilities, Inc.

Permit no. 95-9248 recognizes a generally described service area as the place of use of the water diverted under the permit. The Ridge at Blackrock Bay Homes, Inc. assigned the permit to Black Rock Utilities, Inc., and Black Rock intends to similarly use the water. The service area is the portion of the Black Rock project served by the Black Rock municipal system.

5. The place of use for Water right No. 95-9248 describes an expanding municipal service area and is not limited to the lots identified in the condition quoted above.

Based upon Idaho Code § 42-202(B) and § 42-219, the place of use for permit no. 95-9248 describes an expanding municipal service area and is not limited to the lots identified in condition number six of the permit.

In response to your general question of whether a permit amendment is required to land apply treated wastewater to golf courses within the project, the answer is different for each permit. Permit no. 95-9055 does not describe a "service area" place of use. Treated water used for irrigation would have to be applied to those portions of the golf course(s) that are within the described place of use on the permit document.

If Black Rock wishes to land apply water diverted under permit no. 95-9055 outside the current place of use, a permit amendment would be required modifying the place of use. IDWR has discretion to publish notice of an application for amendment. The original public notice for this permit used the language "municipal use is within the service area of the applicant." IDWR will not require publication of notice of the application for amendment, assuming Black Rock only proposes to change the place of use to a generally described service area.

Permit no. 95-9248 describes the place of use as a "service area." The place of use may change as the service area changes. An amendment to permit no. 95-9248 is not required to land apply reclaimed municipal water.

Respectfully,

Gary Spackman

Cc: Bob Haynes, Regional Manager, Northern Regional Office, IDWR
John R. Layman, Layman, Layman & Robinson
Barry Rosenberg, Executive Director, Kootenai Environmental Alliance
Jai K. Nelson, Coordinator, Coalition for Positive Rural Growth

Addendum E COMMUNICATIONS WITH IDWR/AG REGARDING NAMPA

1. Letter from Christopher Meyer to Steven Strack (May 19, 2011) (with enclosed copy of letter from Steven Strack to Randall Fife (June 16, 2005)).
2. Letter from Christopher Meyer to Garrick Baxter and Jeff Peppersack (May 24, 2011) (including an attachment from the Water Law Handbook).
3. Letter from Garrick Baxter to Chris Meyer (May 26, 2011).
4. Letter from Christopher Meyer to Garrick Baxter (June 2, 2011) (including a copy of the May 24, 2011 letter with hand-written notes showing edits made by Garrick Baxter in his letter of May 26, 2011).
5. Letter from Garrick Baxter to Christopher Meyer (June 3, 2011).

Letter from Christopher Meyer to Steven Strack (May 19, 2011) (with attached copy of letter from Steven Strack to Randall Fife (June 16, 2005)

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May 19, 2011

Steven W. Strack
Senior Deputy Attorney General
Office of the Attorney General
Natural Resources Division
P.O. Box 83720
Boise, ID 83720-0010

Re: City of Nampa: Use of water treatment facility outside of city limits

Dear Mr. Strack:

It was a pleasure to speak with you on Monday. As promised, I am writing to memorialize our discussion. Specifically, I wish to confirm that the views expressed in the letter you provided to Moscow City Attorney Randall Fife on June 16, 2005 (copy attached) are consistent with the advice we have received from IDWR staff respecting a possible wastewater infiltration project.

My client, the City of Nampa, is contemplating construction of such a facility as one option for meeting water quality requirements. As I mentioned, I met on Monday with Jeff Peppersack and Garrick Baxter of IDWR and Jeff Johnson and Steve Burgos of Brown and Caldwell to discuss water rights implications of such a project. If the City pursues the project, it would likely be located south of the City outside of the city limits and outside of the area of city impact.

Jeff Peppersack and Garrick Baxter expressed their view, based on current Department policy and guidance, that operation of such a facility would not require a new water right or a transfer of the City's existing water rights, so long as the purpose of the facility is to provide treatment to meet mandatory water quality requirements.

Moreover, they expressed the view that no legal obstacle is imposed by the fact that the facility likely would be located outside of the city limits. Jeff explained that the City would simply need to notify the Department of the location of the wastewater infiltration facilities so

that the Department could update its GIS shape file describing the City's service area. This would be the only administrative action required.

It was their view that an infiltration project to meet mandatory water quality requirements would constitute a municipal use of water. Accordingly, the service area of the City would expand to include this use. The water code was amended in 1996 to provide expressly for such a flexible, expanding service area, and that definition expressly recognizes that the service area may reach beyond a city's boundaries. The statute defines a municipal provider's "service area" as follows:[1]

> "Service area" means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes. For a municipality, the service area shall correspond to its corporate limits, or other recognized boundaries, including changes therein after the permit or license is issued. The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality's established planning area if the constructed delivery system for the area shares a common water distribution system with lands located within the corporate limits. For a municipal provider that is not a municipality, the service area shall correspond to the area that it is authorized or obligated to serve, including changes therein after the permit or license is issued.

Idaho Code § 42-202B(9) (emphasis supplied).

The City's contemplated wastewater infiltration facility meets this test. First, it would be "within the municipality's established planning area." "Planning area" is not a defined term but is understood to refer to the area used by the City or other municipal provider to plan for current and future water requirements. Second, the infiltration project would be physically connected via pipeline or other conveyance with the City's wastewater collection and treatment system which is, in essence, a continuation of the City's water delivery system. Accordingly, it satisfies the definitional requirement that "the constructed delivery system for the area shares a common water distribution system with lands located within the corporate limits."

After the meeting at IDWR, I reviewed your letter to Mr. Fife. I then called you to confirm that nothing in that letter expresses a contrary view, particularly with respect to location of the infiltration facility outside of city boundaries. The letter to Mr. Fife, of course, addressed a different and more complex question: Can a city provide water to customers in another state? Thankfully, we need not grapple with that issue here. In answering that question, the Fife letter made reference to statutory provisions and case law dealing with the issue of water service by a

[1] By the way, the reference in the Dykes letter to Idaho Code § 42-203 appears to be in error. The language quoted is from Idaho Code § 42-202B(9).

municipality outside of its boundaries. As I understand it, you agree that none of those authorities pose a problem here. I will step through this conclusion briefly.

The Fife letter references Idaho Code § 50-323 which provides:

> Cities are hereby empowered to establish, create, develop, maintain and operate domestic water systems; provide for domestic water from wells, streams, water sheds or any other source; provide for storage, treatment and transmission of the same to the inhabitants of the city; and to do all things necessary to protect the source of water from contamination. The term "domestic water systems" and "domestic water" includes by way of example but not by way of limitation, a public water system providing water at any temperature for space heating or cooling, culinary, sanitary, recreational or therapeutic uses.

Idaho Code § 50-323 (emphasis supplied).

The first authorizing clause ("Cities are hereby empowered to establish, create, develop, maintain and operate domestic water systems") is not limited to the city limits. The clause mentioned in your letter ("provide for storage, treatment and transmission of the same to the inhabitants of the city") might be read as a geographic constraint but, in context, should not be so understood. First, as noted, other clauses provide express authorization that are not so limited. Second, the reference limiting a city's authority to "inhabitants of the city" is written in terms of water deliveries to customers and should not apply to limit the physical location of post-use water treatment. Instead, post-use water treatment would more properly fall under the final clause ("to do all things necessary to protect the source of water from contamination") which is not limited geographically. In any event, the language in section 50-323 must be read in light of the more recently enacted definition of "service area" in the 1996 Act, discussed above, which expressly authorizes deliveries outside of a city's boundaries. Moreover, common sense indicates that cities have general police power authority to own and operate facilities outside of their city limits. Surely, for example, a city could operate a garage for city vehicles outside of its boundaries. A treatment facility should be no different.

This is not to say that the "inhabitants of the city" language is meaningless surplusage. The meaning, however, is found in other contexts. For example, the language is meaningful in the context of the authority of a city to enter into franchise agreements, as noted in the case you cited, *Albert v. Boise Water Corp.*, 118 Idaho 136, 143, 795 P.2d 298, 305 (1990). Thus, it makes sense that cities should be allowed to enter into exclusive franchise agreements (exempt from anti-trust laws) only within their city limits. Likewise, they could not issue regulations governing water use (such as a requirement to hook up to city water) outside of the city's boundaries. But geographic boundaries should not come into play in other contexts, such as where to locate a treatment facility.

I trust that this letter fairly summarizes our discussion. If, instead, you believe that the City of Nampa may not be authorized to operate a water treatment facility (e.g., an infiltration basin) outside of its city limits, please let me know. I will copy Jeff Peppersack and Garrick Baxter, and ask that they, too, let me know if I have failed to accurately summarize their understandings.

Thanks to each of you for your assistance in this matter. I am sure it is apparent how important it is to Nampa to get this right.

Sincerely,

Christopher H. Meyer

Encl: Letter from Steven W. Strack to Randall D. Fife (June 16, 2005)

ec: Jeff Peppersack, Water Allocation Bureau Chief, IDWR
Garrick L. Baxter, Deputy Attorney General
Michael J. Fuss, Director, Public Works Department
Lenard Grady, City Engineer, Engineering Division
Kim Lord, Water Superintendent, Waterworks Division
Terrence R. White, White, Peterson, Gigray, Rossman, Nye & Nichols, P.A.
Jeffrey Johnson and Steve Burgos, Brown and Caldwell
Terry M. Scanlan, Roxanne Brown, and Stuart Hurley, SPF Water Engineering, LLC

CHM:ch

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STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

June 16, 2005

Randall D. Fife
City Attorney
City of Moscow
P.O. Box 9203
Moscow, ID 83843-1703

Re: Provision of Water and/or Sewer Services by an Idaho Municipality to Out-of-State Governmental or Private Entities.

Dear Mr. Fife:

Your letter asked four questions:

(1) Are there state prohibitions on cities providing water and/or sewer services to extra-territorial governments or private users?

(2) Do principles of state ownership of water prohibit a city from providing domestic water services to customers outside the state?

(3) Would provision of water and/or sewer services to extra-territorial governments or private users adversely affect current city water permits and licenses?

(4) May a city, as a municipal corporation, sell water and/or water related services as a commodity similar to how Idaho water bottlers appear to do?

Delivery of water to customers outside municipal boundaries.

Among the powers of municipal corporations is the power to "operate their own utility systems and provide water, power light, gas and other utility services *within the city limits*." Alpert v. Boise Water Corp., 118 Idaho 136, 143, 795 P.2d 298, 305 (1990) (emphasis added). Idaho Code § 50-323 provides that cities may "provide for storage, treatment and transmission of [domestic water] to the inhabitants of the city." Idaho Code § 42-203 provides that the service area of a municipality "shall correspond to its corporate limits." The term "service area" also includes lands outside the city boundaries, but within a city's planning area, if the delivery system within the planning area shares a common water distribution system with lands within the

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corporate boundaries. *Id.* Service areas must be defined in any water license issued to a municipal provider, and the license must be conditioned "to prohibit any transfer of the place of use outside the service area." Idaho Code § 42-219. Thus, as a general matter, cities may not contract to provide water services to private users who reside outside the city boundaries or outside the service area defined in the city's water right license.

Cities within Idaho are also authorized to enter into joint service agreements with other municipalities where it is more practical to construct and maintain a unified water or sewage system than for each city to provide separately such services to their respective residents. Idaho Code §§ 50-1022 to -1025. In such a case, each city's water rights would presumably be amended so that the service area included all lands within the corporate boundaries of the two cities.

Similar arrangements with out-of-state cities are potentially available under the Joint Exercise of Powers Act, Idaho Code §§ 67-2326 to -2333, which authorizes public agencies in Idaho to enter into cooperative agreements with other public agencies in Idaho and other states. Idaho Code § 67-2327 defines "public agency" to include cities. One important caveat on the exercise of joint powers is that:

> nothing in this act shall be construed to extend the jurisdiction, power, privilege or authority of the state or public agency thereof, beyond the power, privilege or authority said state or public agency might have if acting alone.

Idaho Code § 67-2328. This prohibition on using the Joint Exercise of Powers Act to expand jurisdiction is especially important in the context of municipalities, which may exercise "only those powers granted to them by the State Constitution or the legislature." Alpert, 118 Idaho at 142, 795 P.2d at 304. Thus, any provision of water within an out-of-state city or county would have to comply with the joint service provisions of Idaho Code §§ 50-1022 to -1025. And, when delivering services to out-of-state entities, any agreement to jointly exercise powers would have to be carefully crafted to address issues such as the authority to levy and collect taxes and fees. Obviously, an Idaho city would have no authority to levy taxes on out-of-state residents, and the levy and collection of taxes would likely have to be carried out by the cooperating out-of-state city.

Aside from the implied authority derived from the Joint Exercise of Powers Act and Idaho Code §§ 50-1022 through -1025, we have found no authority in the Idaho Code allowing a city to provide water and sewer services to out-of-state customers. Indeed, the only provision in the Idaho Code addressing city authority to provide water to out-of-state customers is Idaho Code § 50-234, which authorizes agreements with cities outside state boundaries to "purchase or lease [the] out of state water distributing system, plant, and equipment of privately owned utilities" for the purpose of providing water to both cities "from an out of state [water] source."

While Idaho Code § 50-234 addresses the joint use of out-of-state water sources, it is silent as to use of Idaho water sources to service out-of-state customers.

Principles governing out-of-state use of water

Presuming that the City of Moscow were to enter into a joint service agreement with an out-of-state city, the City of Moscow would have to obtain a change of its water rights before providing water to customers in the other city.

State law does allow the use of water outside the state. Any provision of water to out-of-state entities, however, must comply with Idaho Code § 42-401(2), which requires that:

> Any person, firm or corporation or any other entity intending to withdraw water from any surface or underground water source in the state of Idaho and transport it for use outside the state or to change the place or purpose of use of a water right from a place in Idaho to a place outside the state shall file with the department of water resources an application for a permit to do so, subject to the requirements of chapter 2, title 42, Idaho Code.

In the case of an existing water right, an application to amend a permit or to transfer a licensed or decreed right would have to be filed, rather than an application for a new permit. *See* Idaho Code §§ 42-211 and 42-222. In determining whether to approve an applicant's use of water outside the state, the Director of the Department of Water Resources "must find that the applicant's use of water outside the state is consistent with the provisions of section 42-203A(5), Idaho Code." Section 42-203A(5) authorizes the director to reject applications where:

> [T]he proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code, or (f) that it is contrary to conservation of water resources within the state of Idaho, or (g) that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates . . . .

Assuming the application were not rejected under the criteria of § 42-203A(5), the director, in assessing whether water should be appropriated for use outside the state, would then consider the following factors:

(a) The supply of water available to the state of Idaho;
(b) The current and reasonably anticipated water demands of the state of Idaho;
(c) Whether there are current or reasonably anticipated water shortages within the state of Idaho;
(d) Whether the water that is the subject of the application could feasibly be used to alleviate current or reasonably anticipated water shortages within the state of Idaho;
(e) The supply and sources of water available to the applicant in the state where the applicant intends to use the water; and
(f) The demands placed on the applicant's supply in the state where the applicant intends to use the water.

Idaho Code § 42-401(3). Finally, any water right held by the city would have to be modified to reflect the joint service area of the involved cities.

Sale of Water as a Commodity

Municipal water rights are held for "residential, commercial, industrial, irrigation of parks and open space, and related purposes ... which a municipal provider is entitled or obligated to supply to all those users within a service area ...." Idaho Code § 42-202B. If a city desired to use part of its water as a commodity for commercial sale, the nature of use would change from municipal purposes to commercial purposes, and the city would have to seek an amendment of its water right permits or licenses pursuant to Idaho Code § 42-222 before engaging in such uses.

Sincerely,

STEVEN W. STRACK
Deputy Attorney General
Natural Resources Division

SWS/pb

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Via Email and U.S. Mail

May 24, 2011

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Re: City of Nampa, re-use of effluent

Dear Garrick and Jeff:

This letter follows up on our meeting in your offices on May 16, 2011. That meeting was attended also by Jeff Johnson and Steve Burgos of Brown and Caldwell. We met to explore water right issues that might be presented by a project the City of Nampa is contemplating that would re-direct its municipal effluent from Indian Creek to infiltration basins the City could construct south of the City.

In that meeting we discussed a wide range of water rights issues potentially affecting such a project. This letter addresses only one: the right of cities to recapture and reuse municipal effluent. (A separate letter from me to Steve Strack dated May 19, 2011 addressed the City's authority to locate the project outside of the city limits.) You confirmed my understanding that a city may recapture and reuse its municipal effluent and apply it to other uses within its growing service area, and that doing so does not cause legal injury to other water uses. You also confirmed that, if required to meet environmental regulations, treatment utilizing an infiltration basin would be viewed as being within the existing municipal use. You also confirmed that the uses could be modified over time. For example, as conditions change and demand grows, the City could put less water into recharge and use some or all of the effluent to serve new customers (e.g., for lawn or open space irrigation). Finally, you confirmed that these

uses would not require a transfer—assuming that the reuse of the effluent was required in order to satisfy environmental requirements.

Following our meeting, I undertook some additional research on the topic. Although there is plenty of Idaho law on the subject of recapture and reuse in the context of irrigation rights, I have not encountered any Idaho case law directly addressing the issue in the context of reuse of municipal effluent. Fortunately, there is a substantial body of law on the subject from other western states. It is entirely consistent with the views you expressed at the meeting.

I thought it might be helpful to share the results of this research with you. Please see the enclosed summary, notably subsection "C" dealing with municipal effluent. I anticipate that this will be added to the Water Law Handbook as a replacement for Chapter 16. If you have any additional thoughts or authorities that I should be aware of, I would be most appreciative of your sharing them with me.

The bottom line is that I believe the Department is on solid footing here. I will counsel the City that there is good support for the proposition that it may recapture effluent and direct it to aquifer recharge and, perhaps later, use it to support expanding municipal demand (e.g., lawn irrigation) as the City grows. As you noted in our meeting, if this is done in order to meet mandatory environmental regulations, both such uses would be viewed as part of the municipal use and no transfer application would be required.

Sincerely,

Christopher H. Meyer

Encl: Recapture and Appropriation of Waste Water

ec: Michael J. Fuss, Lenard Grady, and Kim Lord, City of Nampa
Jeffrey Johnson and Steve Burgos, Brown and Caldwell
Terry M. Scanlan, Roxanne Brown, and Stuart Hurley, SPF Water Engineering, LLC

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RECAPTURE AND APPROPRIATION OF WASTE WATER

A. Overview

Few water uses consume one hundred percent of that which is diverted. Most water uses entail the release of some "waste water," that is, water that is diverted for beneficial use, but is not consumed. Irrigation uses, in particular, involve diversions that alter natural flow patterns and can result in increased discharge of waste water in other areas.

The term "waste water" as used here includes the tail water accruing at the end of an irrigated field, the seepage water that leaks out of canals or reservoirs, the excess water applied to crops that percolates into the soil, and wastewater generated by industrial processes or by a municipality.[522] (Note that wastewater—typically written without a space—refers to effluent from industries or municipal treatment plants.) The term "return flow" also is used as a catch-all to describe any water that is diverted, but not consumed, and eventually returns to a stream or aquifer, either that from which it originated or some other. In common usage, return flow is used to describe the water that reaches a stream or aquifer after the first use and, hence, becomes part of the public water supply available for appropriation. Waste water, if not recaptured by the appropriator or appropriated by another, becomes return flow.

This section explores the rights of the original appropriator to recapture his or her own waste water and the rights of third parties to obtain an appropriation of waste water released by another.

B. Recapture of irrigation waste water by the original diverter

One principle governing waste water is that an irrigator "is not bound to maintain conditions giving rise to the waste of water from any particular part of its system for the benefit of individuals who may have been making use of the waste." Wells A. Hutchins, *The Idaho Law of Water Rights*, 5 Idaho L. Rev. 1, 100 (1968). Thus, the original appropriator is free to abandon or modify the activity producing the waste. Perhaps the most common scenarios are the conversion from flood irrigation to sprinklers or the replacement of a leaky ditch with a pipeline. After the improvement is made, less water is applied to the field and/or less water escapes along the conveyance. As a result, the neighboring hydrology may be affected and water available to serve other water rights could be reduced. Holders of those rights, however, have no legal basis to object to such efficiency improvements by their neighbors.

This right to increase efficiency includes the appropriator's right to recapture waste water before he or she has relinquished control by allowing the waste water to reach a natural stream or aquifer. "It is settled law that seepage and waste water belong to the original appropriator and, in the absence of abandonment or forfeiture, may be reclaimed by such appropriator as long as he is willing to put it to beneficial use."[523] For example, a farmer may capture tail water running off the low end of a field and pump it back to a portion of the field that, due to topography or other factors, was chronically under-irrigated. This recapture may even occur years after the original diversion is initiated. Since the right of recapture is considered part of the original water right, it would be allowed under the priority date of the original diversion—provided the recaptured waste water is put to beneficial use on the original parcel (for example to water an area that previously was under-irrigated). Others who may have come to rely on the waste water may not insist that the

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[522] In *A&B Irrigation Dist. v. Aberdeen-American Falls Ground Water District*, 141 Idaho 746, 118 P.3d 78 (2005) (emphasis omitted), the Idaho Supreme Court (quoting the SRBA Court) defined waste water as: "(1) water purposely discharged from the project works because of operation of necessities, (2) water leading from ditches and other works, and (3) excess water flowing from irrigated lands, either on the surface or seeping under it."

[523] *Reynolds Irrigation Dist. v. Sproat*, 70 Idaho 217, 222, 214 P.2d 880 (1950). *See also Hidden Springs Trout Ranch v. Hagerman Water Users, Inc.*, 101 Idaho 677, 619 P.2d 1130 (1980); *Sebern v. Moore*, 44 Idaho 410, 258 P. 176 (1927) (third parties may appropriate waste water, subject to the original appropriator's right, in good faith, and to cease wasting it and put it to a beneficial use); and *In re Boyer*, 73 Idaho 152, 248 P.2d 540 (1952). None of these cases addresses the question whether one may reduce waste, then transfer the surplus to some new use. Later opinions make clear that an appropriator may not do this. *See, e.g., Fremont-Madison Irrigation Dist. v. Idaho Ground Water Appropriators, Inc.*, 129 Idaho 454, 926 P.2d 1301 (1996) (Basin-Wide Issue No. 4).

original appropriator maintain the artificial conditions from which they have benefited. However, it perhaps conveys the wrong message to conclude that all seepage and waste water literally "belong" to the original appropriator.

The right to recapture waste water does not override other principles of water law, the most important of which likely is the rule against enlargement of a water right. In *United States v. Haga*, 276 F. 41 (Dist. Idaho 1921), the District Court suggested that the beneficial use of the conserved waste or seepage must occur within the same lands for which the water originally was appropriated.[524] This limitation—that recaptured waste or seepage water may be used only on the original lands—reinforces Idaho's anti-enlargement policy. Allowing a water user to make more complete use of water under his or her water right within the licensed or decreed place of use, and for the licensed or decreed purpose, promotes efficiency and the full beneficial use of water under the right; doing so logically has been seen by Idaho courts as fully within the original right.

The Idaho Supreme Court reiterated the non-enlargement limitation, and further enforced the rule of *Fremont-Madison*,[525] in *A&B Irrigation Dist. v. Aberdeen-American Falls Ground Water District*, a 2005 opinion where the Court ruled that "A&B may use the [reclaimed waste] water on its original appropriated lots."[526] The *A&B* Court not only emphasized this point, but went beyond it to state that an excess of waste water obligates the appropriator to diminish its diversion to reduce the waste:

> As the Ground Water Users and the State appropriately note, should A&B find itself in the unique situation of having more excess drain and/or waste water than it can reuse on its appropriated properties, Idaho water law requires the district to diminish its diversion. Reclamation Act of June 17, 1902, ch. 1093, § 8, 32 Stat. 388, 390.

A&B, 141 Idaho at 752, 118 P.3d at 84.[527]

Thus, if recapture and onsite re-use proves so effective that less water is required to accomplish the licensed or decreed beneficial use, the user may be required to reduce his or her diversion accordingly. This may mean that the right itself is reduced, either immediately or at some time in the future—such as when it is evaluated in a transfer, for example. On the other hand, depending on the circumstances, the user may retain the right to cease the recapture and revert to the prior regime.

But there is more to say about the ruling in *A&B*, and it further reinforces the point that seepage cannot be used for enlargements, such as irrigation of new lands. The central dispute in the case concerned 2,363 acres the irrigation district was irrigating but which were in excess of the water right's licensed acreage. The district explained that the acres were irrigated with waste water originating from both the district's ground water delivery system and natural runoff, and argued that it should be allowed to do this because it "owned" the waste water. The plaintiffs, who were junior ground water users, asserted that these additional acres were illegal enlargements and that a water right to irrigate them could be recognized, if at all, only under Idaho's amnesty statute, Idaho Code § 42-1426, in which case the right would have to take a subordinated priority tied to the 1994 date the statute was passed. This had been the essential ruling in *Fremont-Madison*. Indeed, the amnesty statute itself explains the Legislature's recognition that enlargements arose "through water conservation and other means" that allow more acres to be irrigated with the same diversion. Reducing or recapturing waste water is a classic example of water conservation.

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[524] The court referred only to the beneficial uses on the "project" lands, which in that case included a federal irrigation project in the Boise River Basin.

[525] *Fremont-Madison Irrigation Dist. v. Idaho Ground Water Appropriators, Inc.*, 129 Idaho 454, 926 P.2d 1301 (1996) (Basin-Wide Issue No. 4).

[526] *A&B Irrigation Dist. v. Aberdeen-American Falls Ground Water District*, 141 Idaho 746, 752, 118 P.3d 78, 84 (June 21, 2005).

[527] The reference to the Reclamation Act, presumably, is intended to embrace Congress' recognition that beneficial use of water is "the basis, the measure and the limit" of a water right. See discussion in section 3.D at page 12.

The *A&B* court took an exacting approach in its discussion of recaptured drain or seepage water which again emphasizes that this water cannot serve new lands without a new water right. The irrigation district had contended that the "source" of water to irrigate the extra acres is waste water, and not ground water under the district's original water right (even though the waste water originated primarily from the ground water supply). Although the Idaho Supreme Court ultimately rejected this and agreed with the district court that the source was the district's original ground water source, it did entertain the question of what would happen had it viewed the source as simply "waste water" not originating from the district's licensed diversion. It found the result in that case would be that:

> A&B's additional 2,363.1 acres neither qualifies as an enlargement or for amnesty under I.C. § 42-1426 based upon a finding that the water source is recaptured drain and/or waste water. A&B is not seeking to expand the number of acres it irrigates with original ground water under right no. 36-02080. Rather, it relies on an unappropriated source, that of recaptured drain and/or waste water to irrigate its additional acres. This is in violation of the mandatory water permit requirements. Idaho Code § 42-229 (2003). Treating the water as something other than ground water, A&B must seek a new water right for this water source prior to any further use on the 2,363.1 acres.

A&B, 141 Idaho at 751-52, 118 P.3d at 83-84.

In a footnote, the Court held that "appropriation under the mandatory permit scheme is the only method by which this water can now be put to beneficial use." *A&B*, 141 Idaho at 752, 118 P.3d at 84, n. 1. Ultimately, the Court found that the district's source was water diverted under its original ground water right (although recaptured on the surface as seepage or waste), and that the district therefore did qualify for the amnesty. Accordingly, the district was able to continue irrigating the enlarged acres, but was required to accept the subordination condition on the new water right for them.

Provisions of Idaho's water code other than the amnesty provision discussed above also are consistent with the non-enlargement principle when it comes to an appropriator's collection and use of waste water arising from his irrigation practices. An Idaho statute authorizes the construction of wells by a person owning irrigation works "for the sole purpose of recovering ground water resulting from irrigation under such irrigation works for further use . . . on lands to which the established water rights of the parties constructing the wells are appurtenant." Idaho Code § 42-228.[528] In other words, this statutory pronouncement on the recapture of waste or seepage water expressly restricts the use of the recaptured water to the original place of use—that is, enlargements are not allowed. Likewise, Idaho's transfer statute expressly prohibits enlargements as a result of any transfer. Idaho Code § 42-222(1).

In summary, although the cases authorizing an appropriator's recapture and re-use of waste water[529] did not expressly address the enlargement issue, it now has been addressed, and in clear terms. If additional lands or other uses are to be added to a water right through the recapture of waste water, a new water right will be necessary.

C. Reuse of municipal effluent.

The same basic principles of recapture and reuse apply in the context of municipal wastewater. Thus, a city may recapture and reuse effluent from its sewage treatment plant before it is released to a public water body. Likewise, farmers or others who had come to rely on the prior discharge of that wastewater cannot complain when the city recaptures and reuses it.

But there are differences when it comes to municipal wastewater. Under Idaho law, muncipal water rights are different from others in two important respects. First, they do not have a fixed place of use. Instead, a municipal service

[528] This statute allows shallow ground water wells to recapture seepage originating from the surface irrigation of a parcel, roughly equivalent to a seepage ditch at the end of a field from which the farmer pumps water back to fully irrigate the parcel.

[529] *E.g.*, as *Sebern v. Moore*, 44 Idaho 410, 258 P. 176 (1927); *In re Boyer*, 73 Idaho 152, 248 P.2d 540 (1952); *Hidden Springs Trout Ranch v. Hagerman Water Users, Inc.*, 101 Idaho 677, 619 P.2d 1130 (1980).

area grows over time as does demand. In addition, municipal use encompasses a broad range of uses from low consumptive domestic uses to high consumptive uses by industries served by the municipal provider. This mix may change over time. Accordingly, the Department deems municipal water rights to be potentially 100 percent consumptive. As a result, cities may recapture wastewater and reuse it for other municipal uses (such as watering parks, golf courses, or lawns) and such use is not deemed to be an enlargement. "This rule [limiting reuse to the original irrigated land] was changed for municipalities, without an adjustment period for those who had relied on the return flow, when the courts allowed municipalities to start consuming their sewage effluent through disposal methods that no longer sent it back to the stream as return flow." Robert E. Beck, *Municipal Water Priorities/Preferences in Times of Scarcity: The Impact of Urban Demand on Natural Resource Industries*, 56 Rocky Mtn. Min. L. Inst. § 7.02[4] (2010).

While Idaho courts have not yet had occasion to address the issue, other state courts have consistently upheld the right of municipal providers to recapture and reuse municipal effluent and even, in some cases, to sell it to others.[530] The only limitation seems to be that the recapture occur before the water reaches a public water body.[531]

The effluent reuse issue was addressed in *Reynolds v. City of Roswell*, 654 P.2d 537 (N.M. 1982). First, the Court recognized the principle that the recapture must occur before the water reaches a natural watercourse.

> The City readily acknowledges, and we agree, that once the effluent actually reaches a water course or underground reservoir [i.e., an aquifer], the City has lost control over the water and cannot recapture it. That is what the courts state in the cases relied upon by the State Engineer. *See Brantley v. Carlsbad Irr. Dist.*, 92 N.M. 280, 587 P.2d 427 (1978); *Kelley v. Carlsbad Irrigation District*, 76 N.M. 466, 415 P.2d 849 (1966); *State v. King*, 63 N.M. 425, 321 P.2d 200 (1958); *Rio Grande Reservoir and Ditch Co. v. Wagon Wheel Gap Improvement Co.*, 68 Colo. 437, 191 P. 129 (1920).
>
> We stress that the specific legal issues on appeal in this case do not concern the recapture of water which has escaped into and have become commingled with the natural public waters, whether surface or underground. The issue here is whether Roswell may take the sewage effluent before it is discharged as waste or drainage water and reuse it for municipal purposes.

Reynolds, 654 P.2d at 540-41.

The *Reynolds* court then overturned conditions imposed by the New Mexico State Engineer that would have limited the City to its prior level of consumptive use. In reaching its decision, the Court quoted at length from a 1925 decision by the Wyoming Supreme Court directly addressing the right of a city to reuse its wastewater to extinction:

> It is not strange that we are unable to find any cases considering the right of a city to dispose of its unpurified sewage for irrigation purposes. Most of the controversies with respect to sewage that have gotten into the courts concern the rights of those who claim that in disposing of its sewage the city is guilty of maintaining a nuisance. In this case both the plaintiff and defendant are satisfied, for the present at least, and in fact insist, that the city discharge its sewage in such a way and at such place as will permit them to use it. It is well known that the disposition of sewage is one of the important problems that embarrass municipalities. In order to dispose of it without injury to others, a city may often be confronted with the necessity of choosing between several different

[530] In addition, at least five states have adopted statutes regulating, facilitiating, and encouraging the reuse of municipal effluent. Or. Rev. Stat. §§ 537.131, 537.132, 540.510; Cal. Water Code §§ 13551-13556; Nev. Rev. Stat. Ann. § 533.024; Wash. Rev. Code §§ 90.44.062 to 140; Utah Code Ann. §§ 73-3c-1 to 73-3c-8.

[531] Perhaps a city could engage in an aquifer storage and recovery project employing treated effluent. Doing so would require affirmative steps to measure and control the stored water, as well as the acquisition of corresponding water rights and/or approval of a mitigation plan. See discussion in section 19.C at page 168.

> plans, and in the selection of the plan to be followed we think it should be permitted to exercise a wide discretion. In determining how it will make a proper disposition of that which may be termed a potential nuisance, we think the city should not be hampered by a rule that would always require the sewage to be treated as waste or surplus waters. Sewage is something which the city has on its hands, and which must be disposed of in such a way that it will not cause damage to others. It would often be considered the height of efficiency if it could be disposed of in some other manner than by discharging it into a stream. Even in this state, where the conservation of water for irrigation is so important, we would not care to hold that in disposing of sewage the city could not adopt some means that would completely consume it. It might, we think, be diverted to waste places, or to any chosen place where it would not become a nuisance, without any consideration of the demands of water users who might be benefited by its disposition in some other manner. In providing such a place, the city might acquire the right to discharge the sewage on the lands of any person willing to suffer such a use of his lands, and we see no reason why this right might not be gained by the city in consideration of the landowner's right to use or dispose of the sewage in any lawful way. From these views with reference to the city's rights, it follows that the sewage deposited from the so-called "sewer east of Lake Minnehaha" should not be considered as a part of the public waters of the state subject to the rights of the appropriators from Crow creek. It is our opinion, therefore, that the plaintiff, as an appropriator of waters of Crow creek, has no right to question the contract between the city and the defendant in so far as it provided for the discharge and use of sewage from the sewer line last mentioned.

Wyoming Hereford Ranch v. Hammond Packing Co., 236 P. 764, 772 (Wyo. 1925) (emphasis supplied). This 1925 decision continues to be cited and quoted for its bedrock principles.

In *Wyoming Hereford*, there were two sewer lines from the City. The Court, however, limited its holding above to the effluent delivered directly to the packing company. The other sewer line discharged back into the river which carried the water to the packing company. Once the water "becomes comingled with the waters of the stream" it is no longer the City's to recapture. Wyoming Hereford, 236 P. at 773. This limitation on the right to recapture is consistent with that in *Reynolds*, discussed above, and *City of San Marcos v. Texas Comm'n on Envt.l Quality*, 128 S.W.3d (Texas Ct. App. 2004), discussed below.

This Wyoming case, in turn, was relied on by the Arizona Supreme Court in reaching a similar conclusion confirming the right to recapture municipal effluent in that state. *Arizona Public Service Co. v. Long*, 773 P.2d 988 (Ariz. 1989).[532] In the Arizona case, holders of junior downstream irrigation rights had come to rely on effluent discharged by Pheonix and other cities. They sued to stop the cities from selling that effluent to a utility that would use it for cooling water at a nuclear power plant. The Arizona Supreme Court upheld the cities' right to do so, holding that they could put their sewage effluent to any reasonable use that would allow them to maximize its use and its economic value. The Arizona Court of Appeals confirmed these principles in *Arizona Water Co. v. City of Bisbee*, 836 P.2d 389 (Ariz. Ct. App. 1991), a case involving a city's sale of effluent to Phelps Dodge for use in copper leaching operations.

In *Barrack v. City of Lafayette*, 829 P.2d 424 (Colo. Ct. App. 1992), the Colorado Court of Appeals released the city from liability for no longer providing effluent water under a contract with plaintiffs when environmental regulations made that delivery illegal. In so ruling, the court ruled that plaintiffs' procedural due process was not violated because they had no property interest in the effluent.

In *City of San Marcos v. Texas Comm'n on Envt.l Quality*, 128 S.W.3d (Texas Ct. App. 2004), the Texas Court of Appeals found that the City of San Marcos did not have the right to recapture its wastewater effluent in a river three miles

[532] This important case is discussed in Ginette Chapman, Note, *From Toilet to Tap: The Growing Use of Reclaimed Water and the Legal System's Response*, 47 Ariz. L. Rev. 773 (2005), and 2 Robert E. Beck, *Waters and Water Rights* § 13.04 (2000).

downstream of the sewage treatment plant. The City sought to recapture the water, treat it, pipe it back to the City, and add it to its municipal supply. The purpose of leaving it in the river for so long was to allow the effluent to be diluted with cleaner river water, thus reducing the cost of treatment after recapture. In rejecting the plan, the court concluded that the character of the water changed once the City released it to the river, whereupon it became public water. "By intentionally discharging its effluent into the river, where it eventually commingles with the State's water, the City effectively abandons its control over the identifying characteristics of its property. This physical reality suggests that the City is voluntarily and intentionally abandoning its ownership rights over the effluent." *San Marcos*, 128 S.W.3d at 277. By clear implication, however, the City would have been allowed to recapture and reuse its wastewater if it had done so before returning it to the river. Indeed, as the court noted, that was exactly what the City's opponents said: "If the City wants to reuse its wastewater, it should use it directly rather than unnecessarily mixing it with the pure river water." *San Marcos*, 128 S.W.3d at 267.[533]

D. Appropriation of waste water by a third party

A distinct issue is presented where a person seeks a new appropriation of waste water generated by another appropriator. Since the new appropriation would carry a junior priority date, and would be allowed only in the absence of injury to other users, it does not present the same enlargement concerns described above. Indeed, such waste water appropriations are common and are analyzed essentially like any other new appropriation.

However, as indicated above, an important caveat is that the new appropriator of waste water has no guarantee that the waste water will continue to be available. For instance, the original appropriator who generates the waste water could cease diverting altogether so as to leave the new appropriator without a water source. Likewise, the original appropriator might alter his or her operation to reduce the amount of waste water generated (e.g., by ditch lining). Finally, as noted, the original appropriator may recapture the waste water for use on existing lands.

In *Sebern v. Moore*, 44 Idaho 410, 258 P. 176 (1927), the court confirmed the basic right to appropriate waste and seepage water made available as a by-product of the diversions of other appropriators. (Prior to this decision, there was some thought that appropriations might be limited to water naturally occurring.) Indeed, in *Sebern*, the waste water appropriator was allowed to re-establish his diversion of waste water after a waste ditch was relocated by another appropriator. The court added the now-familiar caveat, however, that the waste water appropriation is "subject to the right of the owner [that is, the person generating the waste water] to cease wasting it, or in good faith to change the place or manner of wasting it, or to recapture it, so long as he applies it to a beneficial use." *Sebern*, 44 Idaho at 418. This is significant given that in a change or transfer application, the prior appropriator is not allowed to make any change (even in good faith) that would injure a junior.

In *Hidden Springs Trout Ranch v. Hagerman Water Users, Inc.*, 101 Idaho 677, 619 P.2d 1130 (1980), the Idaho Supreme Court unanimously reaffirmed the principle that a third-party appropriator of waste water may not compel the original diverter to continue the practices leading to the generation of the waste water. The court emphasized that it makes no difference whether the waste water arises before the use (from a leaky canal) or after the use (from post-irrigation tail water, for example). The original appropriator may at any time cease the practice giving rise to the waste water, even to the detriment of those who hold valid water rights in that waste water (subject, of course, to the limitations as to non-enlargement and beneficial use as described in *A&B Irrigation Dist. v. Aberdeen-American Falls Ground Water District*, 141 Idaho 746, 752, 118 P.3d 78, 84 (2005)).

These legal principles pertaining to waste water have been followed in the Snake River Basin Adjudication ("SRBA"). Special Master Terry Dolan reiterated these principles in *Special Master's Report, In re SRBA*, Case No. 39576, Subcases 75-4471 and 75-10475 (Silver Creek Ranch Trust) at 4 and 6-7 (September 28, 2009). Similarly, in *In re: Janicek Properties, LLC, Memorandum Decision and Order on Motion for Summary Judgment, In re SRBA*, District Court of the Fifth Jud. Dist. Of the State of Idaho, Subcase No. 63-27475 (May 2, 2008), the Bureau of Reclamation and

[533] Texas, by the way, is the only western state that applies a rule of capture (rather than the prior appropriation doctrine) to ground water. (The City's water supply, and hence its effluent, was based entirely on ground water.) The court discussed the rule of capture at some length, but it does not seem that the outcome would be any different had the prior appropriation doctrine applied instead.

its contracting irrigation district argued that they constructed a drain and could trace most or even all of the water in it to seepage and return flows from the district's irrigated lands. They contended that the drain was not a natural watercourse and that they should be deemed the owner of the drain and the water in it. Based on this reasoning, they asked the adjudication court to invalidate a farmer's 1951-priority licensed water right pursuant to which he pumped water from the drain to irrigate his crops. The Special Master rejected this challenge to the farmer's drain water right, ruling that, regardless of who constructs a drain, the water in it is "public water of the state of Idaho and subject to appropriation and beneficial use." *Janicek Properties*, slip op. at 6. The court found that whether the drain is a natural watercourse "is immaterial—what matters is that the water is water of the state" and is subject to appropriation. *Id.* at 8.

Once water is released by the original appropriator and is beyond his or her control (whether that be to an artificial conveyance such as a drain or to a natural stream or aquifer), it becomes public water once again and subject to appropriation. Referring to such a source as "waste water" undoubtedly has led to some confusion over the years. Other than the caveat discussed above (that the new appropriator cannot complain if the waste water is no longer supplied), there is little to be gained in attempting to distinguish it from water occurring naturally. Even a constructed drain at times will carry natural runoff. Similarly, natural stream flows in agricultural areas nearly always contain some measure of return flow and seepage, either those flowing to the stream as surface returns or those arriving through ground water discharge. The essential rule is simply that public waters are subject to appropriation regardless of their origin or whether they are found in drains or similar structures.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

May 26, 2011

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Re: City of Nampa municipal effluent

Dear Chris,

This letter is in response to your letter of May 24, 2011, which documents the issues discussed at a meeting held on May 16, 2011. Jeff Peppersack and I appreciated meeting with you and the gentlemen from Brown and Caldwell on May 16th. Our conversation, regarding the City of Nampa's proposal to re-direct its municipal effluent from Indian Creek to infiltration basins south of the City, was a productive discussion. As explained at our meeting, the Department is not aware of any legal impediment to the City being able to reuse its municipal effluent for other municipal purposes within its growing service area. That said, I am writing to clarify the Department's understanding of the issues discussed at our May 16th meeting as those issues are explained in your May 24th letter.

First, the Department would like to clarify a subtle but important point. The second paragraph of page one states "You confirmed my understanding that a city may recapture and reuse its municipal effluent and apply it to other uses within its growing service area." It is important to clarify that the use which the effluent can be put must continue to be a municipal use. I believe that this is likely your understanding as well. If so, the term "municipal" should be inserted as follows: "You confirmed my understanding that a city may recapture and reuse its municipal effluent and apply it to other municipal uses within its growing service area."

Second, the example used in the second paragraph should also be clarified. It provides: "For example, as conditions change and demand grows, the City could put less water into recharge and use some or all of the effluent to serve new customers (e.g. for lawn or open space irrigation)." The use of the term "recharge" raises a new issue that was not within the scope of our discussion. The context of our conversation was the treatment of water by infiltration, not recharge per se. Again, this is a subtle but important distinction to the Department. The following more accurately states the Department's current understanding regarding the City of

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Nampa's proposed project: "For example, as conditions change and demand grows, the City could put less water into treatment of effluent by infiltration and instead use some or all of the effluent for other municipal uses within its growing service area (e.g. for lawn or open space irrigation)." This more accurately encompasses the scope of our discussion. Similarly, the May 24th letter would better reflect our conversation if "aquifer recharge" in the last paragraph on page two was replaced with "treatment of effluent by infiltration."

Thank you for taking the time to document our conversation at the May 16th meeting. I hope this letter helps clarify the Department's position regarding the City of Nampa's proposed project. Please feel free to contact me if you have any questions.

Sincerely,

Garrick Baxter
Deputy Attorney General
Idaho Department of Water Resources

cc: Jeff Peppersack

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June 2, 2011

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Re: City of Nampa, re-use of effluent

Dear Garrick:

Thank you for your letter of May 26, 2011, responding to mine of May 24, 2011. Your comments are well taken and appreciated. For convenient reference in the future, I have hand-written your suggested changes on a copy of my May 24, 2011 letter. I enclose a copy for your file.

Your comments accurately capture our conversation and the informal guidance you have provided to the City of Nampa. The issue at hand and the primary focus of our meeting on May 16, 2011 is whether the City of Nampa would be allowed to re-direct its municipal effluent to an infiltration basin as a means of complying with federally-mandated water quality requirements. You have answered that question in the affirmative.

As noted in my prior letter, there is a broader range of water rights issues that could be presented down the road but do not need to be resolved at this time. I write to confirm that your letter of May 26, 2011 does not preclude exploring those issues if and when the occasion arises.

In the first clarification you provided, you noted that a city may recapture and reuse its municipal effluent and apply it to other municipal uses within its growing service area, and that

doing so does not cause legal injury to other water users. I agree that limiting this statement to municipal uses is necessary in order for this to be accomplished without a change in an element of the water right. However, it seems plausible to me that, based on a transfer, it would be possible for a city to recapture its municipal effluent and make that water available to other non-municipal uses. I am not aware of any Idaho authority on this. But I have encountered authorities from Wyoming and New Mexico that support this conclusion.

In *Wyoming Hereford Ranch v. Hammond Packing Co.*, 236 P. 764, 772 (Wyo. 1925), the Wyoming Supreme Court allowed the City of Cheyenne to enter into a contract whereby effluent previously discharged to a creek was delivered to a packing company "in such a way and at such place as will permit [the packing company] to use it." *Wyoming Hereford*, 236 P. at 772. (Another part of the contract was disallowed, because it used the creek as a delivery system.) Plainly this new use was not municipal, yet it was allowed irrespective of its impact on downstream users who previously benefited from the discharge of the effluent. "It might, we think, be diverted to waste places, or to any chosen place where it would not become a nuisance, without any consideration of the demands of water users who might be benefited by its disposition in some other manner. In providing such a place, the city might acquire the right to discharge the sewage on the lands of any person willing to suffer such a use of his lands, and we see no reason why this right might not be gained by the city in consideration of the landowner's right to use or dispose of the sewage in any lawful way." *Id.* (emphasis supplied).

In a more recent case, *Reynolds v. City of Roswell*, 654 P.2d 537 (N.M. 1982), the New Mexico Supreme Court relied on and quoted extensively from *Wyoming Hereford*. That case involved the City of Roswell's recapture of effluent for its own municipal use. While the ruling focused on the city's own use of its effluent for municipal purposes, the Court noted that for years "treated effluent had been sold to some farmers located east of the city, and has been sold to the Roswell Country Club for fairway watering purposes." *City of Roswell*, 654 P.2d at 538. Indeed, the State Engineer specifically addressed these uses in his conditions: "The State Engineer's conditions required that the city either continue selling treated effluent to the farmers east of the City and to the Roswell Country Club or to continue discharging treated effluent directly into the Hondo River." *City of Roswell*, 654 P.2d at 538. The Court disagreed, saying that the city was not required to maintain the prior regime of return flow. Nothing in the ruling, however, suggested that there was anything wrong with these non-municipal uses. Hence, there is a very strong implication that the sales to non-municipal uses were valid and the city could chose to continue them if it liked.

Let me emphasize that I am not trying to argue this point now. I just want to keep the door open for further discussion should the occasion arise.

The same is true for the second issue you addressed. You have confirmed that in the future the City may "put less water into treatment of effluent by infiltration and use some or all of the effluent to serve new customers." This is most helpful and fully answers the question I posed to you. Again, however, I hope there is no need to close the door on the possibility that

the City might explore other options including, for example, mitigation credits for aquifer recharge.

At this point, it would be premature for me to ask for departmental guidance on these side issues. I just hope that we may clarify that your letter of May 26, 2011 was not intended to preclude further exploration of these topics should the City move in that direction.

It is always a pleasure to work with you, Jeff Peppersack, and others at the Department. Thank you once again for your assistance and guidance, which the City greatly appreciates.

Sincerely,

Christopher H. Meyer

Encl: Copy of my letter of May 24, 2011 with hand-written edits reflecting Garrick Baxter's comments of May 26, 2011

cc: Jeff Peppersack, IDWR
Michael J. Fuss, Lenard Grady, and Kim Lord, City of Nampa
Jeffrey Johnson and Steve Burgos, Brown and Caldwell
Terry M. Scanlan, Roxanne Brown, and Stuart Hurley, SPF Water Engineering, LLC

CHM:ch

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GIVENS PURSLEY LLP

Edits noted per letter of 5-26-2011 from Garrick Baxter. CLL

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Via Email and U.S. Mail

May 24, 2011

Garrick L. Baxter
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garrick.baxter@idwr.idaho.gov

Jeff Peppersack
Water Allocation Bureau Chief
Idaho Department of Water Resources
322 East Front Street
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jeff.peppersack@idwr.idaho.gov

Re: City of Nampa, re-use of effluent

Dear Garrick and Jeff:

This letter follows up on our meeting in your offices on May 16, 2011. That meeting was attended also by Jeff Johnson and Steve Burgos of Brown and Caldwell. We met to explore water right issues that might be presented by a project the City of Nampa is contemplating that would re-direct its municipal effluent from Indian Creek to infiltration basins the City could construct south of the City.

In that meeting we discussed a wide range of water rights issues potentially affecting such a project. This letter addresses only one: the right of cities to recapture and reuse municipal effluent. (A separate letter from me to Steve Strack dated May 19, 2011 addressed the City's authority to locate the project outside of the city limits.) You confirmed my understanding that a city may recapture and reuse its municipal effluent and apply it to other municipal uses within its growing service area, and that doing so does not cause legal injury to other water uses. You also confirmed that, if required to meet environmental regulations, treatment utilizing an infiltration basin would be viewed as being within the existing municipal use. You also confirmed that the uses could be modified over time. For example, as conditions change and demand grows, the City could put less water into recharge and use some or all of the effluent to serve new customers (e.g., for lawn or open space irrigation). Finally, you confirmed that these

treatment of effluent by infiltration

uses would not require a transfer—assuming that the reuse of the effluent was required in order to satisfy environmental requirements.

Following our meeting, I undertook some additional research on the topic. Although there is plenty of Idaho law on the subject of recapture and reuse in the context of irrigation rights, I have not encountered any Idaho case law directly addressing the issue in the context of reuse of municipal effluent. Fortunately, there is a substantial body of law on the subject from other western states. It is entirely consistent with the views you expressed at the meeting.

I thought it might be helpful to share the results of this research with you. Please see the enclosed summary, notably subsection "C" dealing with municipal effluent. I anticipate that this will be added to the Water Law Handbook as a replacement for Chapter 16. If you have any additional thoughts or authorities that I should be aware of, I would be most appreciative of your sharing them with me.

The bottom line is that I believe the Department is on solid footing here. I will counsel the City that there is good support for the proposition that it may recapture effluent and direct it to aquifer recharge and, perhaps later, use it to support expanding municipal demand (e.g., lawn irrigation) as the City grows. As you noted in our meeting, if this is done in order to meet mandatory environmental regulations, both such uses would be viewed as part of the municipal use and no transfer application would be required.

Sincerely,

Christopher H. Meyer

Encl: Recapture and Appropriation of Waste Water

cc: Michael J. Fuss, Lenard Grady, and Kim Lord, City of Nampa
Jeffrey Johnson and Steve Burgos, Brown and Caldwell
Terry M. Scanlan, Roxanne Brown, and Stuart Hurley, SPF Water Engineering, LLC

CHM:ch

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STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

June 3, 2011

Christopher H. Meyer
GIVENS PURSLEY LLP
Post Office Box 2720
Boise, ID 83702-2720

Re: City of Nampa

Dear Chris,

Thank you for your letter of June 2, 2011 regarding our recent correspondence on the subject of the City of Nampa's water use. I would like to alleviate any concerns you have regarding the scope of my letter of May 26, 2011. My letter was not intended to preclude further exploration of the topics highlighted in your June 2, 2011 letter, should the City intend to move in that direction in the future. My letter was intended only to clarify the scope of the specific issues which we discussed at our May 16, 2011 meeting.

As always, I appreciate working with you on these important and interesting issues. Please let me know if you have any further questions.

Sincerely,

Garrick L. Baxter
Deputy Attorney General
Idaho Department of Water Resources

cc: Jeff Peppersack

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P.O. Box 83720 Boise, Idaho 83720-0098
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Addendum F COMMUNICATIONS WITH IDWR/AG REGARDING MCCALL

1. Letter from Christopher Meyer to Garrick Baxter (August 18, 2011).
2. Letter from Garrick Baxter to Christopher Meyer (September 7, 2011).
3. Letter from Christopher Meyer to Garrick Baxter (September 16, 2011).
4. Letter from Garrick Baxter to Christopher Meyer (September 19, 2011).

Letter from Christopher Meyer to Garrick Baxter (August 18, 2011)

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August 18, 2011

Garrick L. Baxter
Deputy Attorney General
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

Re: City of McCall - Land application of municipal effluent outside of city limits

Dear Garrick:

Thank you for taking my call the other day inquiring as to whether my client, the City of McCall, has authority to land apply water it collects as municipal effluent on lands outside of the city limits under its existing municipal water rights. You suggested that I provide a letter to the Idaho Department of Water Resources ("IDWR" or "Department") setting out the City's understanding of the governing law and seeking confirmation that the City has this authority. This letter is intended to serve that purpose.

The City serves customers within its service area with municipal water rights including the following:

No. 65-10344 (5.13 cfs, 1918 priority, Payette Lake)
No. 65-10345 (2.31 cfs, 1968 priority, Payette Lake)
No. 65-12607 (3.88 cfs, 1983 priority, Payette Lake)
No. 65-13476 (2.23 cfs, 1993 priority, ground water)
No. 65-13796 (6.4 cfs, 1998 priority, ground water)

The Municipal Water Rights Act of 1996 ("1996 Act") defines three categories of municipal provider. The first is "[a] municipality that provides water for municipal purposes to

its residents and other users within its service area." Idaho Code § 42-202B(5)(a). The City plainly meets this definition.

It is a well established principle under the Prior Appropriation Doctrine that an appropriator may recapture water that he or she has applied to beneficial use while it is still under the appropriator's control and re-use that water on lands authorized within the original right. "It is settled law that seepage and waste water belong to the original appropriator and, in the absence of abandonment or forfeiture, may be reclaimed by such appropriator as long as he is willing to put it to beneficial use." *Reynolds Irrigation Dist. v. Sproat*, 70 Idaho 217, 222, 214 P.2d 880 (1950). *See also Hidden Springs Trout Ranch v. Hagerman Water Users, Inc.*, 101 Idaho 677, 619 P.2d 1130 (1980); *Sebern v. Moore*, 44 Idaho 410, 258 P. 176 (1927); and *In re Boyer*, 73 Idaho 152, 248 P.2d 540 (1952).

This is true even if the re-use reduces the water available to other water users downstream. As Mr. Hutchins noted in his seminal article, an irrigator "is not bound to maintain conditions giving rise to the waste of water from any particular part of its system for the benefit of individuals who may have been making use of the waste." Wells A. Hutchins, *The Idaho Law of Water Rights*, 5 Idaho L. Rev. 1, 100 (1968).

A natural extension of this principle is that cities may recapture their sewage effluent before it reaches a natural water body and may apply that water to additional municipal uses within the original water right. A city's right to recapture and reuse municipal effluent was recognized in *Reynolds v. City of Roswell*, 654 P.2d 537 (N.M. 1982). In reaching its decision, the *Reynolds* Court quoted at length from a 1925 decision by the Wyoming Supreme Court directly addressing the right of a city to reuse its wastewater to extinction—in this case by land application. "It is well known that the disposition of sewage is one of the important problems that embarrass municipalities. In order to dispose of it without injury to others, a city may often be confronted with the necessity of choosing between several different plans, and in the selection of the plan to be followed we think it should be permitted to exercise a wide discretion." *Wyoming Hereford Ranch v. Hammond Packing Co.*, 236 P. 764, 772 (Wyo. 1925). This Wyoming case, in turn, was relied on by the Arizona Supreme Court in reaching a similar conclusion confirming the right to recapture municipal effluent and sell it for cooling water to a nuclear power plant. *Arizona Public Service Co. v. Long*, 773 P.2d 988 (Ariz. 1989).

The next question is whether land application is a proper municipal use. The 1996 Act defines municipal purposes broadly:

> "Municipal purposes" refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a municipal provider.

Idaho Code § 42-202B(6). Although this definition does not expressly identify land application as a municipal purpose, it does include the broad catch-all phrase, "related purposes."

Consistent with this broad definition, the Department's guidance recognizes that land application of effluent may be treated as part of the original water right.[1] This guidance is aimed primarily at land application of industrial effluent. However, the same broad principles would apply to municipal effluent. Indeed, the 2009 guidance expressly references municipal land application, as well as land application of industrial and other effluent. Transfer Processing Memo No. 24, § 5d(9) at 31.

Other parts of the guidance specifically provide that in order to be considered part of the same beneficial use as the underlying water right, the land application must be undertaken to meet mandatory regulatory requirements. "Waste water treatment necessary to meet adopted state water quality requirements will be considered to be part of the use authorized under the industrial right." Application Processing Memo No. 61, § 1 at 3.[2] The City's land application was undertaken as a direct result of compliance obligations under section 402 of the federal Clean Water Act.[3] Accordingly, land application by the City of McCall is a proper municipal purpose encompassed by its municipal water rights.

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[1] Two guidance documents were issued by the Department in 1996. Phil Rassier, Chief Counsel, *IDWR Memorandum: Land Application of Industrial Effluent* (Sept. 5, 1996); Norm Young, IDWR, *Administrator's Memorandum – Application Processing No. 61* ("Application Processing Memo No. 61") (Sept. 27, 1996). This guidance has been modified to some extent by a broader guidance document, *Transfer Processing Policies & Procedures* ("Transfer Processing Memo No. 24") (revised Dec. 21, 2009).

[2] Note that the requirement for a transfer application stated in Application Processing Memo No. 61, § 3 at 3 has been overridden by the more recent guidance in Transfer Processing Memo No. 24, at 3 n.1. Accordingly, no transfer application is required where the land application occurs on lands that were previously cultivated with a full existing water right. Transfer Processing Memo No. 24, § 1 at 3, § 2 at 7, § 3(6)(g)(ii). Such is the case here.

[3] In 1996, the Environmental Protection Agency ("EPA") issued an NPDES permit to the City and the Idaho Department of Environmental Quality ("DEQ") issued a section 401 certification for that permit, both of which imposed a zero discharge limit for phosphorous. The zero discharge was driven by the Cascade Reservoir Watershed Management Plan issued by DEQ on October 1, 1995. This plan was the functional equivalent of a TMDL (total maximum daily load) required by section 303(d) of the Clean Water Act. EPA approved the TMDL in May of 1996. The TMDL requires a 37% reduction in the overall phosphorous load, with the City's load allocation set to zero.

The permit established a compliance schedule for the zero discharge limit. The City filed an administrative appeal of the 401 certification with DEQ. This resulted in the first of four consent orders being issued on July 27, 1998.

The City then went to work on a land application system to achieve the requirements imposed by the permit and the consent orders. This effort resulted in a *Three-Way Agreement* among the City, the Lake Irrigation District (which owns legal title to the water rights used for mixing), and the J-Ditch Pipeline Association (which I believe was responsible for constructing and maintaining the distribution system that leaves the mixing station to deliver enhanced irrigation water to the farmers). The *Three-Way Agreement* contemplated individual contracts between the farmers and the City. A series of 20-year *Water User and Supply Agreements* were executed in 1997, which remain effective through 2016.

The next question is whether the land application may occur beyond McCall's city limits. This is addressed by the 1996 Act which expressly authorizes municipal providers to serve within a flexibly-defined service area. That authority is found in two places.

First, it is noted in the definition of "municipal purposes" quoted above, which states that the municipal purposes include uses "located outside the boundaries of a municipality served by a municipal provider." Idaho Code § 42-202B(6).

Second, the term "service area" is defined by the 1996 Act as follows:

> "Service area" means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes. For a municipality, the service area shall correspond to its corporate limits, or other recognized boundaries, including changes therein after the permit or license is issued. The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality's established planning area if the constructed delivery system for the area shares a common water distribution system with lands located within the corporate limits. For a municipal provider that is not a municipality, the service area shall correspond to the area that it is authorized or obligated to serve, including changes therein after the permit or license is issued.

Idaho Code § 42-202B(9) (emphasis supplied). This definition expressly authorizes service outside of a city's service area so long as two conditions are met.

First, the land application must be "within the municipality's established planning area." "Planning area," however, is not a defined term. It is an informal term generally understood to refer to the area used by a city for water rights planning purposes as it plans for current and future water requirements.[4] In other words, the 1996 Act requires that land application outside the city limits must be undertaken as part of a city's long-term water planning effort. Given the long history of development of this project within the context of environmental regulatory requirements (see footnote 3), this condition is satisfied.

Second, in order to satisfy the requirement that "the constructed delivery system for the area shares a common water distribution system with lands located within the corporate limits," it should be sufficient to demonstrate that the land application is physically connected via pipeline or other artificial conveyance with the City's wastewater collection and treatment system. For example, it could not be viewed as part of the original water right if the effluent

[4] The term "planning area" in the 1996 Act should not be confused with the city's "area of city impact." The latter is a distinct term meaningful in the context of annexation rules under the Local Land Use Planning Act, Idaho Code § 67-6526.

were placed into a natural stream and diverted later for land application.[5] McCall's treated effluent is completely contained and controlled within a series of pipes or other artificial conveyances from the place where the sewage is captured to the place where it is land applied. It is of no consequence that some or all of these conveyance and delivery systems are owned by others so long as the land application is undertaken pursuant to contract or other agreement with the City. Accordingly, this condition is satisfied as well.

The only other statute potentially bearing on the question of municipal water uses outside of the City's city limits is Idaho Code § 50-323. It provides:

> Cities are hereby empowered to establish, create, develop, maintain and operate domestic water systems; provide for domestic water from wells, streams, water sheds or any other source; provide for storage, treatment and transmission of the same to the inhabitants of the city; and to do all things necessary to protect the source of water from contamination. The term "domestic water systems" and "domestic water" includes by way of example but not by way of limitation, a public water system providing water at any temperature for space heating or cooling, culinary, sanitary, recreational or therapeutic uses.

Idaho Code § 50-323 (emphasis supplied). This does not impose any limitation. The authorizing clause ("Cities are hereby empowered to establish, create, develop, maintain and operate domestic water systems") is not limited to the city limits. Moreover, treatment of municipal effluent through land application would fall under the final clause ("to do all things necessary to protect the source of water from contamination"), which is not limited geographically.

For these reasons, it is my conclusion that the City of McCall is authorized to land apply its captured municipal effluent on lands outside of the city limits, and such use is authorized under the City's existing municipal water rights without need for transfer. This conclusion is premised on my representations to you in this letter that the land application is mandated by environmental requirements, that the lands on which the land application occurs were previously served by full existing water rights, and that the City has authority via contract or otherwise to land apply on these lands.

The City believes that these conclusions are fully consistent with the principles of optimum utilization embodied in Idaho's constitution. *Baker v. Ore-Ida Foods, Inc.*, 95 Idaho 575, 584, 513 P.2d 627, 636 (1973). It is in the public interest to encourage well-designed land application projects that enable cities to meet increasingly strict environmental requirements at

[5] This is consistent with the law elsewhere in the West. In *City of San Marcos v. Texas Comm'n on Envt.l Quality*, 128 S.W.3d (Texas Ct. App. 2004), the Texas Court of Appeals found that the City of San Marcos did not have the right to recapture its wastewater effluent in a river three miles downstream of the sewage treatment plant.

lower cost while promoting water conservation and facilitating additional beneficial use of water. Idaho's water law fully accommodates such undertakings.

As we discussed, I would very much appreciate your review, on behalf of the Department, of the conclusions reached in this letter. I look forward to hearing back from you in that regard. Thank you in advance for the time and effort you, the Acting Director, and others at the Department have invested in this review. It is important to the City to have clarity on these issues.

Sincerely,

Christopher H. Meyer

cc: Gary Spackman
Jeff Peppersack
John Westra
Steve Lester
Lindley Kirkpatrick

CHM:ch

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Letter from Garrick Baxter to Christopher Meyer (September 7, 2011)

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN
September 7, 2011

Christopher H. Meyer
Givens Pursley LLP
601 West Bannock St
P.O. Box 2720
Boise, ID 83702

Re: City of McCall - Land application of municipal effluent outside of city limits

Dear Chris:

This responds to your letter of August 18, 2011 requesting confirmation that the City of McCall ("City") has authority to land apply its municipal effluent to lands located beyond the city limits but within the City's service area. I have reviewed your letter with staff of the Idaho Department of Water Resources ("IDWR") and am able to confirm that on the issue of whether municipal reuse of waste water comes within the original use of the municipal right, your analysis is consistent with current IDWR policy. Waste water treatment necessary to meet adopted state water quality requirements is considered by IDWR as part of the use authorized under a municipal right so long as the treatment process complies with the best management practices required by the Idaho Department of Environmental Quality, the U.S. Environmental Protection Agency, or other state or federal agency having regulatory jurisdiction. For new uses of municipal waste water that are not necessary to meet water quality requirements, an application for permit to appropriate water should be filed as required by Idaho Code § 42-202.

One concern raised by IDWR relates to your analysis of the place of use for a municipal provider. As you correctly recognize, the Municipal Water Rights Act of 1996 expressly authorizes municipal providers to serve within a "service area" that may include lands "located outside the boundaries of a municipality served by a municipal provider." Idaho Code § 42-202B(6). The term "service area" is defined by the 1996 Act as follows:

> "Service area" means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes. For a municipality, the service area shall correspond to its corporate limits, or other recognized boundaries, including changes therein after the permit or license is issued. The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality's established planning area if the constructed delivery system for the area shares a common

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> water distribution system with lands located within the corporate limits. For a municipal provider that is not a municipality, the service area shall correspond to the area that it is authorized or obligated to serve, including changes therein after the permit or license is issued.

Idaho Code § 42-202B(9) (emphasis supplied).

Under this statute, only if the constructed delivery system for the area outside the city limits shares a common water distribution system with lands located within the corporate limits, may the area outside the city limits be considered part of the city's service area. In the City's case, the Department understands that the City uses a series of privately owned irrigation ditches to transport effluent to lands outside the city limits. The Department has questions regarding the process in which the City delivers effluent to the lands outside the city limits. A measure of control and supervision is at least implied for a delivery system to be considered a "common" water distribution system. The Department does not have a complete understanding of how the effluent is tracked and delivered by the City. In short, the Department would need a better understanding of the City's actual delivery process to be able to answer whether the use of private irrigation ditches by the City would satisfy Idaho Code § 42-202B.

The Department would be happy to meet with you and your clients to discuss this matter further. Let me know if you would like to set up a meeting.

Sincerely,

Garrick L. Baxter
Deputy Attorney General
Idaho Department of Water Resources

cc: Gary Spackman
Jeff Peppersack
John Westra
Steve Lester

Letter from Christopher Meyer to Garrick Baxter (September 16, 2011)

GIVENS PURSLEY LLP

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September 16, 2011

Garrick L. Baxter
Deputy Attorney General
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
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garrick.baxter@idwr.idaho.gov

Re: City of McCall - Land application of municipal effluent outside of city limits

Dear Garrick:

Thank you for your letter of September 7, 2011. I am writing to respond to your request for more information on the delivery system used by the City of McCall for its land application. I have spoken with Peter Borner, the City's Public Works Director. Mr. Borner has confirmed the following facts:

The City owns and operates its wastewater treatment facility near the edge of town. Water is piped from the wastewater treatment facility to another facility known as the mixing station located on leased land approximately three miles south of the City. The City owns, operates, and controls the water treatment facility, the mixing station, and the pipe carrying the water from the water treatment facility to the mixing station.

The purpose of the mixing station is to add irrigation water to dilute the treated effluent from the wastewater treatment plant prior to land application. The irrigation water is provided under other water rights not owned by the City. The diluted effluent is then piped directly to center pivots or other delivery systems on farms under contract with the City for land application. The piping from the mixing station to the farms is owned by irrigation entities and/or the farmers themselves.

It is my understanding that the chief concern of the Department is that the treated effluent be under the physical control and direction of the City or others throughout the delivery process, and that the water not simply be used to augment the water supply of an irrigation district without the ability to determine which land actually receives the effluent. I can assure you that the City's system satisfies this requirement.

Based on this additional information, the City would appreciate receiving confirmation from the Department that its use of its municipal wastewater for land application as described in this letter and my letter of August 18, 2011 is a municipal use falling within the scope of its municipal water rights.

I thank you, Mr. Spackman, Mr. Peppersack, and Mr. Westra for your attention to this inquiry.

Sincerely,

Christopher H. Meyer

cc: Gary Spackman
Jeff Peppersack
John Westra
Steve Lester
Lindley Kirkpatrick
Peter Borner

CHM:js

1241016_2 / 4432-7

Letter from Garrick Baxter to Christopher Meyer (September 19, 2011)

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

September 19, 2011

Christopher H. Meyer
Givens Pursley LLP
601 West Bannock St
P.O. Box 2720
Boise, ID 83702

Re: City of McCall - Land application of municipal effluent outside of city limits

Dear Chris:

Thank you for your letter dated September 17, 2011. You letter alleviates the Department's concerns regarding the City of McCall's effluent distribution system. Based upon the representations in your letter, the Department agrees that the lands served outside the City of McCall's corporate limits share a common water distribution system with lands located within the corporate limits. So as long as the City of McCall is land applying its captured municipal effluent as part of a treatment process to meet adopted state water quality requirements (this issue was discussed in my letter to you dated September 7, 2011), the Department agrees that the use (and location) is in conformance with City of McCall's municipal water right.

Sincerely,

Garrick L. Baxter
Deputy Attorney General
Idaho Department of Water Resources

cc: Gary Spackman
Jeff Peppersack
John Westra
Steve Lester

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Addendum G APPLICATION PROCESSING MEMO NO. 61

1. Memorandum from Norm Young to IDWR (Sept. 27, 1996).
2. Memorandum from Phil Rassier to Norm Young (Sept. 5, 1996).

State of Idaho
DEPARTMENT OF WATER RESOURCES
1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

ADMINISTRATOR'S MEMORANDUM

APPLICATION PROCESSING MEMORANDUM NO. 61

TO: **WATER ALLOCATION BUREAU, ADJUDICATION BUREAU AND REGIONAL OFFICES**

FROM: **NORM YOUNG**

SUBJECT: **WATER RIGHT FILING REQUIREMENTS FOR INDUSTRIAL WASTE WATER USE AND TREATMENT (INTERIM POLICY)**

DATE: **September 27, 1996**

PURPOSE OF MEMORANDUM

Because much of southern Idaho is included within areas covered by moratoriums or other designations that prevent or limit approval of new applications to appropriate water, water users are seeking innovative ways of using water for new and expanded projects. The waste water from industrial processes is one source of water for such uses. In addition, more restrictive water quality requirements are causing industrial water users to implement land disposal methods, create wetlands, capture and reuse waste water, and to provide for on-site containment of waste water.

The administrative requirements addressing the use of industrial waste water have not been clearly set forth. Direction is needed to guide staff and water users concerning the types of applications, if any, that need to be made, the criteria for considering such applications, and conditions that may be appropriate for approved applications. This memorandum addresses the water right filing requirements for the treatment of waste water and the reuse of waste water from industrial processes.

This memorandum provides interim guidance pending additional determination of policy and requirements through changes to law, adoption of rules or court rulings. Because a basic premise of this memorandum is that the consumptive use authorized by a water right for industrial purposes can be 100% of the amount diverted, depending on particular factual issues, this memorandum does not apply to waste water from uses which could not be 100% consumptive.

For purposes of this memorandum "waste water" is effluent, treated or untreated, from authorized beneficial uses under an industrial or other potentially 100% consumptive water right, prior to its being returned to a public water source. Waste water may contain solid waste and other contaminates, but for purposes of this memorandum it is a liquid, fluid enough to flow in an open channel or unpressurized pipeline.

AN EXAMPLE OF A TYPICAL SITUATION

An industrial user has for many years disposed of waste water diverted from the aquifer under a licensed right through a series of ponds which evaporate part of the water with the remainder seeping to the regional aquifer. In this instance, DEQ is requiring that water not be allowed to seep to the aquifer and has suggested land application. The land available for disposing of the waste is in sagebrush and does not have an irrigation water right. Each gallon of waste water land applied will have to be diluted with 3 to 4 gallons of fresh water. The net depletion from the aquifer will be increased 400 af/yr by the new water treatment requirements. Are water right related approvals required from IDWR to authorize surface disposal of the waste water?

LEGAL PRINCIPLES

The continuum of options for considering this mattter is bounded by two principles. At one end of the continuum, the treatment necessary to comply with water quality requirements may be a part of the diversion and beneficial use authorized under the industrial water right. If the industrial right is a fully consumptive right, then as water quality requirements require a change in treatment, the amount of the water consumed can be increased. However, the diversion rate, annual volume diverted, and season of use established under the right cannot be increased. Any fresh water needed to dilute the waste water must be within the quantity elements of the industrial right or be covered by another water right.

At the other end of the continuum, the industrial right may be construed to authorize only the beneficial use established and historically used under the industrial right. Any increase in consumptive use (or other element of the right) would require a new water right. Depending upon the availability of water for appropriation, this may require the holder of the industrial right to mitigate injury to other users or obtain an existing right to cover the expanded consumption.

A brief review of the legal and administrative precedents (see Phil Rassier's attached memorandum) indicates that the existing law in Idaho does not provide strong guidance as to whether the land application of industrial waste water initiated to comply with water quality requirements should be considered to come within the original purpose of use of the industrial right, whether it should be treated as an added beneficial use of the water requiring a new water right, or whether some intermediate consideration should be used.

APPLICATION OF PRINCIPLES

IDWR will apply the following policies until or unless further guidance is provided:

1. Waste water treatment necessary to meet adopted state water quality requirements will be considered to be a part of the use authorized under the industrial right. The method of treatment must be "reasonable." IDWR will consider a treatment method to be reasonable if it is in accordance with best management practices recognized by Idaho Division of Environmental Quality, the U.S. Environmental Protection Agency, or other responsible state or federal agency.

2. Consumptive use can increase up to the amount determined to be consistent with the original water right as reasonably necessary to meet treatment requirements. Diversion rate, annual volume diverted, and season of use cannot exceed the permitted, licensed or decreed amounts for these parameters.

3. If the treatment method for industrial waste water is changed to land application on cultivated fields or any other method that beneficially uses the water, the industrial right must be changed to include the new use. This will require a transfer application to be filed, processed and approved in accordance with Section 42-222, Idaho Code, to include a new location for a waste treatment practice, such as land application, and other conditions of approval that may be necessary to prevent injury to other valid water rights.

4. For new uses of industrial waste water that are not necessary to meet water quality requirements, an application for permit to appropriate water should be filed as required by Section 42-107, Idaho Code.

5. Fresh water required to dilute the waste water for treatments such as land application must be diverted in accordance with a water right. This can be the industrial right if adequate rate and volume are available under the right. If not, another right must be provided. In areas where new allocations are limited or prevented by moratorium orders or other designations, establishment of a new right will require appropriate provisions to mitigate the depletion from the source.

Attachment: P. Rassier's Memorandum

MEMORANDUM

TO: Norm Young

FROM: Phil Rassier PJR

RE: Land Application of Industrial Effluent

DATE: September 5, 1996

You have asked for legal guidance regarding the water right implications created when a private industrial water user elects to land apply its industrial effluent because the company is required by environmental constraints to prohibit its waste water effluent from continuing to reach a public water source. The water rights issue created when an industrial water user adopts a land-application method of disposing of its effluent is whether the change results in an impermissible enlargement of its underlying water right by increasing the amount of water consumptively used. Previously, some percent of the water in the effluent was returned to a public stream or allowed to percolate into the ground water. The goal of land application of the effluent is that it all will be absorbed by the growing crops or evaporated to the atmosphere. The use of water under the industrial water right thus becomes 100 percent consumptive where before it was not.

The case law addressing this issue appears to deal almost exclusively with the disposal of municipal effluent. In the case of municipalities, the majority view is that the proper disposal of effluent from waste treatment facilities comes within the parameters of the beneficial use of a municipal water right. One of the most frequently cited cases is *Arizona Public Service Co. v. Long*, 773 P.2d 988 (Ariz. 1989). In this case, the owners of downstream junior water rights that had historically used the effluent for irrigation following upstream discharge sued the City of Phoenix alleging that the city had no right to contract with a utility for the transport and use of the effluent in the cooling towers of a nuclear power plant. The court upheld the contract, holding that sewage effluent was neither surface water nor ground water, but was simply a noxious by-product which the city must dispose of without endangering the public health and without violating any federal or state pollution laws. In reaching it decision, the Arizona Court quoted from a much earlier Wyoming decision which upheld the sale by a city of effluent discharged directly into the buyer's ditch, but also held that effluent discharged into a stream became public water subject to appropriation. *Wyoming Hereford Ranch v. Hammond Packing Co.*, 236 P.2d 764 (Wy. 1925). The *Arizona Public Service* case generally holds that cities may put their sewage effluent to any reasonable use that would allow them to maximize their use of the appropriated water and dispose of it in an economically feasible manner. Beck, *Waters and Water Rights*, § 16.04(c)(6) (1991).

In an even more recent Arizona case, the court upheld a city contract for the disposal of its effluent noting that the effluent from the city of Bisbee delivered to Phelps Dodge for copper leaching operations was not useable for drinking water, irrigation, or fire protection purposes and

that it was only useful for the leaching operation. The city contract had been challenged by the local water utility that otherwise would have provided water for the leaching operation.

Other cases reviewed have reached results similar to that in Arizona for municipal entities without as much emphasis on the distinct character of effluent. In a more recent Wyoming case, the court held that the City of Roswell could recapture its sewage effluent before it is discharged as waste or drainage and reuse it for municipal purposes. *Reynolds v. City of Roswell*, 654 P.2d 537 (Wy. 1982). The court characterized sewage effluent as artificial water and therefore primarily private and subject to beneficial use by the owner and developer thereof because treated sewage effluent depends upon the acts of man.

In the early Colorado case of *Pulaski Irrigation Ditch Co., et al v. City of Trinidad, et al*,203 P. 681 (Colo. 1922), the court held that where a city had voluntarily chosen to treat its effluent in a manner that produced surplus water, it did not have the right to sell its purified water. The court went on to recognize, however, that where there is no other practicable method of disposing of the sewage, public policy might permit its disposal by the evaporation of the water. 203 P. at 683. A more recent Colorado case, *Metropolitan Denver Sewage Disposal District No. 1 v. Farmers Reservoir & Irrigation Co.*, 499 P.2d 1190 (Colo. 1972) merely holds that changes in the points of return of waste water to a stream are not governed by the same rules as changes of points of diversion and that there is no vested right in downstream appropriators to maintenance of the same point of return of irrigation waste water or effluent from a municipality or a sanitation district. In *Barrack v. City of Lafayette*, 829 P.2d 424 (Colo. App. 1992), the court held that impossibility of performance relieved the city from any obligation to deliver effluent to plaintiffs after state regulation made such delivery illegal. The court concluded that plaintiffs had no property right to the delivery of untreated water that could no longer be legally delivered.

In 1991, Nevada and Oregon each enacted legislation addressing the reuse of effluent or reclaimed water. The Oregon statute defines "reclaimed water" as "water that has been used for municipal purposes and after such use has been treated in a sewage treatment system and that, as a result of treatment, is suitable for a direct beneficial purpose or a controlled use that could not otherwise occur. OR. REV. STAT. § 537.131. The new legislation requires any person who is using or intends to use reclaimed water to file a Reclaimed Water Registration form with the Oregon Water Resources Department. The statute provides the circumstances under which potentially affected water users must be notified of the proposal and of their rights of preference to the use of the water under certain circumstances. The Nevada statute, by contrast, merely provides a statement of legislature policy encouraging and promoting the use of effluent, where that use is not contrary to the public health, safety or welfare, and where that use does not interfere with federal obligations to deliver water of the Colorado River. N.R.S. § 533.024.

The review of existing case law provides significant guidance with respect to the handling

of municipal effluent. None of the reported cases I have reviewed, however, address whether the same or some different analysis should be applied when the effluent is produced by a private industrial user rather than by a municipality. This issue was raised but not addressed in *Wyoming, et al v. Husky Oil Company*, 575 P.2d 262 (Wy. 1978). The case arose as an action for declaratory relief by Husky Oil seeking a determination that its plan to impound and evaporate effluent water rather than continue to discharge it to a natural stream was not subject to the jurisdiction of the State Engineer and did not infringe upon any rights of downstream water appropriators. The majority of the Court voted to remand the case to the trial court for a full factual trial and to join other indispensable parties to the action. A lengthy dissent, however, proceeded to analyze the merits of the case. The dissent characterized the proposed change as an expansion of the original industrial water right for the refining process to now include the additional use of pollution abatement. The dissent concluded that Husky should be required to apply to the State Engineer for a permit for the additional use.

Before the Department, we have the precedence of issuing waste water permit nos. 29-7437 and 29-7431 to the J.R. Simplot Company and to the City of Pocatello respectively in 1978. The two permits were for the use of waste water from the city's sewage treatment plant and from the Simplot Fertilizer Plant at Pocatello. The waste water from both facilities was previously discharged to the Portneuf River. The applications specified 3,124 acres of land on which the water would be used for irrigation. Some 1,613 of these acres were not owned by the city or the J.R. Simplot Company but were covered by user agreements with the owners of the land. The decision does not address any concern that may have existed about discontinuing the practice of discharging the effluent to the river. The concerns with the project revolved more around the health and safety implications of the project.

Existing law in Idaho does not provide strong guidance as to whether the land application of industrial effluent initiated to comply with water quality requirements should be considered to come within the original purpose of use of the industrial water right, or should be treated as an added beneficial use of the water requiring a new water right to be obtained or established. If the Department determines that a new separate water right should be required, the option of allowing the user to appropriate the industrial waste water for the new purpose of pollution abatement through land application of the effluent should be considered. This approach is consistent with that taken by the Department in 1978 with the City of Pocatello and J. R. Simplot filings.

Please let me know if you desire further review or discussion of these issues.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER RESUE PERMIT NO. M-225-01	Docket No. P-DR-2020-001

INTERVENOR PIONEER IRRIGATION DISTRICT'S RESPONSE TO PETITIONER'S OPENING BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

RULES

CONSTITUTIONAL PROVISIONS

Intervenor Pioneer Irrigation District ("Pioneer" or the "District"), by and through undersigned counsel of record and pursuant to the Department's *Amended Scheduling Order* (Sept. 11, 2020), hereby submits this response to Petitioner Riverside Irrigation District, Ltd.'s ("Riverside") *Opening Brief* (Oct. 2, 2020) ("Open").

I.
INTRODUCTION

Other than Riverside, Pioneer is the only other party coming at this matter from an irrigation delivery entity perspective. Pioneer does not claim to be expert in matters of municipal water rights. This said, there is no question that municipal water rights law and the greater, more modern flexibility woven within it, have a direct bearing on this matter.

Riverside repeatedly attempts to pound a square peg into a round hole by selectively arguing and superimposing more traditional (and restrictive) irrigation water law principles where they do not apply. Worse, Riverside fails to address the classic wastewater principles that do apply as a general matter to its injury allegations. Riverside cannot have it both ways, and it cannot ignore the express, statutory flexibility provided municipalities like Nampa, particularly in the context of environmental regulatory compliance. For the reasons discussed below, Pioneer does not need a water right to implement the parties' Recycled Water Discharge and Use Agreement, and Pioneer could not obtain and perfect a separate water right even if it wanted to.

II.
FACTS

As a signatory to the parties' *Stipulation of Facts by All Parties* (Sept. 11, 2020) ("SOF"), Pioneer finds the facts recited therein relevant to this proceeding and incorporates the same by reference. Rather than duplicate effort with a broad and separate Statement of Facts herein,

Pioneer cites and refers to discrete stipulated facts as needed to further support the arguments discussed below.

III.
ARGUMENT

A. Idaho Code Section 42-201(8) Governs This Matter; Section 42-201(2) Does Not Apply

1. Greater Flexibility Afforded Municipal Water Rights

Municipal-purpose water rights, like those owned by Nampa, are different from and enjoy significantly greater flexibility than the more traditional (and restrictive) irrigation-purpose water rights owned by Pioneer and Riverside. And these differences and their inherent flexibility matter in this proceeding.

For example, "municipal purposes" of use include a variety of potential uses: domestic, commercial, industrial, and irrigation. IDAHO CODE § 42-202B(6). Municipal water rights are afforded unique forfeiture protections (*i.e.*, "planning horizons") and greater quantities than presently needed ("reasonably anticipated future needs") immune from traditional speculation concepts such that municipal providers can "grow into" their water rights under much longer development periods than afforded more traditional water rights. IDAHO CODE § 42-202B(7) and (8) .

Municipal water right places of use are also far more flexible and forgiving. Their "service area" (*i.e.*, place of use) is not fixed; rather it can grow, develop, and evolve over time. IDAHO CODE § 42-202B(9). And, the municipal "service area" can extend far beyond corporate limits or other more traditionally recognized boundaries when, as here, the municipal provider "shares a [larger] common water distribution system" with lands otherwise "located within the corporate limits." *Id.*

Perhaps, the most significant difference between municipal purpose and more traditional irrigation-based water rights is that of authorized/expected degree of consumptive use. Traditional irrigation water rights are limited by the concept of historic consumptive use—the quantity of water used and transpired by crops and vegetation never to return again as tail or operational spill water, or subsurface seepage. Unlike more traditional irrigation water rights, municipal water rights are considered "fully consumptive" with no expectation or requirement of residual returning to the ground or other surface water supply. *See, e.g., Administrator's Memorandum* (Transfer Processing No. 24) (Dec. 21, 2009) ("Transfer Memo No. 24"), p. 31 at § 5.d(9) (characterizing "water under non-irrigation uses such as . . . municipal . . . to be fully consumptive"), *and compare id.*, § 5.d(5) (requiring evaluation of "historic beneficial use" and "historic consumptive use" to determine the amount of water available for transfer from a traditional irrigation water right to a different purpose of use).[1]

Pioneer offers no endorsement of, or opinion regarding, the more modern trend of flexibility and growth afforded to municipal purpose water rights; the differences are what they are for better or worse. But, the differences and flexibility exist and they drive the primary legal analysis under Riverside's Petition.

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[1] Pioneer appreciates that Transfer Memo No. 24 evaluates water right transfer applications as opposed to addressing the need for, and initial appropriation of, water rights as raised in the context of Riverside's *Petition for Declaratory Ruling Regarding Need For A Water Right To Divert Water Under Reuse Permit No. M-255-01* (Feb. 24, 2020) ("Petition"). However, Idaho Code Sections 42-203A(5) and 42-222(1) governing the review of new applications for water right permits and water right transfer applications, respectively, share virtually identical "injury" evaluation criteria. Consequently, Transfer Memo No. 24 guidance concerning application review for "injury" and "enlargement" is instructive in the context of Riverside's Petition.

2. Idaho Code Section 42-201(8) Operates Independent of, and is Unaffected by, Subsection (2)

The differences between municipal purpose water rights and more traditional irrigation purpose rights are further illustrated by Idaho Code Section 42-201(8) in the context of municipal effluent treatment and discharge in response to state or federal environmental regulatory requirements. In pertinent part, subsection (8) provides:

> ***Notwithstanding the provisions of subsection (2) of this section***, a municipality or municipal provider as defined in section 42-202B, Idaho Code . . . shall not be required to obtain a water right for the collection, treatment, storage or disposal of effluent from a publicly owned treatment works or other system for the collection of sewage or stormwater where such collection, treatment, storage or disposal, including land application, is employed in response to state or federal regulatory requirements. If land application is to take place on lands not identified as a place of use for an existing irrigation water right, the municipal provider . . . shall provide the department of water resources with notice describing the location of the land application, or any change therein, prior to land application taking place. The notice shall be upon forms furnished by the department of water resources and shall provide all required information.

IDAHO CODE § 42-201(8) (emphasis added).

As highlighted by the emphasis above, traditional water right notions and requirements found in Idaho Code Section 42-201(2) are irrelevant to, and have no bearing upon the recycled water project undertaken by Pioneer and Nampa. Subsection (8) is an exception because the plain and ordinary meaning of the unambiguous term "notwithstanding" is: "DESPITE"; "NEVERTHELESS, HOWEVER." *Webster's Collegiate Dictionary*, 10th Ed. (1995); *see also*, *State v. Owens*, 158 Idaho 1, 3, 343 P.3d 30, 32 (2015) (citations omitted) (statutory interpretation begins with a statute's plain language, giving the words their "plain, usual, and ordinary meanings"; when the language of the statute is unambiguous, "the legislature's clearly

expressed intent must be given effect"). Consequently, subsection (8) of the statute operates separately and independently of Riverside's reliance on subsection (2).

Having excepted the application of Idaho Code Section 42-201(2) Riverside urges, the remaining inquiries under subsection (8) are: (a) whether Nampa is a "municipality" or a "municipal provider" as defined by Section 42-202B); (b) whether the project involves the "collection, treatment, storage or disposal of effluent from a publicly owned treatment works"; and (c) whether the project, "including land application," is undertaken "in response to state or federal regulatory requirements." The answer to each of the foregoing inquiries is "yes," and the parties have stipulated as much. SOF, ¶¶ 7-9, 23-25, 34, 36-46, and 49-55; *see also,* Ex. H (DEQ Staff Memo), p. 4 (emphasis added) ("The final limits, also presented in the NPDES permit, include temperature limits and phosphorus limits that are effective during the growing season (EPA 2016). ***Because of this***, and for the benefit of PID and City irrigation utility customers, the City is planning to upgrade and increase the water treatment level so that it can be reused during the growing season . . .").

After casting aside the more traditional notions and requirements of Idaho Code Section 42-201(2), the Idaho Legislature authorized significant express flexibility to those, like Nampa, proceeding under subsection (8). Nampa need not apply for a separate water right, and it likewise need not seek a transfer updating any land application place of use. Instead, Nampa merely need submit "notice" to the Department in the event that the proposed land application sites are not "identified as a place of use for an existing water right." *Id.* In other words, ***even if new lands not covered by an existing water right are broken out for land application-related irrigation purposes, no new water right is needed for those new lands***—only mere "notice" need be provided on forms furnished by the Department. This is a significant departure from

traditional water right notions and requirements further demonstrating that the provisions of subsection (2) simply do not apply in this matter.[2]

3. Section 42-201(8) Applies to Pioneer by Operation of the Parties' Recycled Water Discharge and Use Agreement

Recognizing that Nampa may unquestionably proceed under Idaho Code Section 42-201(8), Riverside instead attacks Pioneer's ability to proceed under the statute. Open, pp. 26-28. No question that Pioneer is not a "municipality," "municipal provider," "sewer district," or a "regional public entity operating a publicly owned treatment works" under the statute. But, there is equally no question that Nampa is, and that Pioneer and Nampa have entered into a legally binding contract implementing Nampa's authorized activities under the statute. SOF, ¶¶ 7-9, and 49 (including Ex. F). Nampa could not gain access to Pioneer's Phyllis Canal for effluent discharge purposes absent the parties' Reuse Agreement. *See, e.g.*, IDAHO CODE §§ 42-1102 and 42-1209 (obligating one to secure "written permission" prior to encroaching upon irrigation facilities). Likewise, Pioneer could not gain access to, or use, the recycled wastewater piped and under Nampa's physical control and dominion absent the parties' Reuse Agreement. *See, e.g., Washington Irr. Dist. v. Talboy*, 55 Idaho 382, 389-390, 43 P.2d 943, 946 (1935) (water stored or conveyed in manmade reservoirs and ditches is already appropriated and no longer "public water[ ]" subject to appropriation).

Under the terms of the parties' *Recycled Water Discharge and Use Agreement* (Mar. 7, 2018) ("Reuse Agreement"), Pioneer is obligated to accept upwards of 41 cfs of recycled wastewater and to "grant" Nampa "all necessary licenses and easements" allowing for the

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[2] In this instance, notice should not be necessary because the land application taking place under the Nampa Reuse Permit is on lands within District boundaries that already have appurtenant water rights. SOF, ¶¶ 1-4, 54-55, and 58-60. This said, there is nothing precluding Nampa from submitting notice as a courtesy, or should the Department so request.

construction, operation, and maintenance of Nampa's piped discharge to the Phyllis Canal. Ex. F, pp. 3-4. Pioneer was also obligated to "actively cooperate" with Nampa to "obtain all permits and approvals from DEQ" necessary to secure the Reuse Permit. *Id.*, pp. 4. In other words, Nampa would not have secured the Reuse Permit absent Pioneer's support and cooperation (*i.e.*, Pioneer's canal and lateral facilities and landmass). Pioneer also obligated itself to a minimum twenty-five (25) year term under the contract (outside of a limited number of narrow exceptions) owing to Nampa's "substantial up-front costs" and "long term NPDES Permit Compliance requirements." *Id.*, p. 4.

Nampa's Reuse Permit, and DEQ's supporting staff analysis, likewise make clear that Pioneer's obligations under the Reuse Agreement are integral to Nampa securing and implementing the Reuse Permit. Ex. G (Reuse Permit), pp. 7 (identifying Pioneer and the Phyllis Canal as the "method of treatment and reuse"), and 15-16 (incorporating Phyllis Canal operations and flow data into Nampa monitoring and annual reporting requirements); *see also*, Ex. H (DEQ Staff Analysis), pp. 9-10; 19-34 (incorporating the Pioneer service area (Phyllis Canal and related laterals) downstream of the proposed Phyllis Canal discharge point as the "Area of Analysis" for purposes of determining land application-based pollution control efficacy as authorized under the parties' Reuse Agreement). Though Pioneer was not the ultimate Reuse Permit applicant, nor the resultant permittee, Pioneer's Phyllis Canal operations and related deliveries serve as the foundation of the permit—the "method of treatment and reuse" in direct response to Nampa's NPDES Permit-based discharge limits and in furtherance of Nampa's compliance with the same.[3]

[3] The Nampa-Pioneer relationship is like that of Nampa School District No. 131 and Nampa & Meridian Irrigation District ("NMID") in *Abbott v. Nampa School Dist. No. 131*, 119 Idaho 544, 808 P.2d 1289 (1991). Though primarily an easement-based case, NMID entered into

Riverside's interpretation and application of Idaho Code Section 42-201(8) is exceedingly narrow, fails to account for the parties' Reuse Agreement, and frustrates the purpose of the statute leading to an absurd result.[4] If Riverside were correct, and Nampa lacked the ability to contract to implement subsection (8), Nampa would either have to: (a) spend many millions of dollars on closed loop, redundant water distribution infrastructure (*i.e.*, duplicating the already-existing and neighboring water distribution capabilities of Pioneer's Phyllis Canal and laterals); or (b) spend many millions of dollars purchasing sufficient land in fee simple on which it (Nampa) could then land apply its effluent (because, remember, under Riverside's theory, Nampa cannot contract with others to gain access to the landmass necessary to meet its land application needs). Riverside's suggestion that the Legislature teases "municipalit[ies],"

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a contract ("license agreement") with the school district delegating to the school district certain ditch improvement rights and authorities NMID otherwise possessed under Titles 42 and 43, Idaho Code. The Court found NMID's agreement-based delegation proper; the servient landowner (Abbott) could not object to the school district's installation of ditch improvements (cement collar and trach rack) that NMID could otherwise install on its own if it chose to do so. *Id.*, 119 Idaho at 550-552, 808 P.2d at 1295-1297.

Here, Nampa could otherwise exercise and wholly internalize its effluent collection and land apply it if it chose to do so. For a variety reasons, including efficiency, wasteful parallel system redundancy, and cost-effectiveness it chose to contract with Pioneer instead. Nampa School District No. 131 exercised Title 42 and 43 authorities not otherwise inherent to it by operation (derivative) of contract with the Title 42 and 43-authorized entity (NMID). Pioneer, likewise, is exercising Section 42-201(8) authorities not otherwise inherent to it by operation (derivative) of contract (the Reuse Agreement) with the subsection (8)-authorized entity (Nampa).

[4] The plain language of Idaho Code Section 42-201(8) does not preclude the Nampa-Pioneer contractual relationship. The statute does not expressly restrict application of the water right exemption to those instances where the land application (*i.e.*, effluent treatment and disposal) is wholly performed, and only occurs on lands owned by the "municipality," "municipal provider," "sewer district," or a "regional public entity operating a publicly owned treatment works." Instead, the statute speaks more broadly in terms of "land application" generally, performed in response to "state or federal regulatory requirements" regardless of end destination.

"municipal provider[s]," "sewer district[s]," and "regional public entit[ies] operating a publicly owned treatment works" with the opportunity to creatively address water pollution control requirements on the front end, only to take away any meaningful opportunity to implement and accomplish those creative solutions via contract with others on the back end is untenable. *See, e.g., David and Marvel Benton Trust v. McCarty*, 161 Idaho 145, 151, 384 P.3d 392, 398 (2016) (reviewing tribunals do not read statutes to create an absurd result).[5]

4. The Pioneer-Nampa Project is not Without Guiding Precedent on the Water Right/Contractual Relationship Questions—the City of McCall

City of McCall effluent discharge and land application practices, and potential legal authorization infirmities associated with those practices, spurred the enactment of Idaho Code Section 42-201(8).[6] Part of the Department's informal guidance to McCall counsel prior to enactment of subsection (8) considered the mechanism by which McCall implemented its effluent land application activities and the extent to which McCall retained some measure of control over its effluent. Appendix ("App."), *generally*. Ultimately, the McCall effluent was

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[5] Even before enactment of Idaho Code Section 42-201(8), the parties' recycled water project under the Reuse Agreement and Reuse Permit was already authorized under Idaho Code Section 42-202B(9) (wherein the "service area" of a municipality is broadly defined to include lands outside corporate limits or other recognized boundaries (*i.e.*, area of impact) in situations where the municipal system shares a "common water distribution system with lands located within the corporate limits"—which is the case here where Pioneer's Phyllis Canal and laterals serve lands both inside and outside of Nampa's corporate limits). SOF, ¶¶ 1-3, 20. Given that subsection (8) was added to Idaho Code Section 42-201 to provide even greater clarity and flexibility concerning the regulatory response to the treatment and disposal of WWTP effluent than what already existed under Section 42-202B(9), makes Riverside's contentions under Section 42-201(8) all the more strained and unavailing.

[6] Pioneer defers to, and incorporates herein, Nampa's arguments, legislative history and informal Department guidance/correspondence regarding the McCall matter. The materials (legislative history concerning the enactment of subsection (8), together with IDWR guidance to McCall counsel regarding the city's land application practices) are subject to Official Notice under Rule 602 (IDAPA 37.01.01.602) because they are official records and communications of the Idaho Legislature and the Department, respectively.

used for irrigation by private landowners located approximately three miles south of the city. *Id.*, pp. 9-10. McCall's access to, and use of the irrigation facilities and lands of others was, as is the case in this matter, secured by contract (the "*Three-Way Agreement*" and a series of "*Water User and Supply Agreements*") among the parties involved. *Id.*, p. 3, n. 3; pp. 9-10.

Pioneer finds no record that McCall or any of the other contracting parties (Lake Irrigation District and the J-Ditch Pipeline Association) were required to obtain new and separate water rights either as the discharger of the effluent (McCall), or as the recipients of that directed discharge (landowners within Lake Irrigation District and the J-Ditch Pipeline Association members). In line with the "absurd result" discussion above, Riverside's application of subsection (8) similarly undermines the policy and legal guidance offered by the Department under the McCall situation. In fact, Riverside's contentions run entirely contrary to the Department's legal opinions on the matter. App., p. 11.

5. Riverside Misinterprets Section 42-201(2) Regardless

Even if Idaho Code Section 42-201(2) had some bearing on this matter—which it does not—Riverside misinterprets and misapplies the statute. Riverside's disjunctive, "or"-based interpretation fails to logically read and apply subsection (2) as a whole. Open, pp. 14-16. And, it fails to read Idaho Code Section 42-201 as a whole (including the express exemption provided by subsection (8)).

With limited exception, Idaho law requires two bedrock principles to perfect a water right (*i.e.*, a legally enforceable real property interest in water): (a) physical diversion from a natural source; and (b) application to end beneficial use. *See, e.g., State v. United States*, 134 Idaho 106, 111, 996 P.2d 806, 811 (2000). The limited exceptions from the physical diversion requirement are in-stream stock-watering, and instream minimum streamflow rights appropriated by the

Idaho Water Resource Board under Idaho Code Section 42-1501, *et seq.* *Id.* Neither of these limited exceptions apply here.

Riverside's application of subsection (2) decouples the required physical diversion and end beneficial use requirements from one another, contending that one needs a valid water right authorizing the separate physical acts of: (a) diverting water from a natural watercourse no matter the end destination or use of the water diverted; or (b) applying water to land without consideration of whether it was "diverted" or not. But this statutory interpretation, teasing out and amplifying a single phrase to the exclusion of the remainder of the subsection yields a non-sensical result—one cannot affirmatively "apply water to land" without some preceding physical act of diversion from somewhere beforehand. Consequently, the land application admonition of subsection (2) ties directly to the physical diversion admonition clause present immediately before it. Riverside's argument yields an absurd result. *David and Marvel Benton Trust*, 161 Idaho at 151, 384 P.3d at 398.

To the extent the Department finds ambiguity in subsection (2)'s use of the term "or," the legislative history of the subsection's enactment in 1986 resolves the issue against Riverside, and is consistent with *State v. United States*, above. Pioneer agrees with Nampa's arguments in this regard and incorporates them by reference herein. In sum, the water that cannot be applied to land under subsection (2) is that which is physically diverted from a natural source (or "natural watercourse") without a valid water right as a threshold matter.

In this case, no one is diverting water from a natural source and subsequently applying it to land absent a valid water right to do so. The land application taking place under Idaho Code Section 42-201(8) is authorized by Nampa's duly appropriated municipal, potable groundwater rights on the front end consistent with subsection (2)'s requirements. *See, e.g.*, SOF, ¶¶ 6-12.

The question in this proceeding is what later becomes of the back end effluent discharged from the Nampa WWTP. SOF, ¶¶ 23-29, 34.[7]

6. Pioneer Cannot Obtain and Perfect a Separate Water Right as Riverside Would Require

As explained above, perfection of a water right under Idaho law requires physical diversion of "unappropriated water" from a natural source and application to a recognized beneficial use. *See, e.g., State v. United States*, above; *see also*, IDAHO CONST. Art. XV, Sec. 3, and IDAHO CODE §§ 42-101, 42-103, and 42-201(2) (each speaking in terms of the "unappropriated" waters of "natural stream[s]," "waters . . . flowing in their natural channels," "rivers, streams, lakes, springs, and subterranean waters or other sources," and "natural watercourse[s]," respectively). In this matter, Pioneer could not obtain and perfect the water right Riverside requires.

Pioneer cannot perfect a valid water right in this matter because the District fails the first bedrock requirement: physical diversion of unappropriated water from a natural source. Riverside can point to no headgate, wellhead, or other physical diversion structure that Pioneer owns, operates or controls under the parties' Reuse Agreement or the Reuse Permit. Put simply,

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[7] Riverside also contends that land application (*i.e.*, irrigation) under the Reuse Agreement and the Reuse Permit violates Nampa Potable System water right conditions concerning the supplemental use of that water for irrigation purposes. Open, pp. 6-7. Riverside is correct that Nampa Potable System water rights cannot be used in the first instance for irrigation purposes under the auspices of "municipal purposes" under Idaho Code Section 42-202B(6). But Nampa is not doing that under the Reuse Agreement or the Reuse Permit. Instead, the water collected at, and discharged from, Nampa's WWTP is that used first for non-irrigation purposes such as domestic, commercial, industrial purposes. SOF, ¶¶ 23 and 25 (municipal irrigation does not generate "sewage" collected and piped to Nampa's WWTP for treatment and disposal). It is the "spent" water residual (WWTP influent and effluent) ***from non-irrigation-related municipal purposes*** that is at issue in this matter. Thus, Nampa is not making any improper front-end irrigation use of its Potable System water in derogation of the water right condition raised by Riverside.

Pioneer is not physically diverting water, and it certainly is not diverting water from a natural source (river, stream, lake, spring, etc.).

Instead, Nampa diverts its Potable System water from the natural source (groundwater). And, the recycled water Pioneer ultimately receives is already appropriated and in the physical control of Nampa through the city's pipeline to the point of discharge into the Phyllis Canal. Pioneer's use of Nampa's recycled water derives solely from the Reuse Agreement (contract), not from any physical act of diversion undertaken or controlled by Pioneer. Moreover, the Reuse Agreement specifically acknowledges that Pioneer's rights to the recycled water are contractual only. Reuse Agreement, p. 4 (Pioneer expressly acknowledging that Nampa is not obligated to, nor guarantees, the discharge of recycled water to the Phyllis Canal).

B. Riverside Suffers No Legally Cognizable (or Redressable) Injury

There is no dispute that Riverside benefits from Nampa's historic effluent (*i.e.*, wastewater) discharge to Indian Creek. SOF, ¶¶ 27-31. Pioneer, too, benefits from the wastewater of Nampa and others flowing through its (Pioneer's) Indian Creek and drain-based water right sources. SOF, ¶¶ 4, 56. But that does not mean that Riverside or Pioneer can compel others to continue wasting for their benefit. And, as discussed in Section III.D below, Pioneer's primary benefit under the Reuse Agreement is the off-setting of drain-based declines it is experiencing in the Fivemile Drain system because the wastewater of others upgradient of Pioneer is what it is—fickle and subject to recapture and reuse upstream. Because Riverside cannot compel Nampa to continue wasting water for Riverside's downstream benefit, Riverside suffers no legally cognizable injury from implementation of the Reuse Agreement and the Reuse Permit. Open, p. 25.

1. General Wastewater Principles

That downstream water users cannot compel others upstream to waste for their continuing benefit is blackletter law. *See, e.g., Sebern v. Moore*, 44 Idaho 410, 418, 258 P. 176, 178 (1927) ("surface waste and seepage water may be appropriated . . . subject to the right of the owner to cease wasting it, or in good faith to change the place or manner of wasting it, or to recapture it, so long as he applies it to a beneficial use"); *see also, Crawford v. Inglin*, 44 Idaho 663, 669, 258 P. 541, 543 (1927) ("appellant cannot be required to waste water into the ditch. He can use all his water, waste none of it, or apply it to other lands, and thereby prevent its flow into the ditch."). The Department embeds this principle were appropriate under its standard "waste water" condition:

> The waste water diverted under this right is subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place of use or manner of wasting it, or to recapture it.

See, e.g., Standard Condition of Approval No. 176 (as applied to Water Right Permit No. 63-34627).

This wastewater principle remains unchanged even when downstream water user beneficiaries have used the water for several decades. *See, e.g., Colthorp v. Mountain Home Irr. Dist.*, 66 Idaho 173, 179, 157 P.2d 1005, 1007 (1945). Put bluntly: "No appropriator of waste water should be able to compel any other appropriator to continue the waste of water which benefits the former . . . while the waste of the original appropriator is not to be encouraged, the recognition of a right in a third person to enforce the continuation of waste will not result in more efficient uses of water." *Hidden Springs Trout Ranch v. Hagerman Water Users*, 101 Idaho 677, 680-681, 619 P.2d 1130, 1133-1134 (1980).

At bottom, Riverside acknowledges that Nampa WWTP effluent (*i.e.*, "wastewater") artificially augments Indian Creek flows. SOF, ¶¶ 27-31. In other words, the approximately 18.6 cfs Nampa currently discharges to the creek would not exist or arise in the creek but for Nampa's purposeful discharge to the same. *Id.* Consequently, Riverside cannot perfect any legally-enforceable property right in those artificial wastewater flows and it cannot be injured by any Nampa re-direction of the same to the Phyllis Canal or somewhere else for a legitimate, good faith, beneficial purpose.

At most, Riverside can mount credible arguments only after Nampa relinquishes control of its effluent and that discharge commingles with the flows of Indian Creek. *See, e.g., A&B Irr. Dist. v. Aberdeen-American Falls Ground Water Dist.*, 141 Idaho 746, 750-752, 118 P.3d 78, 82-84 (2005) (discussing the differences between the sources of water recaptured and the timing of recapture either before or after commingling with other sources). But, that situation does not arise in the context of the Phyllis Canal. Nampa's Potable System groundwater continues to be waste-based "groundwater" under Nampa's exclusive physical possession and control from its WWTP to its piped point of discharge into the Phyllis Canal. Nampa's discharge is not commingled with other flows and it is not "unappropriated" water from a comingled drain-based source as was the case with A&B Irrigation District's practices.

Riverside's water rights entitle it to divert up to 180 cfs of the ***natural flow*** of Indian Creek, or at least the flow of Indian Creek available at its doorstep because those flows (natural or augmented by wastewater) have been commingled and continuing physical control lost by the upstream/upgradient appropriators. But, Riverside is not entitled to compel Nampa to continue wasting for its benefit where Nampa has not relinquished physical control and its effluent has not commingled with other sources of water. Thus, setting aside for the moment the more modern

flexibility afforded municipal water rights, and the additional express authorizations provided under Idaho Code Section 42-201(8), even the well-worn traditional concepts of wastewater and recapture defeat Riverside's claims of injury under the Reuse Agreement and the Reuse Permit.

For the foregoing, Pioneer specifically requests a declaratory ruling that Riverside possesses no legally cognizable injury going forward in the event that Pioneer is required to apply for a water right in order to implement the parties' Reuse Agreement. Riverside does not get to seek a mere advisory opinion in a vacuum. *See, e.g., Miles v Idaho Power Co.*, 116 Idaho 635, 639-641, 778 P.2d 757, 761-763 (1989) (declaratory relief depends upon a justiciable controversy, not a generalized grievance shared by others; a distinct palpable injury that is fairly traceable); *Idaho ex. rel. Andrus v. Kleppe*, 417 F. Supp. 873, 876 (1976), n. 3, *overruled in part on other grounds* by *Andrus v. Idaho*, 445 U.S. 715 (1980) (citation omitted) (declaratory relief must address an actual controversy, not a desire for a mere abstract declaration of law). Riverside's Petition and Open allege injury, and Pioneer is not interested in bifurcating the injury question and reserving it for some later permit application-based contested case waiting in the wings.

2. There Is No Enlargement

Riverside's enlargement arguments also fail because there is no enlargement in this matter. Open, pp. 23-25. And, Riverside's reliance on *A&B Irr. Dist.* above is misplaced. *Id.*

There is no enlargement in this matter for a variety of reasons. First, and as discussed above, municipal water rights are considered "fully consumptive." *See, e.g.*, Transfer Memo No. 24, p. 31 at § 5.d(9). One cannot enlarge use of what can be used to extinction as a threshold matter.

Second, there no irrigation of new ground—no breaking out of arid/dry acres that was at issue in *A&B Irr. Dist.* above. *See id.*, 141 Idaho at 751-752, 118 P.3d at 83-84 (discussing A&B's "additional 2,363.1 acres" irrigated beyond reuse on its "appropriated properties" (*i.e.*, its originally wet/irrigated acres under its initial appropriations)). Similar to Riverside's inability to point to any new Pioneer point of diversion from a natural source, Riverside cannot point to any new dry acreage being reclaimed by use of Nampa's recycled wastewater. Instead, Nampa's recycled water is being used within Pioneer's place of use/service area on lands already entitled to delivery and use of irrigation water under Pioneer's water rights. SOF, ¶¶ 1, 14-15, 20.[8] And, this Pioneer-facilitated land application is consistent with Department guidance on the topic.

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[8] Pioneer is confused by Section IV of Riverside's Open (pp. 25-26). Pioneer agrees that it cannot deliver water outside its boundaries, or to those who are not otherwise Pioneer landowners. But, Nampa's effluent is being used entirely within Pioneer's boundary and largely being reused by Nampa and its citizens (who are also Pioneer landowners). *See, e.g.*, SOF, ¶¶ 1-3, 15, 17, 19-20, 57-59, and Ex. H, p. 20 (illustrating the Phyllis Canal laterals supplying water to Nampa's Non Potable System and other Nampa citizens not served by Nampa's Non-Potable System; an aggregate of 68 cfs of deliveries from the Phyllis Canal more than doubling Nampa's proposed 31 cfs discharge under the Reuse Permit).

Certainly, Pioneer cannot guarantee that every molecule of water Nampa discharges to the Phyllis Canal will, in fact, be used by Nampa or its citizens. But, conversely, Riverside cannot claim that Nampa and its citizens are not benefitting from the reuse of much, if not all, of the recycled water by virtue of Pioneer's delivery infrastructure and its landowner delivery entitlements because, again, Nampa and many of its citizens are Pioneer landowners. *See, e.g.*, SOF, ¶¶ 1, 17, and 20 (Nampa's Non Potable System delivery entitlement from Pioneer is 59.7 cfs (one miner's inch per 2,985 acres within the District), and its current installed Non Potable System pumping capacity is already 33.3 cfs—26.4 cfs and 2.3 cfs, respectively, ***more*** than contemplated for discharge to the Phyllis Canal under the Reuse Permit. Moreover, Nampa's pumping capacity will only continue to grow as it continues to urbanize and expand its Non Potable System footprint within Pioneer's larger boundary.).

Last, to the extent Riverside somehow suggests Pioneer is performing an *ultra vires* act under the Reuse Agreement, such a suggestion is incorrect. Idaho Code Section 43-304 authorizes Pioneer to, among other things, "enter into contracts for a water supply to be delivered to the canals and works of the district, and do any and every lawful act necessary to be done that sufficient water may be furnished to the lands in the district for irrigation purposes."

Transfer Memo No. 24 at §§ 1, 2 and 5.d(9) (land application of wastewater requires a transfer "when there is not a full, existing water right for irrigation of the place of use receiving wastewater"; conversely, land application of wastewater does not require a transfer "when there is a full existing water right for irrigation [on] the place of use receiving [the] wastewater").

Third, and finally, Idaho Code Section 42-201(8) overrides any potential concerns over traditional notions of increased consumptive use or enlargement. As subsection (8) makes clear, "notwithstanding" these more traditional concerns, municipal providers like Nampa are specifically authorized to implement the land application practices contemplated in the Reuse Agreement and the Reuse Permit in response to environmental regulatory requirements.

The Pioneer-Nampa Project presents no illegal enlargement or expansion of Nampa's existing municipal water rights, and Riverside possesses no legally cognizable property interest (or injury) in the Nampa WWTP effluent anyway.

C. Riverside's Constitutional Challenges are Misplaced and Beyond the Department's Purview Anyway

Riverside asserts that granting Pioneer use of the "municipal carveout" of Idaho Code Section 42-201(8) would injure Riverside's existing water rights and violate Idaho Constitution Article XV, § 3 in an as-applied manner. Open, pp. 29-33. Riverside confuses what its downstream water rights entitle it to, misapplies Idaho Constitution Article XV, § 3, and seeks relief beyond the purview of the Department.

As explained in Section III.B.1 above, Riverside cannot compel Nampa to continue wasting water into Indian Creek for Riverside's benefit. While Riverside may have a right to divert and use existing Nampa discharges to the creek after Nampa relinquishes its control and dominion over the same, Nampa equally has the right to cease wasting water altogether. Riverside's Indian Creek-sourced surface water rights, like Pioneer's, entitle it to diversion and

use of the natural flow of the creek (including that augmented by the upstream wastewater discharges of others—whether surface or seepage—upon the upstream appropriators' loss of control and commingling of flows). Riverside's Indian Creek-sourced water rights do not include the right to compel access to wastewater generated from a completely different source (groundwater) remaining within Nampa's physical control and dominion.

As Riverside correctly notes, Idaho Constitution Article XV, § 3 provides in pertinent part: "[t]he right to divert the unappropriated waters of any natural stream to beneficial uses, shall never be denied . . ." and the "[p]riority of appropriations shall give the better right as between those using the water." Open, p. 29. But, this constitutional protection does not apply here. Nampa's effluent is not "unappropriated water," and its WWTP and future pipeline to the Phyllis Canal is not a "natural stream." Thus, Riverside's reliance on priority administration under the Idaho Constitution or any corresponding statutes simply does not apply.

Finally, the Department is not the proper forum for addressing Riverside's constitutional arguments no matter how misplaced they are. The ability of the Department to consider constitutional issues is limited. IDAPA 37.01.01.415. If Riverside truly believes that a statute or its application is unconstitutional, it must take those questions up with the judiciary. *Id.*; *see also*, *Order on Exceptions; Final Order*, In the Matter of Application for Permit No. 63-34348 In the Name of Elmore County, Board of County Commissioners (Aug. 13, 2019), p. 38.

If, on the other hand, the Department is inclined to wade into Riverside's constitutional challenges, a statute is presumed constitutional and all reasonable doubt as to its constitutionality must be resolved in favor of its validity. *Rich v. Williams*, 81 Idaho 311, 316-317, 341 P.2d 432, 435 (1959). The burden of showing unconstitutionality rests with Riverside, and the reviewing

tribunal is obligated to uphold the enactment if such can be accomplished by reasonable construction. *Id.*

As discussed in Section III.A.3 above, the only reasonable construction of Idaho Code Section 42-201(8) is that Pioneer can proceed to land apply Nampa's effluent (exercise by extension Nampa's authority under the statute) by operation of contract (the parties' Reuse Agreement).

D. The Recycled Water Discharge and Use Agreement Serves Important and Legitimate Purposes

Riverside's disdain for the Nampa-Pioneer project is misplaced. There is nothing surreptitious about the Reuse Agreement or the Reuse Permit; they further no "scheme." Open, pp. 2-3 ("When two water users decide how to divide up the waters of the State without any supervision, there very likely will be losers—both other water users and the authority of the Director . . . this private water distribution scheme must be reviewed under Idaho's water right review process for new or expanded uses.").

Consistent with the bulk of Riverside's arguments, it fails to appreciate (or selectively ignores) that the Nampa-Pioneer recycled water project does not rely on any previously unappropriated "waters of the State." Moreover, there is no hiding of the ball here—Idaho Code Section 42-201(8) does not evade the Department. Instead, subsection (8) expressly includes the Department via the statute's "notice" requirement—notice that "shall be upon forms furnished by the department of water resources and shall provide all required information."

The Reuse Agreement and Reuse Permit do not facilitate a Pioneer water grab either. *See, e.g.*, Petition, ¶ 5 (the Reuse Permit results in a "gift of approximately 20 CFS of water to Pioneer's Phyllis Canal"). Like Riverside, Pioneer relies on wastewater from others as part of its irrigation water supply. SOF, ¶ 4 (referring to Pioneer's Indian Creek and "drain"-sourced water

rights). Unfortunately, Pioneer's drain-based sources, particularly the Fivemile Drain system providing water to the Phyllis Canal upstream of Nampa are declining. SOF, ¶ 56 (discussing Pioneer water right no. 63-21731 and its utility decline from 76.6 cfs on paper to 30-40 cfs in physical water during the latter half of the irrigation season over the last five seasons). The Reuse Agreement and Reuse Permit present Pioneer a reliable and cost-effective opportunity to offset Fivemile Feeder Canal declines and keep Nampa, its citizens, and other Pioneer landowners downstream whole. The Reuse Agreement and Reuse Permit also support the conservation of water resources. Nampa recycled water discharge to the Phyllis Canal will provide operational flexibility to Pioneer, potentially allowing Pioneer to lessen reliance on stored water supplies needed to backfill Fivemile Drain system declines.

The suggestion that Pioneer will selectively horde and spread Nampa's recycled water throughout the District's larger water distribution system on a whim is unfounded and a physical impossibility. Open, pp. 9-13. As discussed above, while some molecules of water will undoubtedly slip by, Nampa and its citizens are the primary delivery recipients (*i.e.*, beneficiaries) of the 15.0 Lateral system, diverting 32 cfs from the Phyllis Canal within a mile downstream of Nampa's proposed canal discharge point. SOF, ¶¶ 57-59; *see also*, Ex. H, pp. 20-21 (DEQ Staff Memo, Figure 10 and Table 4). 15.0 Lateral system diversions (32 cfs) exceed Nampa's Reuse Permit-based inputs (31 cfs) already, and far exceed the current 18.6 cfs Nampa will discharge in the near future (*i.e.*, Nampa discharges will grow into the Reuse Permit; 31 cfs will not be discharged to the Phyllis Canal from Day One). And, as discussed above, additional Nampa and Nampa citizen diversions within the next two miles of the Phyllis Canal add another 36 cfs—diversions in aggregate far outstripping the 41 cfs contemplated in the

parties' Reuse Agreement at full build-out decades into the future. SOF, ¶¶ 57-59; *see also*, Ex. H, pp. 20-21 (DEQ Staff Memo, Figure 10 and Table 4).

Similarly, Riverside erroneously contends that compliance with the Reuse Permit requires Pioneer to cease wasting (or spilling) water from its canal and lateral system back to Indian Creek. Open, p. 7. Riverside's contention is apparently intended to suggest larger ripple effects and broader hydrologic impacts designed to give the Department pause. However, the spill elimination requirement of the Reuse Permit is far less dramatic than Riverside suggests. This is because the Reuse Permit only requires Pioneer to cease spills to the Moses Drain which, while tributary to Indian Creek, only receives minimal operational spills from the 15.0 Lateral system. Ex. G (Reuse Permit), p. 8 (CA-255-02, eliminating spills to Moses Drain); Ex. H (DEQ Staff Memo), p. 23 (describing the 15.0 Lateral spills (North and South branches) as "this spill" to be eliminated); and Ex. J (Nampa Preliminary Technical Report), p. 7-7 and Figure 9 (identifying the "small operational spill" of the 15.0 Lateral system to Moses Drain as the "spill" to be eliminated through Nampa Non Potable System pump station automation and cross-connection). The larger flow of Moses Drain to Indian Creek, as well as other operational spills throughout Pioneer's water distribution system will remain unaffected by implementation of the Reuse Agreement and the Reuse Permit.[9]

[9] It is also worth noting that Nampa's Non Potable System will be the direct beneficiary of the 15.0 North and South Branch Laterals spill elimination because it will be Nampa pump stations used to eliminate the spills in an area where irrigation water shortfalls routinely exist. Ex. J, p. 7-6 (noting local "shortfalls" and use of groundwater wells and "rotation" to address these deficits, as well as describing the 15.0 Lateral system as one of "perpetual challenge" for the Nampa Non Potable System owing to peak usage creating "low water pressures"). This is no boondoggle. Pioneer and Nampa are working together to solve real, existing problems to their mutual benefit.

Pioneer can no more compel others to waste water for its benefit in the Fivemile Drain system (or any of its other drain systems) than Riverside can compel Nampa to waste for its benefit in Indian Creek. Like Riverside, Pioneer would much prefer that the historic status quo concerning wastewater flow regimes upstream and within it remain intact and robust. But that preference is neither realistic nor attainable. Again, there is no "scheme" here. Pioneer and Nampa are simply trying to absorb and evolve with the hydraulic and regulatory trends occurring within and around them as creatively, cost-effectively, and symbiotically as possible.

IV.
CONCLUSION

Perhaps out of municipal water right legal regime naiveté, Pioneer fails to understand the substance of Riverside's Petition. That Riverside prefers Indian Creek flows remain augmented by Nampa WWTP discharges is obvious and understandable. But, Idaho Code Section 42-201(8) is clear, as is over a century of general wastewater principle precedent. Pioneer does not need a water right to contractually receive and land apply recycled water from Nampa's WWTP. And, Riverside has no legally protectable interest in Nampa's effluent stream provided Nampa maintains physical control and dominion over the same. This is not a matter involving the appropriation of otherwise unappropriated water from a natural source. Therefore, the permitting regime of Title 42, Chapter 2 does not apply.

DATED this 30th day of October, 2020.

SAWTOOTH LAW OFFICES, PLLC

By _____
Andrew J. Waldera
Attorneys for Pioneer Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of October, 2020, I caused a true and correct copy of the foregoing **INTERVENOR PIONEER IRRIGATION DISTRICT'S RESPONSE TO PETITIONER'S OPENING BRIEF** to be served by the method indicated below, and addressed to the following:

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August 18, 2011

Garrick L. Baxter
Deputy Attorney General
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

Re: City of McCall - Land application of municipal effluent outside of city limits

Dear Garrick:

Thank you for taking my call the other day inquiring as to whether my client, the City of McCall, has authority to land apply water it collects as municipal effluent on lands outside of the city limits under its existing municipal water rights. You suggested that I provide a letter to the Idaho Department of Water Resources ("IDWR" or "Department") setting out the City's understanding of the governing law and seeking confirmation that the City has this authority. This letter is intended to serve that purpose.

The City serves customers within its service area with municipal water rights including the following:

No. 65-10344 (5.13 cfs, 1918 priority, Payette Lake)
No. 65-10345 (2.31 cfs, 1968 priority, Payette Lake)
No. 65-12607 (3.88 cfs, 1983 priority, Payette Lake)
No. 65-13476 (2.23 cfs, 1993 priority, ground water)
No. 65-13796 (6.4 cfs, 1998 priority, ground water)

The Municipal Water Rights Act of 1996 ("1996 Act") defines three categories of municipal provider. The first is "[a] municipality that provides water for municipal purposes to

its residents and other users within its service area." Idaho Code § 42-202B(5)(a). The City plainly meets this definition.

It is a well established principle under the Prior Appropriation Doctrine that an appropriator may recapture water that he or she has applied to beneficial use while it is still under the appropriator's control and re-use that water on lands authorized within the original right. "It is settled law that seepage and waste water belong to the original appropriator and, in the absence of abandonment or forfeiture, may be reclaimed by such appropriator as long as he is willing to put it to beneficial use." *Reynolds Irrigation Dist. v. Sproat*, 70 Idaho 217, 222, 214 P.2d 880 (1950). *See also Hidden Springs Trout Ranch v. Hagerman Water Users, Inc.*, 101 Idaho 677, 619 P.2d 1130 (1980); *Sebern v. Moore*, 44 Idaho 410, 258 P. 176 (1927); and *In re Boyer*, 73 Idaho 152, 248 P.2d 540 (1952).

This is true even if the re-use reduces the water available to other water users downstream. As Mr. Hutchins noted in his seminal article, an irrigator "is not bound to maintain conditions giving rise to the waste of water from any particular part of its system for the benefit of individuals who may have been making use of the waste." Wells A. Hutchins, *The Idaho Law of Water Rights*, 5 Idaho L. Rev. 1, 100 (1968).

A natural extension of this principle is that cities may recapture their sewage effluent before it reaches a natural water body and may apply that water to additional municipal uses within the original water right. A city's right to recapture and reuse municipal effluent was recognized in *Reynolds v. City of Roswell*, 654 P.2d 537 (N.M. 1982). In reaching its decision, the *Reynolds* Court quoted at length from a 1925 decision by the Wyoming Supreme Court directly addressing the right of a city to reuse its wastewater to extinction—in this case by land application. "It is well known that the disposition of sewage is one of the important problems that embarrass municipalities. In order to dispose of it without injury to others, a city may often be confronted with the necessity of choosing between several different plans, and in the selection of the plan to be followed we think it should be permitted to exercise a wide discretion." *Wyoming Hereford Ranch v. Hammond Packing Co.*, 236 P. 764, 772 (Wyo. 1925). This Wyoming case, in turn, was relied on by the Arizona Supreme Court in reaching a similar conclusion confirming the right to recapture municipal effluent and sell it for cooling water to a nuclear power plant. *Arizona Public Service Co. v. Long*, 773 P.2d 988 (Ariz. 1989).

The next question is whether land application is a proper municipal use. The 1996 Act defines municipal purposes broadly:

> "Municipal purposes" refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a municipal provider.

Idaho Code § 42-202B(6). Although this definition does not expressly identify land application as a municipal purpose, it does include the broad catch-all phrase, "related purposes."

Consistent with this broad definition, the Department's guidance recognizes that land application of effluent may be treated as part of the original water right.[1] This guidance is aimed primarily at land application of industrial effluent. However, the same broad principles would apply to municipal effluent. Indeed, the 2009 guidance expressly references municipal land application, as well as land application of industrial and other effluent. Transfer Processing Memo No. 24, § 5d(9) at 31.

Other parts of the guidance specifically provide that in order to be considered part of the same beneficial use as the underlying water right, the land application must be undertaken to meet mandatory regulatory requirements. "Waste water treatment necessary to meet adopted state water quality requirements will be considered to be part of the use authorized under the industrial right." Application Processing Memo No. 61, § 1 at 3.[2] The City's land application was undertaken as a direct result of compliance obligations under section 402 of the federal Clean Water Act.[3] Accordingly, land application by the City of McCall is a proper municipal purpose encompassed by its municipal water rights.

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[1] Two guidance documents were issued by the Department in 1996. Phil Rassier, Chief Counsel, *IDWR Memorandum: Land Application of Industrial Effluent* (Sept. 5, 1996); Norm Young, IDWR, *Administrator's Memorandum – Application Processing No. 61* ("Application Processing Memo No. 61") (Sept. 27, 1996). This guidance has been modified to some extent by a broader guidance document, *Transfer Processing Policies & Procedures* ("Transfer Processing Memo No. 24") (revised Dec. 21, 2009).

[2] Note that the requirement for a transfer application stated in Application Processing Memo No. 61, § 3 at 3 has been overridden by the more recent guidance in Transfer Processing Memo No. 24, at 3 n.1. Accordingly, no transfer application is required where the land application occurs on lands that were previously cultivated with a full existing water right. Transfer Processing Memo No. 24, § 1 at 3, § 2 at 7, § 3(6)(g)(ii). Such is the case here.

[3] In 1996, the Environmental Protection Agency ("EPA") issued an NPDES permit to the City and the Idaho Department of Environmental Quality ("DEQ") issued a section 401 certification for that permit, both of which imposed a zero discharge limit for phosphorous. The zero discharge was driven by the Cascade Reservoir Watershed Management Plan issued by DEQ on October 1, 1995. This plan was the functional equivalent of a TMDL (total maximum daily load) required by section 303(d) of the Clean Water Act. EPA approved the TMDL in May of 1996. The TMDL requires a 37% reduction in the overall phosphorous load, with the City's load allocation set to zero.

The permit established a compliance schedule for the zero discharge limit. The City filed an administrative appeal of the 401 certification with DEQ. This resulted in the first of four consent orders being issued on July 27, 1998.

The City then went to work on a land application system to achieve the requirements imposed by the permit and the consent orders. This effort resulted in a *Three-Way Agreement* among the City, the Lake Irrigation District (which owns legal title to the water rights used for mixing), and the J-Ditch Pipeline Association (which I believe was responsible for constructing and maintaining the distribution system that leaves the mixing station to deliver enhanced irrigation water to the farmers). The *Three-Way Agreement* contemplated individual contracts between the farmers and the City. A series of 20-year *Water User and Supply Agreements* were executed in 1997, which remain effective through 2016.

The next question is whether the land application may occur beyond McCall's city limits. This is addressed by the 1996 Act which expressly authorizes municipal providers to serve within a flexibly-defined service area. That authority is found in two places.

First, it is noted in the definition of "municipal purposes" quoted above, which states that the municipal purposes include uses "located outside the boundaries of a municipality served by a municipal provider." Idaho Code § 42-202B(6).

Second, the term "service area" is defined by the 1996 Act as follows:

> "Service area" means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes. For a municipality, the service area shall correspond to its corporate limits, or other recognized boundaries, including changes therein after the permit or license is issued. The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality's established planning area if the constructed delivery system for the area shares a common water distribution system with lands located within the corporate limits. For a municipal provider that is not a municipality, the service area shall correspond to the area that it is authorized or obligated to serve, including changes therein after the permit or license is issued.

Idaho Code § 42-202B(9) (emphasis supplied). This definition expressly authorizes service outside of a city's service area so long as two conditions are met.

First, the land application must be "within the municipality's established planning area." "Planning area," however, is not a defined term. It is an informal term generally understood to refer to the area used by a city for water rights planning purposes as it plans for current and future water requirements.[4] In other words, the 1996 Act requires that land application outside the city limits must be undertaken as part of a city's long-term water planning effort. Given the long history of development of this project within the context of environmental regulatory requirements (see footnote 3), this condition is satisfied.

Second, in order to satisfy the requirement that "the constructed delivery system for the area shares a common water distribution system with lands located within the corporate limits," it should be sufficient to demonstrate that the land application is physically connected via pipeline or other artificial conveyance with the City's wastewater collection and treatment system. For example, it could not be viewed as part of the original water right if the effluent

[4] The term "planning area" in the 1996 Act should not be confused with the city's "area of city impact." The latter is a distinct term meaningful in the context of annexation rules under the Local Land Use Planning Act, Idaho Code § 67-6526.

were placed into a natural stream and diverted later for land application.[5] McCall's treated effluent is completely contained and controlled within a series of pipes or other artificial conveyances from the place where the sewage is captured to the place where it is land applied. It is of no consequence that some or all of these conveyance and delivery systems are owned by others so long as the land application is undertaken pursuant to contract or other agreement with the City. Accordingly, this condition is satisfied as well.

The only other statute potentially bearing on the question of municipal water uses outside of the City's city limits is Idaho Code § 50-323. It provides:

> Cities are hereby empowered to establish, create, develop, maintain and operate domestic water systems; provide for domestic water from wells, streams, water sheds or any other source; provide for storage, treatment and transmission of the same to the inhabitants of the city; and to do all things necessary to protect the source of water from contamination. The term "domestic water systems" and "domestic water" includes by way of example but not by way of limitation, a public water system providing water at any temperature for space heating or cooling, culinary, sanitary, recreational or therapeutic uses.

Idaho Code § 50-323 (emphasis supplied). This does not impose any limitation. The authorizing clause ("Cities are hereby empowered to establish, create, develop, maintain and operate domestic water systems") is not limited to the city limits. Moreover, treatment of municipal effluent through land application would fall under the final clause ("to do all things necessary to protect the source of water from contamination"), which is not limited geographically.

For these reasons, it is my conclusion that the City of McCall is authorized to land apply its captured municipal effluent on lands outside of the city limits, and such use is authorized under the City's existing municipal water rights without need for transfer. This conclusion is premised on my representations to you in this letter that the land application is mandated by environmental requirements, that the lands on which the land application occurs were previously served by full existing water rights, and that the City has authority via contract or otherwise to land apply on these lands.

The City believes that these conclusions are fully consistent with the principles of optimum utilization embodied in Idaho's constitution. *Baker v. Ore-Ida Foods, Inc.*, 95 Idaho 575, 584, 513 P.2d 627, 636 (1973). It is in the public interest to encourage well-designed land application projects that enable cities to meet increasingly strict environmental requirements at

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[5] This is consistent with the law elsewhere in the West. In *City of San Marcos v. Texas Comm'n on Envt.l Quality*, 128 S.W.3d (Texas Ct. App. 2004), the Texas Court of Appeals found that the City of San Marcos did not have the right to recapture its wastewater effluent in a river three miles downstream of the sewage treatment plant.

lower cost while promoting water conservation and facilitating additional beneficial use of water. Idaho's water law fully accommodates such undertakings.

As we discussed, I would very much appreciate your review, on behalf of the Department, of the conclusions reached in this letter. I look forward to hearing back from you in that regard. Thank you in advance for the time and effort you, the Acting Director, and others at the Department have invested in this review. It is important to the City to have clarity on these issues.

Sincerely,

Christopher H. Meyer

cc: Gary Spackman
Jeff Peppersack
John Westra
Steve Lester
Lindley Kirkpatrick

CHM:ch

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STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

September 7, 2011

Christopher H. Meyer
Givens Pursley LLP
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Re: City of McCall - Land application of municipal effluent outside of city limits

Dear Chris:

This responds to your letter of August 18, 2011 requesting confirmation that the City of McCall ("City") has authority to land apply its municipal effluent to lands located beyond the city limits but within the City's service area. I have reviewed your letter with staff of the Idaho Department of Water Resources ("IDWR") and am able to confirm that on the issue of whether municipal reuse of waste water comes within the original use of the municipal right, your analysis is consistent with current IDWR policy. Waste water treatment necessary to meet adopted state water quality requirements is considered by IDWR as part of the use authorized under a municipal right so long as the treatment process complies with the best management practices required by the Idaho Department of Environmental Quality, the U.S. Environmental Protection Agency, or other state or federal agency having regulatory jurisdiction. For new uses of municipal waste water that are not necessary to meet water quality requirements, an application for permit to appropriate water should be filed as required by Idaho Code § 42-202.

One concern raised by IDWR relates to your analysis of the place of use for a municipal provider. As you correctly recognize, the Municipal Water Rights Act of 1996 expressly authorizes municipal providers to serve within a "service area" that may include lands "located outside the boundaries of a municipality served by a municipal provider." Idaho Code § 42-202B(6). The term "service area" is defined by the 1996 Act as follows:

> "Service area" means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes. For a municipality, the service area shall correspond to its corporate limits, or other recognized boundaries, including changes therein after the permit or license is issued. The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality's established planning area if the constructed delivery system for the area shares a common

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> water distribution system with lands located within the corporate limits. For a municipal provider that is not a municipality, the service area shall correspond to the area that it is authorized or obligated to serve, including changes therein after the permit or license is issued.

Idaho Code § 42-202B(9) (emphasis supplied).

Under this statute, only if the constructed delivery system for the area outside the city limits shares a common water distribution system with lands located within the corporate limits, may the area outside the city limits be considered part of the city's service area. In the City's case, the Department understands that the City uses a series of privately owned irrigation ditches to transport effluent to lands outside the city limits. The Department has questions regarding the process in which the City delivers effluent to the lands outside the city limits. A measure of control and supervision is at least implied for a delivery system to be considered a "common" water distribution system. The Department does not have a complete understanding of how the effluent is tracked and delivered by the City. In short, the Department would need a better understanding of the City's actual delivery process to be able to answer whether the use of private irrigation ditches by the City would satisfy Idaho Code § 42-202B.

The Department would be happy to meet with you and your clients to discuss this matter further. Let me know if you would like to set up a meeting.

Sincerely,

Garrick L. Baxter
Deputy Attorney General
Idaho Department of Water Resources

cc: Gary Spackman
Jeff Peppersack
John Westra
Steve Lester

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September 16, 2011

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Re: City of McCall - Land application of municipal effluent outside of city limits

Dear Garrick:

Thank you for your letter of September 7, 2011. I am writing to respond to your request for more information on the delivery system used by the City of McCall for its land application. I have spoken with Peter Borner, the City's Public Works Director. Mr. Borner has confirmed the following facts:

The City owns and operates its wastewater treatment facility near the edge of town. Water is piped from the wastewater treatment facility to another facility known as the mixing station located on leased land approximately three miles south of the City. The City owns, operates, and controls the water treatment facility, the mixing station, and the pipe carrying the water from the water treatment facility to the mixing station.

The purpose of the mixing station is to add irrigation water to dilute the treated effluent from the wastewater treatment plant prior to land application. The irrigation water is provided under other water rights not owned by the City. The diluted effluent is then piped directly to center pivots or other delivery systems on farms under contract with the City for land application. The piping from the mixing station to the farms is owned by irrigation entities and/or the farmers themselves.

It is my understanding that the chief concern of the Department is that the treated effluent be under the physical control and direction of the City or others throughout the delivery process, and that the water not simply be used to augment the water supply of an irrigation district without the ability to determine which land actually receives the effluent. I can assure you that the City's system satisfies this requirement.

Based on this additional information, the City would appreciate receiving confirmation from the Department that its use of its municipal wastewater for land application as described in this letter and my letter of August 18, 2011 is a municipal use falling within the scope of its municipal water rights.

I thank you, Mr. Spackman, Mr. Peppersack, and Mr. Westra for your attention to this inquiry.

Sincerely,

Christopher H. Meyer

cc: Gary Spackman
Jeff Peppersack
John Westra
Steve Lester
Lindley Kirkpatrick
Peter Borner

CHM:js

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STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

September 19, 2011

Christopher H. Meyer
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Re: City of McCall - Land application of municipal effluent outside of city limits

Dear Chris:

Thank you for your letter dated September 17, 2011. You letter alleviates the Department's concerns regarding the City of McCall's effluent distribution system. Based upon the representations in your letter, the Department agrees that the lands served outside the City of McCall's corporate limits share a common water distribution system with lands located within the corporate limits. So as long as the City of McCall is land applying its captured municipal effluent as part of a treatment process to meet adopted state water quality requirements (this issue was discussed in my letter to you dated September 7, 2011), the Department agrees that the use (and location) is in conformance with City of McCall's municipal water right.

Sincerely,

Garrick L. Baxter
Deputy Attorney General
Idaho Department of Water Resources

cc: Gary Spackman
Jeff Peppersack
John Westra
Steve Lester

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	))))))	Docket No. P-DR-2020-01

RIVERSIDE'S REPLY IN SUPPORT FOR PETITION FOR DECLARATORY RULING

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Table of Contents

Table of Authorities

Cases

Statutes

Rules

Constitution

I. INTRODUCTION

The City of Nampa and Pioneer Irrigation District have hatched a scheme that allows Nampa to avoid some water quality standards during a part of the year by providing effluent to Pioneer that Pioneer will then deliver to 17,000 acres of Pioneer land. Some of these 17,000 acres are in Nampa's service area, but the vast majority are in the City of Caldwell and beyond.

Nampa claims the right to carry out this plan without any IDWR review or approval because of Nampa's privileged status as a municipality. Nampa asserts the terms and conditions of its potable water rights are irrelevant in determining what it can and cannot do with the water. Nampa also claims that the source of the water as ground water is irrelevant. In effect, Nampa claims title to the water to do with as it pleases.

Pioneer claims no special immunity from Idaho water law. It intends to take, manage and convey Nampa's effluent to Pioneer's land owners. It admits taking Nampa's effluent is like diverting any other drain water. Exhibit S, at 29 of 50.[1] Pioneer is not a municipality with a statutory right to reuse effluent for water quality purposes. Rather Pioneer is content to piggy-back and rely on whatever rights Nampa might have.

The other Municipal Intervenors are not in the same boat that Nampa and Pioneer are proposing to build[2]. However, they assure the Department that if the Director green-lights the Nampa-Pioneer scheme, then they may embark on similar ventures in the future. This warning sign is a signal that the Director must carefully examine the water right implications of the Nampa-Pioneer scheme to irrigate Pioneer's land to ensure that it complies with Idaho law and does not

[1] Citations to Exhibits refer to the page number of the Exhibit, not the internal page number of the document where the Exhibit contains multiple documents.

[2] The City of Caldwell claims that it has discussed discharge of effluent to Riverside's canal. Caldwell has never brought such a proposal to the Riverside Board.

usurp State control over the State's water resources. This is important because under Idaho law, control of water in Idaho vests in the State and the State must, in providing for the use of the waters of the State, "equally guard all the various interests involved." Idaho Code § 42-101. Such a careful examination will reveal that Nampa's proposal to gift the effluent to Pioneer requires an appropriate water rights proceeding.

II. RIVERSIDE'S PETITION ASKS THE DIRECTOR TO DETERMINE THAT PIONEER MUST OBTAIN A WATER RIGHT BEFORE ACCEPTING NAMPA'S EFFLUENT

In response to Riverside's Opening Brief outlining the issues of the case, the Intervenors submitted a blizzard of paper and exhibits. None of the exhibits were included among the stipulated exhibits that the parties worked so hard to identify and stipulate to at the beginning of this proceeding.[3] Most of what is said in response to Riverside's Opening Brief and the Petition is devoted to claiming that cities have virtually unlimited control over water they pump, that cities are not constrained by the plain language of their water rights and that cities have complete control over reuse of the water anywhere they chose to send the water. Undoubtedly the Intervenors would like to make cities' rights the focus of this proceeding. However, Riverside petitioned the Department to make two rulings.

> "a. Pioneer cannot divert or accept water from the City or apply any of that water to land in the Pioneer district boundaries under this Reuse Permit without first obtaining a water right.

[3] The *Stipulation Regarding Exhibits A-T and Other Evidence* was submitted to the Department on September 11, 2020. This *Stipulation* recognized that the Parties might want to submit additional facts or information. *Stipulation* p. 4. Accordingly the Parties established a protocol for offering additional information. The *Stipulation* provided that facts or information eligible for notice under IDAPA 37.01.01.602 could be considered by requesting that the hearing officer take judicial notice under IRE 201. *Id.*

Here Intervenors attached 150 pages of information. Yet Intervenors failed to request that the hearing officer take judicial notice and failed to explain how the attachments qualified for judicial notice under IRE 201. For their failing to comply with stipulated procedures and law. Intervenors' attachments should be disregarded

b. Any attempt by Pioneer or the City to divert water under the Permit to Pioneer without applying for a water right is in contravention of Idaho law."

Riverside's Petition for Declaratory Ruling, at. 3 (emphasis added).

Riverside's Petition is directed at the lack of legal authority for Pioneer to divert Nampa's effluent without any IDWR review and supervision.

III. THE UNDISPUTED FACTS SHOW THAT THE REUSE PERMIT REQUIRE PIONEER TO USE NAMPA'S EFFLUENT ON 17,000 ACRES OF PIONEER LAND, MOST OF WHICH IS BEYOND NAMPA'S BOUNDARIES

The facts underlying this petition are not in dispute. Nampa and Pioneer have entered into an agreement entitled a "Recycled Water Discharge and Use Agreement" (Reuse Agreement), dated March 7, 2018. Exhibit F. Under the Reuse Agreement, Nampa agrees to deliver and Pioneer agrees to accept up to 41 cfs of effluent from Nampa's Waste Water Treatment Plant (WWTP) into Pioneer's Phyllis Canal. Nampa proposes to convey this water by pipe directly from its WWTP to Pioneer's Phyllis Canal. From that point of diversion on the canal, Pioneer will deliver the water to Pioneer Irrigation District land owners who have the right to receive water from Pioneer through the Phyllis Canal.[4] Exhibit F. Under Section 4 of the Reuse Agreement, Nampa is responsible for plumbing, and the maintenance of the plumbing, from the Waste Water Treatment Plant to the canal. Exhibit F. There Nampa's plumbing ends. Section B (3) of the Reuse Agreement provides that "Pioneer will handle, manage and convey discharged Recycled Water as an integrated part of its irrigation operations." Exhibit F. Notably the Reuse Agreement provides that it is the entire agreement between Nampa and Pioneer over the receipt and use of the effluent from Nampa's Waste Water Treatment Plant. Exhibit F, Section C (10).

[4] Attached to Riverside's Reply Brief is Attachment A from Riverside's Opening Brief with the addition of boundaries shown in Exhibit K (Map Showing Irrigation Districts within Nampa's Area of City Impact) added for reference.

Thus it is undisputed that Pioneer is in charge of and accepts and maintains control over the effluent once diverted into the Phyllis Canal. The record is clear and the parties do not dispute that the Reuse Permit requires this effluent water to be applied to 17,000 acres of Pioneer land downstream of the point of discharge into the Pioneer's Phyllis Canal.[5] Exhibit J. Indeed, spreading that water over the entire 17,000 acres was an important consideration for the approval of the Reuse Permit. *See* Exhibit J, *Preliminary Technical Report*, Section 4 "Land Application Site." This section describes "the land application site" as "[t]he Pioneer Irrigation District (PID) service area downstream from the proposed recycled water discharge site." *See also* Figure 3 (Area of Analysis). Section 4 refers to the crop types in the area of analysis. Section 9 of the Preliminary Technical Report shows the crop types within Pioneer's 17,000 acres. *Id.* Section 9, at 74 of 259. Nampa's engineers, Brown & Caldwell, also provided mapping showing the flow of water through Pioneer's system, west to Greenleaf (Figure 8 of Exhibit J) and crop coverage in the area of analysis. Figure 12 of Exhibit J. Neither Pioneer nor Nampa disputes the fact that use across the entire 17,000 acres was an important factor in Nampa's application and DEQ's approval of the Reuse Permit.

Another important consideration here that is not disputed by Nampa or Pioneer is the fact that Pioneer intends to use this effluent water as a "supplemental" water supply for its existing irrigation obligations. *Stipulation of Facts* (SOF) 49. Pioneer admits it has no water right for this supplemental water source. *SOF* 35. Nampa does not have any plumbing enabling Nampa to deliver any of this effluent water to the 17,000 acres of Pioneer land. *See* Exhibit F, Section B (3) and Exhibit R, at 4. The land where the reuse water is land applied is served by Pioneer, and

[5] Pioneer has other land in both the City of Nampa and City of Caldwell's impact areas that are served under the Caldwell Highline by the Caldwell Highline Canal. These lands are north of Nampa and north east Caldwell. Exhibit H, p. 29 of 58. But that land is not within the area of land application under the reuse permit. *See* Exhibit H, Figure 3 (attached to Riverside's Opening Brief).

includes "much of the City of Caldwell." *SOF 2*. Nampa does not contend that the land in "much of the City of Caldwell" is within the City of Nampa's service area or that Nampa has the right or ability to supply water within the City of Caldwell city limits or within the City of Caldwell's impact area under Nampa's water rights.[6] Attachment A to Riverside's Opening Brief shows that most of the lands that are to receive Nampa's effluent water are either in the City of Caldwell, its impact area or areas to the west of the City of Caldwell as far as Greenleaf and far beyond any conceivable reach that Nampa might have. *See* Exhibit J, Figure 3. Exhibit K, a map showing Nampa's municipal irrigation system and irrigation districts within Nampa's and Caldwell's areas of impact, also shows the demarcation between Nampa and Caldwell areas of impact. Nampa is hemmed in on the west by Caldwell, on the north by Middleton, on the east by Meridian and on the south by Lake Lowell. Exhibit K. Nampa may be able to expand its service area south of the lake, but that area south of the lake is not within the "land application site" in the Reuse Permit.

DEQ's response to comments from Riverside and the Reuse Permit itself make it clear that Nampa's obligation and its plumbing ends at what DEQ calls "the point of discharge," which is the discharge by Nampa to Pioneer's Phyllis Canal. Nampa must maintain the equipment and the structure up to that point, where Nampa is subject to DEQ inspection and engineering review. After that point of discharge "the water is considered to be irrigation and is no longer regulated by DEQ." Exhibit R, at 4. Having convinced DEQ that the water, once it reaches the canal, is "irrigation water" and no longer Nampa's effluent subject to DEQ regulation, Nampa and Pioneer cannot argue that this water is anything other than Pioneer's irrigation supply. Exhibits D and J both contain Figure 8 of Nampa's application. This Figure 8 shows numerous City of Caldwell diversions from Pioneer's canal. DEQ Staff Analysis describes that use "via the Phyllis Canal", as "use [of] that

[6] Nor does the City of Caldwell as a member of the municipal intervenors group, assert that the City of Nampa has the right to deliver water under Nampa's water rights within the City of Caldwell city limits or its impact area.

water for irrigation by the users of that canal network." Exhibit H (Executive Summary) at 9. DEQ further explains that Nampa will meet Class A requirements "prior to the use of recycled water to augment Phyllis canal irrigation water." *Id*. at 10.

Pioneer then puts the final nail in its coffin. Pioneer agrees that Nampa's control over the effluent ends at the proposed point of discharge in the Phyllis Canal. *Pioneer Response Brief*, at 15. Idaho Code § 42-110 makes it clear that water is the property of the appropriator only so long as the water remains under the appropriator's "physical control." Since, as Pioneer argues, Pioneer assumes control of the effluent once it is in the Phyllis Canal, the water is Pioneer's irrigation water, not Nampa's effluent.

The record could not be more clear. Nampa proposes to deliver effluent to Pioneer, and Pioneer takes control of that water where it enters the Phyllis Canal and delivers that water as an augmentation to Pioneer's water supply which Pioneer then delivers to its landowners under Pioneer's water delivery system. But Pioneer admittedly has no water right for this water supply. And Nampa's water rights don't allow delivery of that water to Pioneer.

IV. PIONEER'S WATER RIGHTS DO NOT IDENTIFY NAMPA'S GROUND WATER OR NAMPA'S WWTP AS A SOURCE OF PIONEER WATER RIGHTS

Pioneer's water rights are listed in Exhibit P. *SOF* 4. The sources for those water rights include the Boise River, Indian Creek, Wilson Drain, Mason Creek Drain, Five Mile Creek Drain, Pipe Gulch Draw Creek Drain, Elijah Drain and certain ground water wells. *Id*. Pioneer's acceptance and delivery of Nampa's effluent throughout Pioneer's downstream district boundaries will result in Pioneer's delivering water for irrigation beneficial use even though Pioneer has no water right identifying Nampa's ground water as the source of that water. None of Pioneer's rights identify Nampa's wells or Nampa's WWTP as a source of water for Pioneer,

and neither Pioneer or Nampa contend they do. Intervenors argue that this failure can be rectified by the filing of a notice form with IDWR. *See e.g. Pioneer's Response Brief*, "Nampa merely need submit 'notice' to the Department in the event that the proposed land application sites are not 'identified as a place of use for an existing water right.'" *Pioneer Response Brief*, at 5 (quoting Idaho Code § 42-201(8)).

Whatever notice Nampa is obligated to provide to IDWR does nothing to change Pioneer's water rights. Allowing Pioneer to deliver water to be put to beneficial use by its landowners when Pioneer has no water right for that water, and when none of its water rights includes it as a source, is contrary Idaho law. "One purpose of the SRBA is to establish ... a uniform description for surface water rights, ground water rights and water rights which include storage." *Rangen, Inc. v. Idaho Dep't of Water Res*., 159 Idaho 798, 806, 367 P.3d 193, 201 (2016) (quoting Idaho Code § 42–1427) (internal quotations omitted). "Any interpretation of [the] partial decrees that is inconsistent with their plain language would necessarily impact the certainty and finality of SRBA judgments…." *Id*. Likewise, in *First Security Corp. v. Belle Ranch, LLC*, 165 Idaho 733, 743, 451 P.3d 446, 456 (2019), the Court stated that the legislature directed that decrees must contain all elements of a water right.

The Idaho Supreme Court in *Rangen* rejected Rangen's argument that its decree did not match its "historical use" because accepting that argument would constitute "an impermissible collateral attack on the decrees." *Rangen, Inc. v. Idaho Dep't of Water Res*., 159 Idaho at 798. Therefore, the Supreme Court held that "Rangen's partial decrees entitle it to divert only that water emanating from the Martin–Curren Tunnel and only within the decreed ten-acre tract." *Id.* at 806. In other words, a water user's use of water is strictly limited to the language of the elements in the decrees, including the source of water and the place of use.

There is no dispute, Pioneer's water rights do not authorize Pioneer to deliver this supplemental water. Delivery of the effluent to Pioneer without a water right identifying the source of that water would violate settled law. Under *Rangen*, Pioneer's partial decrees "entitle it to divert" only the sources of water identified in those decrees and only within the place of use of those partial decrees.

V. THE SOURCE OF NAMPA'S EFFLUENT IS GROUND WATER

Nampa's effluent comes from its potable system, and is supplied by Nampa's ground water rights. *SOF* 9; *Nampa's Response Brief*, at 31. Nampa's effluent is primarily treated sewage derived from its ground water rights. Some additional water from outside sources is introduced to the WWTP and becomes part of the effluent discharge. *SOF* 25.

In *A & B Irrigation Dist. v. Aberdeen-Am. Falls Ground Water Dist*., the Idaho Supreme Court rejected the contention that water sourced from ground water can be somehow "transformed" into "something else as it is collected." *A & B Irrigation Dist. v. Aberdeen-Am. Falls Ground Water Dist*., 141 Idaho 746, 753, 118 P.3d 78, 85 (2005). "The thrust of A & B's position is that even though water originates as ground water, the water is legally and factually changed once collected in A & B's drainage system." *Id*., at 750. Rejecting this argument, the Court found:

> The water in this case in large part derives from ground water. It can be identified as such from the time it is pumped from the ground until it collects in A & B's ponds and/or drains. It would be anomalous to treat the water as ground water so long as it is pumped directly from the ground to the field but transform it to something else as it is collected. To the extent that the source of appropriated water can be identified, it retains that characterization.

Id.

Applying *A&B* to Nampa's potable water rights, the inescapable outcome is that the water pumped under those water rights remains ground water. It is not transformed into

something else when collected at the waste water treatment plant. As the Court concluded, "[t]o the extent that the source of appropriated water can be identified, it retains that characterization." *Id*. Nampa's potable water rights are collected by Nampa from its sewage collection system with some comingling of additional water. *SOF* 23, 25. The limited comingling of the potable water rights with additional water does not transform the ground water into something else under *A&B*. The end result under the Reuse Agreement and the Reuse Permit is that Pioneer is delivering Nampa's ground water to Pioneer's landowners, which under Idaho law it cannot do without a new water right.

VI. NAMPA'S POTABLE WATER RIGHTS ARE DISTINCT FROM ITS WATER RIGHTS FOR IRRIGATION USE

The Intervenors contend that the nature and scope of Nampa's water rights do not matter. *See e.g. Municipal Intervenor's Response* "… an irrelevant focus on the source and purpose elements of Nampa's water rights…" *Municipal Intervenor's Response Brief* at 8; *see also* "Riverside engages in a seven-page analysis of the nature and scope of Nampa's water rights…. the nature and scope of Nampa's water rights are irrelevant." *Nampa's Response Brief* at 48.

There is no dispute that the water rights for Nampa's potable water supply state that the water is for use in Nampa's potable water system. *See e.g*., water right 63-2779, Condition #1. ("This right is part of the potable water delivery system for the City of Nampa"). Nampa says that this condition describing the right as part of the potable water system only refers to the wells identified in the water right and not to the water right itself. *Nampa Response Brief*, at 50. The fact is that potable water has a clear and unambiguous meaning – "drinking water." *See* IDAPA 37.03.09.010.43. (Definition of potable water as water suitable for human consumption). In other words, the term "potable water" refers to the use to which the water is put – drinking water. *See City of Marshall v. City of Uncertain*, 206 SW 3.d. 97 (Tex 2006) (change from potable

purpose of use to supply industrial use required a hearing to assess effects of change in purpose use.) *See Rosetto Inc. v. US*, 64 F Supp 2.d 1116 (D.N.M. 1999) (right to use potable water does not allow use of water for a heat source).

Nampa's potable water rights are not decreed for pressurized irrigation unlike Nampa's non-potable water rights. *SOF* 8. Nampa has a separate delivery system for its potable water. *SOF* 8. This potable water system is separately supplied by many wells and water rights. *SOF* 9. Nampa's non-potable system is entirely separate. A majority of water for its non-potable system is supplied by irrigation districts. *SOF* 13-16. Nampa's non-potable system supplies pressurized irrigation water. *SOF* 8. Therefore, to supply Nampa's potable water to Pioneer for Pioneer to use as supplemental irrigation water (Exhibit R, at 4) is an expansion of Nampa's potable water rights.

VII. NAMPA'S WATER RIGHTS DEFINE THE PLACE OF USE AS WITHIN NAMPA'S SERVICE AREA

In arguing that Nampa's effluent can be discharged to the Phyllis Canal and subsequently land applied in Pioneer's district boundaries, the Intervenors completely disregard the place of use description in Nampa's potable water rights, which specifies "[p]lace of use is within the service area of the City of Nampa municipal water supply system as provided for under Idaho Law." *See, e.g.*, water right 63-02779 (emphasis added). The plain language of Nampa's potable water rights restricts the place of use to use within Nampa's "municipal water supply system."

It is an even further stretch to propose applying water appropriated under the potable water rights to lands within Pioneer's district boundaries. Pioneer's place of use is not referenced within the four corners of Nampa's potable water right decrees. Nampa and Pioneer argue that the Director can simply ignore this fact because there is crossover between Nampa and Pioneer water users. *SOF* 57-60. That it is simply not the law of water administration in Idaho. Nampa

admits as much in its *Response Brief*, "the obligation to return unused water to the public supply is counterbalanced by the equally important principle that an appropriator may recapture and reuse water previously diverted so long as the reuse occurs within the bounds of the original water right." *Nampa Response Brief*, at 32 (emphasis added). The proposed actions under the Reuse Agreement that take place outside Nampa's service area are clearly not "within the bounds of [Nampa's] original water right." *Id*. *See also Nampa's Response*, "Simply put, water that is lawfully recaptured and beneficially reused within the scope of the original water right is not 'unused' water that must be returned to the common supply." *Nampa's Response Brief*, at 32 (emphasis added). Here there is no dispute that most of the land application area of use is far outside Nampa's boundaries. *See* Exhibit J, Figure 3 and Exhibit K.

VIII. NAMPA PROPOSES EXPANDING ITS WATER RIGHT BY DELIVERING EFFLUENT TO PIONEER FOR USE OUTSIDE NAMPA SERVICE AREA

Nampa acknowledges that, "the right to recapture and reuse waste water does not override other principles of law, such as the rule against enlargement." *Nampa Response Brief*, at 33. Nampa then flips and argues that this rule does not apply to Nampa, contending, without authority, that "the no-enlargement limitation imposes little if any constraint on reuse of municipal rights, which may be used and reused to extinction within a flexible and expanding service area." *Nampa Response Brief*, at 34. But Nampa's "flexible and expanding service area" is not without bounds. Nampa's current area of impact has little, if any, room to expand. *See* Exhibit K. Further, the facts are clear that Pioneer will not use this water exclusively in Nampa's "flexible and expanding service area." Rather Pioneer intends to use it on 17,000 acres of Pioneer land, and most of that land is far outside Nampa's service area.

The Supreme Court's decision in *A & B Irrigation Dist. v. Aberdeen-Am. Falls Ground Water Dist.*, demonstrates that, under Idaho law, Pioneer's proposed use of Nampa's ground

water collected in the Waste Water Treatment Plant constitutes an enlargement. Nampa's potable water rights undoubtably retain their ground water character. In *A&B*, the Court made it clear that any distinction between waste water and ground water does not provide an end run around the rule against enlargement.

The Court in *A&B* conducted enlargement analysis of the water that A&B had collected, treating that water as both waste water and ground water. Looking first to waste water and the analysis provided in *Jensen v. Boise -Kuna Irrigation Dist.*:

> '… no attempt was made by the directors to obligate the district to deliver or make available to the plaintiffs any of the water or water rights owned by the district, and available, appurtenant *and dedicated to lands within the district*.' [*Jensen*]. at 141, 269 P.2d at 759–60. This finding distinguished between 'dedicated sources,' such as ground water, or the lake water in *Jensen*, and 'seepage or waste waters' which the district granted the Jensens the right to use. *Jensen* is consistent with *Hidden Springs Trout Ranch* and *Sebern* that drain, waste and/or seepage waters may be appropriated.

A & B Irrigation Dist. v. Aberdeen-Am. Falls Ground Water Dist., 141 Idaho 746, 751, 118 P.3d 78, 83 (2005) (emphasis in *A&B Order*). The Court noted that while the "majority of water used to irrigate A & B's enlarged acres comes from a series of drains that collect excess irrigation water appropriated under water right no. 36–02080, similar to the water at issue in *Jensen*" *A & B*, at 751, 83, a "key factor in determining A & B's enlargement source was where the water originated." *Id*.

The Court acknowledged that, under the "logic of *Jensen*, the source of water for A & B's enlarged acres could be drain and/or waste water", however, "treating the water as recaptured drain and/or waste water would not accomplish the purpose [A&B] seeks." *Id*.

> A & B is not seeking to expand the number of acres it irrigates with original ground water under right no. 36–02080. Rather, it relies on an unappropriated source, that of recaptured drain and/or waste water to irrigate its additional acres. This is in violation of the mandatory water permit requirements. Idaho Code § 42–229 (2003). Treating the

> water as something other than ground water, A & B must seek a new water right for this water source prior to any further use on the 2,363.1 acres.

Id. at 752. *See also FN 1* from the above quote, ("As noted by the district court, the drain and/or waste water does not qualify as a private water source. To use this water, appropriation under the mandatory permit scheme is the only method by which this water can now be put to beneficial use.") *Id*. The result is that A&B could reuse the water on "its original appropriated lots" but not on the new acres without leading to an enlargement. *Id*. The Court then examined the consequence of treating the collected water as A&B's ground water and concluded that allowing A&B to expand the use to irrigate new acres would be an unlawful expansion of A&B's ground water rights. Ultimately the Court held that A&B's water source for this water was its original ground water right. *Id*., at 753.

Pioneer misunderstands the application of *A&B* to Nampa's water use proposal. Pioneer seems to think that comingling of other water with A&B's recaptured ground water was what triggered the Court's decision in A&B. *Pioneer Response Brief*, at 15. That was not the basis for the Court's decision. A&B argued to the Court that the comingling of other waters with the ground water transformed the water into waste water. *A&B*, 141 Idaho at 750, 118 P.3d at 82. While the Court examined both possible sources, it ultimately held that the water remained ground water despite the comingling argument of A&B. *Id*., at 753. Moreover, contrary to Pioneer's claim, (*Pioneer Response Brief*, at. 15) Nampa's effluent, like A&B's collected water, includes water from other comingled sources. *SOF* 25.

Pioneer then claims that there is no irrigation of new ground with Nampa's ground water and that fact distinguishes *A&B* from this case. *Pioneer Response Brief*, at. 17. While there do not appear to be plans to irrigate new ground with new surface water rights under the Reuse

Agreement, the facts are clear that 17,000 acres of Pioneer land will receive a "supplemental" or "augmented" irrigation supply. As in *A&B,* these acres are not covered by Nampa's water right.

Nampa and Pioneer assure the Department that it needn't be bothered at a "molecular" level with where the effluent goes after it is delivered to Pioneer because many Nampa citizens are also Pioneer landowners. *Pioneer Response Brief* at 17, 21; *Nampa Response Brief*, at 46, 48. But of course, where the water goes and how it is used is the very purpose of Idaho's system of water administration. *See e.g*. Idaho Code § 42-101; § 42-201(1). Even so, Intervenors' positions are contradictory. On one hand, Nampa argues that delivery of effluent to Pioneer can be seen as an expansion of its municipal boundaries, suggesting "the Department may view all of Pioneer's district lands as part of Nampa's expanded service area..." *Nampa Response Brief*, at 48. Saying so doesn't make it true. Indeed, Nampa cites no authority to support the claim that it has taken over 17,000 acres of Pioneer's land into its service area. Nampa doesn't claim that its municipal irrigation agreements encompass any of these areas. *See SOF* 19, Exhibits L – O. Certainly nothing in Nampa's water rights suggests this possibility. *See* Section IX below. On the other hand, Nampa asks the Department to pretend that Pioneer is only delivering the effluent back to Nampa within Nampa's current boundaries, "the Department may view the effluent as being applied to Nampa's own customer base. *Id*. Both Nampa and Pioneer admit that there is no way of assuring which molecules (effluent or non-effluent) are delivered to Nampa. *Nampa Response Brief*, at 46-47. *Pioneer Response Brief*, at 17 and 18 (admitting that Pioneer can't guarantee delivery of the water Nampa discharges will go to Nampa citizens). The difficulty with this argument is that it is directly contrary to the terms of the Reuse Permit which anticipates and requires delivery of the water across all 17,000 acres. *See* Exhibit G.

The Department, Nampa advises, should just go along with this cavalier water spreading of Nampa's effluent because "it will save the good citizens and customers of Nampa many millions of dollars." *Nampa Response Brief*, at 11. However, saving money is not one of the criteria for determining when a water right or transfer is necessary. If it were, there would never be a water right or transfer, as they all cost money. The Department should not be so casual with the accounting of water and its lawful distribution. Idaho statutes and case law make it clear that the nature and scope of water rights even municipal water rights do matter. *See City of Pocatello v. Idaho*, 152 Idaho 830, 152 P.3d 845 (2012)*; City of Blackfoot v. Spackman*, 162 Idaho 302, 396 P.3d 1184 (2017).

IX. MUNICIPAL USE DOES NOT INCLUDE USE OUTSIDE NAMPA'S SERVICE AREA BOUNDARIES ON PIONEER'S 17,000 ACRES

Nampa asserts that "changes in consumptive use, in themselves, do not require a transfer application." *Nampa Response Brief*, at 38, citing Idaho Code § 42-202B(1). Nampa then claims that because municipal use is "allowed to be 100 percent consumptive, it necessarily follows no transfer is required for reuse of municipal water so long as the reuse occurs within in the broadly-defined bounds of the municipal water right." *Id*. No matter how "broadly-defined" the bounds of Nampa's potable water rights, the rights are defined and the elements in Nampa's water rights do not provide for, or even mention, the agricultural irrigation by Pioneer's land owners. In the *Stipulation of Facts*, Nampa and Pioneer agreed to the following facts:

10. Each of the water rights set out in Table 1[7] above is authorized for "municipal purposes" in accordance with Idaho Code § 42-202B(6).

[7] Table 1 lists Nampa's Ground Water Rights for its Potable System.

11. Each of the water rights set out in Table 1 above has a place of use corresponding to Nampa's expanding service area, in accordance with Idaho Code § 42-202B(9).

12. Each of the water rights set out in Table 1 above is subject to the conditions set forth in the water rights.

SOF 10-12.

"Municipal purposes" is defined in the Idaho Code as:

> 'Municipal purposes' refers to water for residential, commercial, industrial, irrigation of parks and open space, and related purposes, excluding use of water from geothermal sources for heating, which a municipal provider is entitled or obligated to supply to all those users within a service area, including those located outside the boundaries of a municipality served by a municipal provider.

Idaho Code § 42-202B(6). Of those "municipal purposes" only "irrigation of parks and open space, and related purposes" mentions "irrigation". But even a "broad" interpretation of that phrase cannot be read to include land application to 17,000 acres most of which are outside of Nampa's service area for agricultural purposes. This is further clarified when Idaho Code § 42-202 B(6) is read together with the companion definition of "municipal provider" which is "[a] municipality that provides water for municipal purposes to its residents and other users within its service area." Idaho Code § 42-202B(5)(a) (emphasis added). Service area" is defined as:

> [T]hat area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes. For a municipality, the service area shall correspond to its corporate limits, or other recognized boundaries, including changes therein after the permit or license is issued. The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality's established planning area if the constructed delivery system for the area shares a common water distribution system with lands located within the corporate limits. For a municipal provider that is not a municipality, the service area shall correspond to the area that it is authorized or obligated to serve, including changes therein after the permit or license is issued.

Idaho Code § 42-202B(9) (emphasis added). In broad terms, this definition arguably includes Nampa's "area of impact" but stretching it to include 17,000 acres, most of which are outside its city limits and area of impact goes too far. This is especially true when the definition of "service area" includes limitations requiring it to correspond to the "corporate limits", "other recognized boundaries" and "shares a common water distribution system… within the corporate limits." *Id*. The vast majority of Pioneer's 17,000 acres do not fall within this definition. Additionally, there is no evidence that Nampa's service area or planning area includes the City of Caldwell and/or other areas to the west of Caldwell, where the Reuse Agreement contemplates land application.

The legislative history of Idaho Code § 42-201(8) and the Department's guidance confirm the limitation on reuse to municipal use and to the municipality's service area. In the *May 26, 2011 Letter from Baxter to Meyers*, the Department's counsel made a point of clarifying that reuse had to be to municipal uses:

> First, the Department would like to clarify a subtle but important point. The second paragraph on page one states "You confirmed my understanding that a city may recapture and reuse its municipal effluent and apply it to other uses within its growing service area." It is important to clarify that the use which the effluent can be put must continue to be a municipal use. I believe that this is likely your understanding as well. If so, the term "municipal" should be inserted as follows: "you confirmed my understanding that a city may recapture and reuse its municipal effluent and apply it to other municipal uses within this growing service area."

May 26, 2011 Letter from G. Baxter to C. Meyers (emphasis in original), reproduced in *Nampa Response Brief* at 183. *See also June 16, 2005 Letter from Strack to Fife RE: Provision of Water and/or Sewer Services by an Idaho Municipality to Out-of-State Government or Private Entities*:

> Service areas must be defined in any water license issued to a municipal provider, and the license must be conditioned "to prohibit any transfer of the place of use outside the service area." Idaho Code § 42-219. Thus, as a general matter, cities may not contract to provide water services to private users who reside outside the city boundaries or outside the service area defined in the city's water right license.

Strack Letter, at 2; reproduced in *Nampa Response Brief* at 171 (emphasis added).

The Intervenors contend that this limitation to municipal uses within Nampa's service area is satisfied because Pioneer delivers surface water to some Nampa residents through its irrigation system, ignoring the fact that, under the Reuse Agreement and the Reuse Permit, the land application area stretches far beyond the boundaries of Nampa's service area. The water Pioneer delivers to its water users (including Nampa residents) is water that Pioneer is obligated to deliver to Pioneer's landowners. Moreover, under the municipal irrigation agreements water delivered to Nampa's municipal irrigation (non-potable) system is non-potable surface water for pressurized irrigation purposes. *SOF* 8, 13, 14.

Nampa and Pioneer propose taking Nampa's potable ground water rights and applying them to lands that are served by Pioneer's water rights. Under *A&B*, this is enlargement, requiring either a new water right or a transfer. Pioneer's use of Nampa's potable ground water rights cannot be subsequently applied to a new beneficial use in a new service area without either a new water right or a transfer application. "Treating this water as something other than ground water, A&B must seek a new water right for this water source prior to any further use on the 2,363.1 acres." *A&B*, 141 Idaho at 751-2.

Intervenors contend, that a "municipal service area grows over time" and can "encompass[] a broad range of uses" *Nampa's Response Brief* at 39. Yet there is no question of fact - Nampa's service area does not and cannot encompass the "land application site" in the DEQ reuse permit. Compare Exhibit K and Exhibit J, Figure 3, and there is no doubt that the land application site covers Caldwell City limits and its impact area. *Id.* Nampa is careful not to mention and avoids asserting that the land in the City of Caldwell's city limits and in Caldwell's impact area is within Nampa's service area. Nor does Nampa show how Nampa can legally supply water in another City or another City's impact area.

The obvious reason Nampa avoids claiming that it has the right to deliver water in the City of Caldwell, or Caldwell's impact area or in unincorporated Canyon County is that Nampa has no authority to act within the boundaries of another city's limits or impact area or the county. Idaho Constitution, Article XII, § 2. *Reardon v. City of Burley*, 140 Idaho 115, 120, 90 P.3d 340, 345 (2004), overruled on other grounds; *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012)(issue of attorneys fees); *Boise City v. Blaser*, 98 Idaho 789, 791 572 P.2d 892, 894 (1977). ("Generally speaking, to give effect to a county permit within city limits would be to violate the separate sovereignty provisions of Idaho Constitution, Article XII, § 2, and the careful avoidance of any county/city jurisdictional conflict or overlap, which is safeguarded therein."); *Clyde Hess Distributing Co. v. Bonneville County*, 69 Idaho 505, 511, 210 P.2d 798, 801 (1949).

Here Nampa and Pioneer propose to take water from Nampa's potable ground water rights and apply them to lands outside Nampa's service area, within the City of Caldwell and its impact area, and to lands in Canyon County west of Caldwell, all of which are served by Pioneer's water rights. Under *A&B*, this is enlargement, requiring either a new water right or a transfer.

X. WATER CANNOT BE APPLIED TO LAND UNLESS THE SURFACE WATER IS NOT AVAILABLE

Nampa's water rights are clear and unambiguous. They contain conditions of use providing that the water is not to be used for irrigation "except when surface water rights are not available for use." *See* Water Right 63-12474. There is no dispute that Pioneer intends to use the water (effluent) sourced from these water rights for irrigation of land that has Pioneer surface water rights and is served by Pioneer. *SOF* 49. Neither Pioneer nor Nampa assert that Pioneer's surface water rights "are not available for use" on these lands. Under this unambiguous condition, use of this water for irrigation of Pioneer lands served by Pioneer surface water rights

is an expansion of Nampa's water rights.

Nampa argues this is okay, based on an exchange of letters between Nampa's counsel and IDWR over different water rights for Black Rock (95-9055 & 95-9248).[8] Counsel asserts, without citation, that a similar condition in Black Rock's right (95-9055) does not prohibit land application. *Nampa Response Brief* at 143. An IDWR 2008 Internal Review memo acknowledges that the Department's recognition of a municipal right as fully consumptive may not necessarily be true as a matter of fact. *See September 23, 2008 Weaver Memo to Peppersack*, reproduced in *Nampa's Response Brief* at.158-59.

The 2008 Internal Review memo states that the condition regarding use of surface water first speaks only to the primary or first use of the diverted groundwater. *Weaver Memo RE: Review of Permits 95-9055 and 95-9248* reproduced in *Nampa's Response Brief* at 160. The Memo cites no legal or statutory authority for the proposition that this surface water use condition only applies to the first use.[9] The Memo continues by relying on a recognition that the municipal water right is considered fully consumptive. *Id*. But the Memo then admits there is no statute or even an Administrator's Memo that articulates the basis for this recognition. *Id*., at 161 fn. 2. IDWR's letter back to Black Rock's counsel simply states the conclusion that the surface water use condition only applies to the first use, without explanation.

Idaho courts interpret water decrees using the same interpretation rules that apply to contracts. *Rangen Inc. v. IDWR*, 159 Idaho 798, 807, 367 P.3d 193, 202 (2016) (citing *A & B Irr.*

[8] Idaho Code § 67-5250(2) authorizes agencies to index agency guidance memos by subject matter. There is no suggestion that the written communication Nampa has attempted to add to the record are either "agency guidance documents" or that they are indexed by subject matter. Even if you were "indexing of guidance documents does not give that document the force and effect of law or other precedential authority. Id. These letters likewise cannot be construed as precedential or having any legal effect here; and should not be considered in this proceeding.

[9] Neither Mr. Young's Administrator's Processing Memo No. 61 (1996), nor Mr. Rassier's September 5, 1996 Memo to Mr. Young (p. 204-209) even purport to assert that the condition limiting groundwater use when surface water is available does not apply to municipal water rights or that the condition only applies to primary use.

Dist. v. Idaho Dep't Of Water Res., 153 Idaho 500, 523, 284 P.3d 225, 248 (2012)). "Whether an ambiguity exists in a legal instrument is a question of law, over which this Court exercises free review." *Id*. (quoting *Knipe Land Co. v. Robertson*, 151 Idaho 449, 455, 259 P.3d 595, 601 (2011)). *Rangen* is important here for two points – one that the water right decree must be interpreted under its clear and unambiguous terms, before resorting to any extra-textual interpretation. Second, there was a mechanism to clarify water rights before the SRBA Court. If Nampa, as the water right holder, believed the language required a broader meaning than what is on the face of the decree, it was required to bring that issue to the SRBA Court's attention. Nampa did not do so. To allow a party to "enlarge or alter" the clearly decreed elements of a water right would be to allow the parties to alter a judicial decree. The Supreme Court held that this result is "untenable." *City of Blackfoot v. Spackman*, 162 Idaho 302, 309, 396 P.3d 1184, 1191 (2017).

Rangen thus counsels that Nampa's attempt to modify the language of the water rights decree to provide for a first use/second use distinction does not comply with Idaho law.

XI. A MUNICIPAL WATER RIGHT IS LIMITED TO THE TERMS & CONDITIONS OF THE WATER RIGHTS – NOT AN UNLIMITED RIGHT TO USE WATER FOR ANY REASON ON ANY LAND

Cities are not above the law when it comes to administering their water rights. In *City of Pocatello v. Idaho*, the Idaho Supreme Court upheld the Department's and the District Court's decisions that Pocatello's ground water wells were not alternative points of diversion for its surface water rights. *City of Pocatello*, 152 Idaho 830, 839, 275 P. 3d 845, 854 (2012). In *City of Blackfoot v. Spackman*, the Idaho Supreme Court again limited the city's uses under its water rights to the elements in the water rights. "Water rights are defined by elements." *City of Blackfoot v. Spackman*, 162 Idaho 302, 307, 396 P.3d 1184, 1189 (2017). "Purpose of use is one

of those defining elements." *Id*. Importantly, a "private settlement agreement cannot define, add, or subtract from the elements of a validly adjudicated water right…" *Id*., at 308. Thus, the City of Blackfoot could not use a water permit for ground water recharge where that permit did not include recharge as a beneficial use.

The IDWR guidance that Nampa relies upon, specifically the Weaver Memo and Spackman correspondence, do acknowledge the fully consumptive potential of municipal water rights and the right to reuse of that water if reclaimed and applied to the place of use by the original appropriator and for a purpose identified in the water right. *See September 29, 2008 Spackman Letter* "… the municipal provider may reuse the reclaimed water within its place of use for other purposes that are defined as specific uses of water within the broader municipal purpose." *Spackman Letter*, at 2 (emphasis added), reproduced in *Nampa's Response Brief*, at 163. Since Nampa's water rights do not allow the water to be used for agricultural use on lands outside Nampa's service area, supplying water to Pioneer for that purpose is an enlargement.

XII. IDAHO CODE § 42-201(8) IS CLEAR ON ITS FACE AND DOES NOT APPLY TO PIONEER

"The interpretation of a statute must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written." *Verska v. Saint Alphonsus Reg'l Med. Ctr*., 151 Idaho 889, 893, 265 P.3d 502, 506 (2011) (quoting *State v. Schwartz*, 139 Idaho 360, 362, 79 P.3d 719, 721 (2003) (internal quotations omitted). The "literal words" of Idaho Code § 42-201(8) unambiguously state "… a municipality or municipal provider as defined in section 42-202B, Idaho Code, a sewer district as defined in section 42-3202, Idaho Code, or a regional public entity operating a publicly owned treatment works shall not be required to obtain a water right…." Idaho Code § 42 -201 (8)

(emphasis added). It is undisputed that Pioneer is not a municipality. Therefore, under the unambiguous language of Idaho Code § 42-201(8), the exemption provided does not apply to Pioneer.

Here, the Reuse Agreement places Pioneer in charge of delivery of Nampa's effluent after it is discharged to the Phyllis Canal to 17,000 acres in Pioneer's district. Exhibit F, Section B 3. Under Idaho law, Pioneer cannot deliver to any user other than Pioneer users and it has an obligation to its landowners first and foremost. The Idaho Supreme Court made this clear in *Jensen v. Boise-Kuna Irr. Dist.*:

> … any water owned by the district and thus dedicated to the irrigation of lands within the district, cannot be supplied to lands outside the district so long as it is needed for the proper irrigation of lands within the district. The officers of the district have no power to contract for the delivery or supplying of such water for use outside the district. Any contract attempting to create or impose an obligation on the district to supply or make available any such water for any such purpose is ultra vires and void.

Jensen v. Boise-Kuna Irr. Dist., 75 Idaho 133, 141, 269 P.2d 755, 760 (1954). Pioneer claims not to understand the point, but it is simple. Pioneer delivers only to Pioneer landowners. Pioneer cannot deliver to Nampa unless the landowner has a Pioneer right. It cannot deliver to other Nampa users in Nampa's service area.

The legislative history of Idaho Code § 42-201(8) reinforces the conclusion that the exemption was to be "narrowly" applied and only to three types of entities – municipalities, sewer districts and entities operating publicly owned treatment works. The manager for the City of McCall testified "[t]he purpose of this legislation is to clarify that cities and sewer districts are not required to obtain a water right for the treatment – and especially disposal – of wastewater effluent." *March 5, 2012 Testimony of Lindley Kirkpatrick, McCall City Manager before the House*, reproduced in *Nampa's Response Brief* at 154 (emphasis added). In that same testimony,

he assured the House "[t]his proposal simply adds a similar exemption for the land application of treated wastewater by cities and sewer districts." *Id*., (emphasis added).

The City of McCall also provided written testimony that "[t]he purpose of this bill is to clarify that cities and sewer districts are not required to obtain a water right for the treatment and disposal of wastewater effluent." *City of McCall Testimony to the Senate Resources and Environment Committee*, March 14, 2012, reproduced in *Nampa's Response Brief*, at 127 (emphasis added). McCall's written testimony further provided "[w]e have received assurances from the Department of Water Resources that cities and sewer districts can land apply their own effluent…" *Id*., (emphasis added).

Nothing in the legislative history contemplates the exemption would be extended to any other entity that was not a municipality, a sewer district or a publicly owned treatment work. There is no mention of the landowners to which the effluent would be land applied securing a role in the exemption. There is no mention of extending the exemption to supposed "agents" of the cities and sewer districts. To the contrary, the scenarios presented to the legislature involved the cities and sewer districts land applying their effluent, acquired under their water rights, within the scope of those water rights, with the exemption allowing the cities and sewer districts to simultaneously dispose of effluent acquired from outside sources that comingled with their effluent before disposal.

That the original appropriator is the one reusing the water is a constant theme in the case law governing reuse, and in the Department's guidance. *See Sebern v. Moore* "… the waste water appropriation is 'subject to the right of the owner to cease wasting it, or in good faith to change the place or manner of wasting it, or to recapture it, so long as he applies it to beneficial use." *Sebern v. Moore*, 44 Idaho 410, 418, 258 P. 176, 178 (1927).

Intervenors attempt to broaden the exemption to include entities that aren't expressly identified in subsection 8 by calling Pioneer Nampa's "agent." They contends "The plain and most logical reading of the 'notwithstanding' reading is that any agent or contracting party acting in conjunction with the exempted party is also exempted from the mandatory permitting requirement in subsection 2." *Nampa's Response Brief*, at 16. But, that is not what the statute says and, evens so, Pioneer is not Nampa's agent. Under the Reuse Agreement, Nampa turns the water over to Pioneer at the Phyllis diversion point and Pioneer handles, manages and conveys this water as Pioneer sees fit. Exhibit F, Section B 3. Moreover, the water is not Nampa's and under the Reuse Permit, the water is no longer Nampa's and no longer under DEQ supervision once diverted into the canal. *See* Exhibit R. p/4, ("the water is considered to be irrigation water").

There is nothing "plain and most logical" about Nampa's reading of subsection 8 to include third-party agents in the exemption. Not only is there no mention of agents or third-parties in subsection 8, the statutory definitions of "municipal provider" and "sewer district" – which define the holders of the exemption – do not mention agents or third-parties. *See,* Idaho Code § 42-202B and Idaho Code § 42-3202. Nampa's insertion of an "agent or contracting party" into subsection 8 rewrites the statute and violates the black letter law that "[t]he interpretation of a statute must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole." *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho at 893 (2011).

The Intervenors criticize Riverside's reading of the exemption as "parsimonious" and "niggardly" *Nampa* at 16 and 15, and, "exceedingly narrow… leading to an absurd result." *Pioneer* at 8. But the very nature of the exemption was intended to be limited and "narrow." *See March 5, 2012 Testimony of Lindley Kirkpatrick, McCall City Manager before the House,*

reproduced in *Nampa's Response Brief*, at 125. The Intervenors would have the Department allow anyone, by virtue of contract, qualify for an exemption that applies only to a specified class to what is one of the cornerstones of Idaho water law.

The Intervenors' argument about expansively reading this exemption is contrary to how the subsection 8, then a proposed amendment, was presented to the Idaho Legislature:

> We've tried to craft this proposal narrowly to apply to only cities, sewer districts and other publicly owned treatment works.

March 5, 2012 Testimony of Lindley Kirkpatrick, McCall City Manager before the House, reproduced in *Nampa's Response Brief*, at 125 (emphasis added). It may have been a different story if instead the City of McCall and its counsel explained "This is crafted narrowly, but once you pass it, it will apply to any entity who contracts with a city or sewer district, thereby removing the administration of the state's water resources from Department and placing it solidly into the hands of private interests."

Rather than apply a "narrow" interpretation, the Intervenors encourage sending a wrecking ball through Idaho Code § 42-201. *See, e.g., Pioneer's Response Brief*:

> The plain language of Idaho Code Section 42-201(8) does not preclude the Nampa-Pioneer contractual relationship. The statute does not expressly restrict application of the water right exemption to those instances where the land application (*i.e.*, effluent treatment and disposal) is wholly performed, and only occurs on lands owned by the "municipality," "municipal provider," "sewer district," or a "regional public entity operating a publicly owned treatment works." Instead, the statute speaks more broadly in terms of "land application, generally, performed in response to "state or federal regulatory requirements: regardless of end destination.

Pioneer's Response Brief, at 8 (emphasis added). *See also Nampa's Response Brief*, "the statute also contains a sweeping declaration that when a city or sewer district takes action pursuant to subsection 8, the mandatory permitting requirements are set aside." *Nampa's Response Brief*, at

15 (emphasis added). Nampa and Pioneer's "broad" and "sweeping" language is the opposite of the "narrow" language provided in testimony before the Idaho Legislature.

As discussed above, the nature and scope of Nampa's water rights matter because this is the water that Pioneer proposes to apply to beneficial use under the Reuse Agreement. The Intervenors urge the Director to ignore this reality because they claim a "broad" exemption under subsection 8. However, the plain language of subsection 8, the legislative history and the communications with the Department indicate that the source and scope of the water being land applied was the very impetus for the legislation:

> Rep. Stevenson stated this legislation was brought by the Association of Cities due to a situation that arose in McCall. They were combining wastewater from the city with a sewer district and realized each individual entity did not require a permit, but when combined, there was ambiguity. RS 21325 makes it clear that when you combine these two sources, if a land application is to take place, this will not require a permit.

House State Affairs Committee Minutes February 28, 2012, reproduced in *Nampa Response Brief* at 117 (emphasis added).

Representative Stevenson's statement describes the combination of two sources of water prior to land application of treated effluent. The two sources of water referred to in that statement belong to a municipality and sewer district, not an irrigation district. This reflects the opening language in subsection 8, providing the exemption to "… a municipality or municipal provider as defined in section 42-202B, Idaho Code, a sewer district as defined in section 42-3202, Idaho Code, or a regional public entity operating a publicly owned treatment works shall not be required to obtain a water right…." Idaho Code § 42-201(8).

Nampa insists that "the legislation was intended to eliminate the water right requirement across-the-board, not to shift the water right burden from the city to the farmer or irrigation district who accepts the effluent." *Nampa's Response Brief*, at 19. But the plain language of the

statute makes no mention of farmers or irrigation districts, instead expressly and unambiguously providing the exemption only to cities, sewer districts and publicly owned treatment works.

The long and short of it is, this water is ground water, diverted from Nampa wells and applied to Pioneer's land largely outside of Nampa's municipal boundaries to grow crops. *See Reuse Agreement;* Exhibit G, *Reuse Permit;* Exhibit H, *IDEQ Staff Analysis,* Exhibit J, application and Figure 3. This is quintessential beneficial use of water without a water right.

Here Nampa doesn't propose combining its water with a sewer district. Instead it proposes delivering water to an irrigation district for the irrigation district to manage and deliver. Pioneer is neither a municipality nor a sewer district. Idaho Code § 42-202B. Accordingly, the legislative history does not expand the plain legal meaning of the statute in the way that Nampa and Pioneer advocate.

XIII. PIONEER CANNOT DIVERT OR APPLY WATER TO BENEFICIAL USE WITHOUT A WATER RIGHT UNDER IDAHO CODE § 42-201(2)

Having established that Pioneer does not qualify for the exemption provided in subsection 8, it is clear that Pioneer cannot divert or apply Nampa's effluent to a beneficial use without a water right in accordance with Idaho Code § 42-201(2). The statutory language in Idaho Code § 42-201 is clear on its face. As such, there is no need to interpret or resort to the legislative history. "[W]here statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature." *Verska v. Saint Alphonsus Reg'l Med. Ctr*., 151 Idaho at 893 (2011).

The Intervenors dispute Pioneer's need for a water right because the Phyllis Canal is not a "natural watercourse." Numerous examples of references to "natural" water are made in the response briefs. Under Idaho law, "no person shall divert any water from a natural watercourse **or** apply water to land without having obtained a valid water right to do so, or apply it to

purposes for which no valid water right exists." Idaho Code § 42-201(2)(emphasis added). As Riverside demonstrated in its Opening Brief, the disjunctive use of the word "or" in this code section extends this requirement to any application of water to land. "The word 'or' ... is '[a] disjunctive particle used to express an alternative or to give a choice of one among two or more things." *City of Blackfoot v. Spackman*, 162 Idaho 302, 307, 396 P.3d 1184, 1189 (2017) (quoting *Markel Int'l Ins. Co., Ltd. v. Erekson*, 153 Idaho 107, 110, 279 P.3d 93, 96 (2012). Intervenors argue that reading Idaho Code § 42-201(2) in the disjunctive is "absurd." *Pioneer Response Brief*, at 11. Yet, if Intervenors interpretation is accepted it would require an amendment to the statute to replace "or" with "and."

If, as Intervenors' argue, Idaho Code § 42-201 applies only to water in "natural watercourses" there could be no appropriation of drain water unless and until it rejoins some "natural watercourse." Clearly this is not the case, which is perhaps why unappropriated water is often referred to as "public water." Indeed, the SRBA proceedings in the *Janicek* case held that water could be appropriated from a constructed drain and that a water right was necessary to appropriate that water. *Janicek Properties, Inc*., Subcase 63-27475 *Memorandum Decision and Order* (May 5, 2008). The Court rejected the claim by BOR and NMID that water could only be diverted from a natural water course. *See also* Idaho Code § 42-107.

Intervenors contend that Nampa's effluent is not "public water" because Nampa never relinquishes control over the water until it discharges it into the Phyllis Canal. Even after discharging to the Phyllis Canal, where the effluent will be comingled with Pioneer's water rights, the Intervenors maintain that it is still "private water" that is not subject to appropriation and therefore, not in need of a water right. But the facts are clear – Nampa relinquishes control

over the water when it leaves Nampa's pipeline, where Pioneer diverts it into the Phyllis Canal. At that point the water is subject to appropriation.

The Municipalities assure the Department "no water right is required because Pioneer is merely acting as Nampa's agent for the disposal of Nampa's treated effluent…" *Municipalities Response Brief*, at 10. This is contrary to previous statements and representations of Pioneer and Nampa. The Reuse Agreement (Exhibit F) expressly memorializes Pioneer's desire "to seasonally receive Recycled Water from the City as a supplemental source of irrigation water supply…" *Id*., (emphasis added). It is disingenuous for any of the Intervenors to admit in one setting that this water will be used as a supplemental source of irrigation water supply, and in another allege this action is merely a "disposal."

Intervenors argue that the discharge of Nampa's waste water through a pipe into the Phyllis Canal is not a diversion. But, as Pioneer previously explained, this set up is really no different from conveying or piping drain water to a canal. Exhibit S ("While a pipeline leading to the Phyllis Canal from the Nampa WWTP may not be a feeder canal diversion from a typical "drain" it's not very different either."). Examples of similar diversions abound. Riverside itself has water rights for diversion of all the flows of the West End Drain. *See* Water Rights 63-1010 and 63-33735. All of the water from the West End Drain runs into the Riverside Canal. Nampa and Pioneer intend to construct the same type of conveyance here that terminates in a diversion at the Phillis Canal.

Pioneer takes the position that there is no "physical diversion of water from a natural source." *Pioneer Response Brief*, at 12. However, the Reuse Agreement clearly envisions the construction of extensive structures in order to deliver this water to Pioneer for subsequent land application by Pioneer. Riverside believes this is sufficient to constitute diversion. Pioneer also

claims that its use of the water is just contractual, "the Reuse Agreement specifically acknowledges that Pioneer's rights to the recycled water are contractual only." *Id.*, at 13. Again, this is contrary to its position in The Reuse Agreement, which expressly memorializes Pioneer's desire "to seasonally receive Recycled Water from the City as a supplemental source of irrigation water supply…" *Id*., (emphasis added).

Nampa asks the Department to go along with the charade that Nampa is really just reusing its own water without relinquishing ownership, and even though this water will be land applied for beneficial use on crops far outside of Nampa's place of use, just pretend the water is being reused within Nampa's boundaries.

Nampa asserts that Idaho Code § 42-201(2) addressed a loophole. *Nampa's Response Brief*, at 29. That may be the case, but the legislative history cited to in Nampa's brief refers to the appropriation of "water" not water in a "natural watercourse." *Id*. ("This legislation makes it clear that no person shall divert water without having a permit to do so."). Nampa then asserts that the legislation was meant to preserve the priority system. *Id*. at 30. This is ironic, given that Nampa proposes to completely undermine the priority system by removing water from Indian Creek that will harm a senior water right user, and to do so without any new water right requirement, any transfer analysis or any injury analysis.

XIV. APPLICATION OF IDAHO CODE § 42-201(8) TO ALLOW PIONEER TO EXPAND THE USE OF NAMPA'S WATER RIGHT WOULD VIOLATE THE IDAHO CONSTITUTION

Riverside's Opening Brief demonstrated that a statute allowing expansion or enlargement of a water right would violate Idaho's constitution, specifically Article XV § 3. *Freemont-Madison Irr. Dist. v. Idaho Ground Water Appropriators, Inc*. 129 Idaho 454, 926 P.2d 1301 (1996), Judge Hurlbutt's decision in Basin Wide Issue No. 1, *Memorandum Decision and Order*,

Subcase 91-00001 (February 4, 1994), and Judge Wildman's Lemhi Gold decision, *Memorandum Decision and Order,* Subcase 75-10117 (November 12, 2014) all make that abundantly clear. No party disputes that legal conclusion.

Riverside's legal argument was simply that expanding Idaho Code § 42-201(8) to allow Pioneer to use Nampa's water rights on Pioneer's land would render § 42-201(8) unconstitutional as applied to this enlargement. *Riverside Opening Brief*, at 29. The Municipality Intervenors did not respond and have waived the right to contend otherwise. Pioneer argues, citing the Director's Elmore County decision in Subcase 63-34348, that the Department cannot rule on constitutional issues. What Pioneer misses is another fundamental legal principle. It is a bedrock rule of statutory construction that whenever possible a statute should be construed to avoid implicating constitutional questions. *City of Idaho Falls v. H-K Contractors, Inc*., 163 Idaho 579, 585 416 P.3d 951, 957 (2018).

Thus, in *H-K Contractors* the Court construed the application of another statute, Idaho Code § 5-216 and resolved its application without running afoul of Idaho's Constitution. *See also Miller v. Idaho State Patrol*, 150 Idaho 856, 864, 252 P.3d 1274, 1282 (2011) ("The general rule of constitutional avoidance encourages courts to interpret statutes so as to avoid unnecessary constitutional questions."); *see also Hill-Vu Mobile Home Park v. City of Pocatello*, 162 Idaho 588, 402 P.3d. 1041, 1047 (2017) ("Whenever an act of the Legislature can be construed and applied as to avoid conflict with the Constitution and give it the force of law, such construction will be adopted by the courts.").

Riverside urges the Director to do the same and limit the expansive interpretation of Idaho Code § 42-201(8) sought by Pioneer and the other Intervenors, and keep the statute within constitutional limits.

Nampa conjures up a parade of horribles, like a challenge to Idaho's firefighting water right exemption, that might be implicated by a wholesale ruling striking all exemptions. However, Riverside did not raise a facial challenge to the applicability of every exemption as Nampa suggests. Riverside's challenge is to expanding 42-201(8) to cover Pioneer, when the statute does not even mention irrigation entities. *See American Falls Res. Dist. No. 2 v. IDWR*, 143 Idaho 862, 880 154 P.3d 433, 451 (2007)("Where the Rules are not facially invalid, but there is room for challenge on an "as applied" basis if the Rules are not applied in a manner consistent with the Constitution.").

Nampa then reverts to the argument that there can never be any limit on a municipal water right and that a City's right to reuse its water is not "deemed" an enlargement. *Nampa Response Brief*, at 24. Whether or not Nampa can enlarge the consumption of its water right without that enlargement in-fact being "deemed" not to be an enlargement is a question for another day. The constitutional question that Riverside is asking the Director to avoid tripping over is whether Idaho Code § 42-201(8) should be enlarged beyond the narrow application to municipal uses to allow Pioneer to deliver Nampa's ground water to 17,000 acres of Pioneer land that is primarily and significantly beyond and outside Nampa's boundaries. Clearly use of this water as a supplemental irrigation water right, as contemplated by the Reuse Permit, is an expansion or enlargement that must be evaluated in an appropriate water right application or transfer proceeding.

XV. THE DIRECTOR'S AUTHORITY TO ACT ON THIS PETITION IS NOT THWARTED BY INTERVENORS' "WASTE WATER" ARGUMENTS

Intervenors raise two primary complaints about Riverside's Petition that hinge on the notion that the effluent from Nampa's Waste Water Treatment Plant is legally "waste water." They assert that Riverside has no right to Nampa's "waste water" and cannot therefore be injured

by the Nampa-Pioneer Reuse Agreement or the DEQ Reuse Permit. First, as a matter of fact, Riverside relies on Indian Creek for a majority of its water supply. *SOF* 30-31. There is no question that the primary purpose of the Nampa-Pioneer scheme is to diminish the flows in Indian Creek. *SOF* 34. Indeed, under the Reuse Permit, Pioneer is prohibited from spilling into Indian Creek or other waters of the state. Exhibit H, at 46. So, there is no doubt Riverside would be directly affected.

The remainder of Intervenors' legal arguments are foreclosed by the Supreme Court's *A&B* decision. *A&B Irrigation District v. Aberdeen-American Falls Ground Water District*, 141 Idaho 746, 118 P.3d 78 (2005). As seen above, when A&B collected its ground water after the ground water was used to irrigate fields in A&B's service area, the Court held that the water collected did not lose its characteristic as ground water. *A&B* 141 Idaho at 753, 118 P.3d at 85. Nampa's collection of its ground water at the Waste Water Treatment Plant is the same and remains ground water. *See* discussion in Section V, s*upra*. While prior to *A&B* the water might have been seen as waste water under *Jensen*, the Court in *A&B* made it clear that it is not the way these waters must be treated.

Even if the effluent could be treated as waste water that Nampa has the right to recapture prior to release, *A&B* also makes clear that when the water user seeking to recapture that water expands or enlarges its use, the water user must seek a new authorization for the expanded use. This could be in the form of a new water right or a transfer application. If Intervenors are correct and a claim that a water user is recapturing its waste water is sufficient to foreclose any examination of the water use, then the Court could not have decided *A&B*, because that was exactly the claim A&B made.

In the event of an enlargement or expansion, the Court has said that there are virtually no circumstances where there will not be some injury. *A&B* 141 Idaho at 752, 118 P.3d at 84 (citing *Fremont-Madison v. Idaho Ground Water Appropriators*, 129 Idaho 454, 461, 926 P.2d 1301, 1308 (1996)). Riverside is entitled to have the scope and extend of injury examine in a proper water rights proceeding.

Second, Intervenors assert that Riverside's petition requires Nampa to waste water. It does no such thing. Riverside's petition asks the Director to order that Pioneer seek a water right or transfer before diverting Nampa's ground water from Nampa's potable water supply into the Phyllis Canal for beneficial use by Pioneer's landowners on 17,000 acres of land. Nothing in the Petition addresses other methods that Nampa might choose to employ. Nor does the Petition pre-judge the outcome of the Department's analysis of a new water right or transfer application or what measures might be appropriate conditions under the standards of Idaho Code § 42-202, § 42-203A(5) or § 42-222 and IDPA 37.03.08.451 (evaluation criteria). As ground waters are public waters of the Sate, Idaho Code § 42-226, the appropriation and transfer rules are applicable to Nampa's ground water as well.

XVI. CONCLUSION

Riverside's Petition rests on a solid foundation of Idaho water law. Water rights mean what they say. A water right holder cannot unilaterally modify its decreed rights. Enlargement of any of the elements of a water right requires either a new water right or a transfer proceeding. Diverting or applying water to beneficial use requires a water right, The waters of the State belongs to the State and are administered by the State.

Pioneer intends to take Nampa's ground water and apply it to 17,000 acres of Pioneer land. This land is largely far outside Nampa's service area, its city limits and its are of impact.

Nampa asserts that the rule against enlargement doesn't apply to cities generally or Nampa in particular. It claims the conditions on its water rights are irrelevant. Nampa claims ownership of the water. Nampa even claims the right to expand its service area without limit. Logically if the Director agrees with Nampa's precept, Nampa could ship, truck or pipe its ground water to Las Vegas, Phoenix or Los Angeles without any IDWR review.

Riverside's position seeks a narrow ruling – that Pioneer must obtain the right to direct and apply this water to beneficial use before diverting Nampa's ground water into the Phyllis canal. That way the Department can evaluate the impact of this water use in the appropriate proceeding under familiar Idaho standards. Idaho Code § 42-2 303A(5) or § 42-222.

DATED this 20 day of November 2020.

BARKER, ROSHOLT & SIMPSON LLP

Albert P. Barker
Sarah W. Higer
Attorneys for Riverside Irrigation District Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November, 2020, I caused to be served a true and correct copy of the foregoing **Riverside's Reply in Support for Petition for Declaratory Ruling** by the method indicated below, and addressed to each of the following:

Original to:

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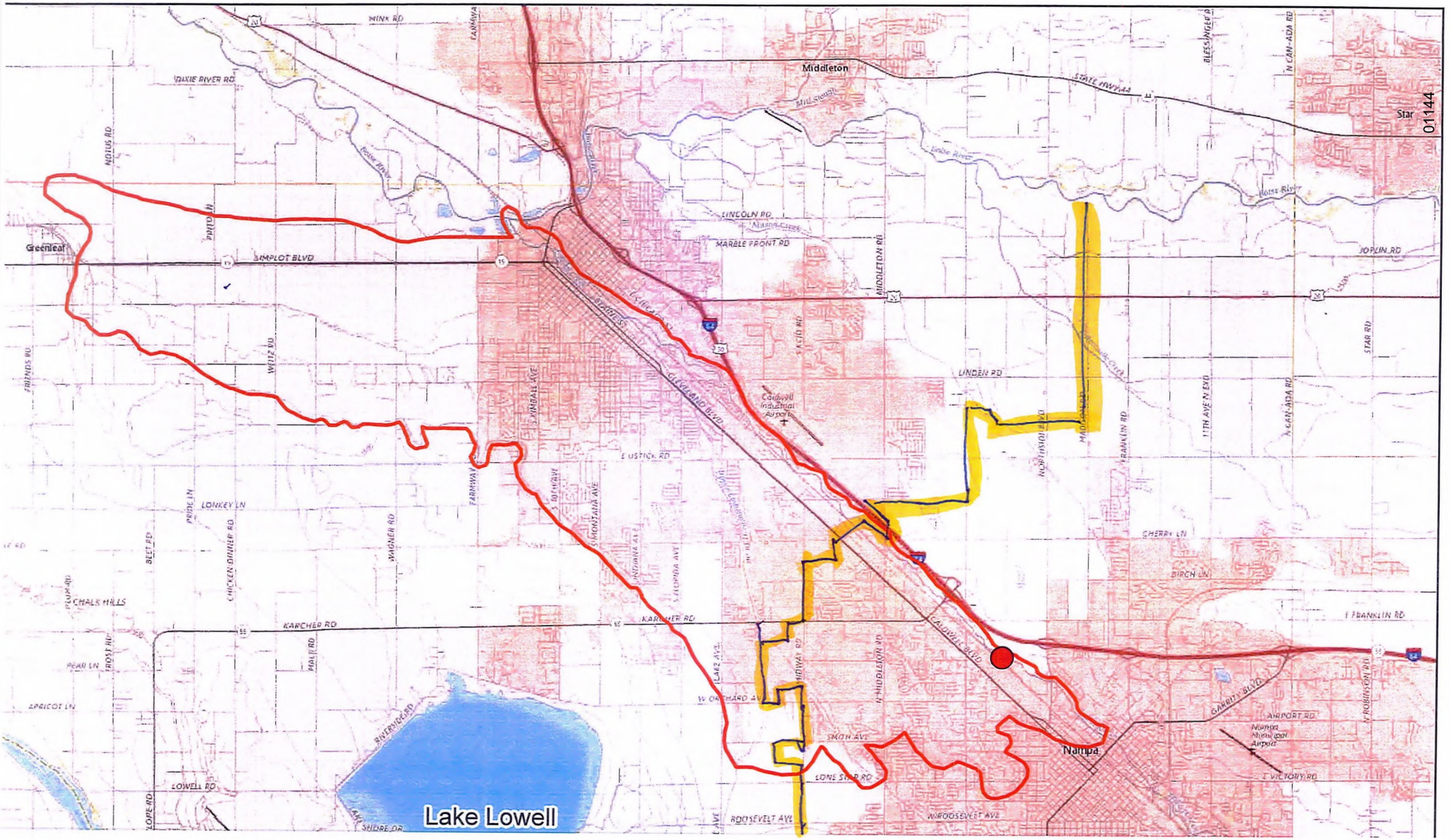
Middleton
Star
Greenleaf
Nampa
Lake Lowell
Caldwell Industrial Airport
Nampa Municipal Airport
DIXIE RIVER RD
MINK RD
NOTUS RD
PHYLO LN
SIMPLOT BLVD
WITTE RD
FRIENDS RD
LINCOLN RD
MARBLE FRONT RD
MIDDLETON RD
STATE HWY 44
BLESSINGER RD
N CAN-ADA RD
JOPLIN RD
STAR RD
LINDEN RD
CLEVELAND BLVD
E USTICK RD
FARMWAY RD
LINDELL AVE
SYMONDS AVE
SACHS RD
NORTHSIDE BLVD
FRANKLIN RD
11TH AVE N EXT
CHERRY LN
BIRCH LN
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LONKEY LN
PRIDE LN
CHICKEN DINNER RD
BEET RD
WAGNER RD
CHALK HILLS
PLUM RD
KARCHER RD
PEAR LN
FROST RD
MILER RD
APRICOT LN
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GARRITY BLVD
AIRPORT RD
N ROBINSON RD
E VICTORY RD
RIVERSIDE RD
LOWELL RD
SMITH AVE
LONE STAR RD
ROOSEVELT AVE
W ROOSEVELT AVE
W ORCHARD AVE
LAKE AVE
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N MIDDLETON RD
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BEFORE THE
DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER REUSE PERMIT NO. M-225-01	Docket No. P-DR-2020-001 **NOTICE OF APPEARANCE**

NOTICE IS HEREBY GIVEN that the undersigned attorney, SCOTT B. MUIR, Deputy City Attorney, does hereby appear as attorney of record for the City of Boise. Please send all future pleadings and correspondence to SCOTT B. MUIR at the address above.

DATED this 1st day of December 2020.

/s/ Scott B. Muir
Scott B. Muir
Deputy City Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have on this 1st day of December 2020, served the foregoing documents on all parties of counsel as follows:

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BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT UNDER REUSE PERMIT NO. M-225-01	Docket No. P-DR-2020-001 **NOTICE OF APPEARANCE**

NOTICE IS HEREBY GIVEN that the undersigned attorney, Chris M. Bromley, of the firm McHugh Bromley, PLLC, hereby enters his appearance as counsel of record for intervenor, City of Boise, in the above entitled matter. Please send all future pleadings and correspondence to the address above.

DATED this 9th day of December, 2020.

MCHUGH BROMLEY, PLLC

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Attorneys for City of Boise

CERTIFICATE OF SERVICE

I certify that on this 9th day of December, 2020, I caused to be served a true and correct copy of the foregoing Notice of Appearance upon the following persons by the following methods:

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **Municipal Intervenors' Sur-Reply Brief**

COMES NOW, Intervenors City of Boise, City of Meridian, City of Caldwell, City of Jerome, City of Post Falls, City of Rupert, City of Idaho Falls, City of Pocatello, Association of Idaho Cities, and Hayden Area Regional Sewer Board ("Municipal Intervenors" or "Cities"), by and through their respective attorneys and submit this Sur-Reply to *Petitioner Riverside's Reply in Support of Petition for Declaratory Ruling* filed on November 20, 2020 ("*Reply*"). The *Reply* responds to *Nampa's Response Brief* ("*Nampa Response*"), *Intervenor Pioneer Irrigation District's Response to Petitioner's Opening Brief* ("*Pioneer Response*"),

and *Municipal Intervenors' Response to Petitioner's Opening Brief* ("*Municipal Intervenor Response*"), all of which were filed on October 30, 2020.

I. SUMMARY OF ARGUMENT

Riverside persists in characterizing Nampa's contract with Pioneer as a "scheme" (*Reply* at 1, 34) and a "charade" (*Id*. at 31). Riverside also asserts that the arguments of Nampa, Pioneer and the Municipal Intervenors are efforts to "completely undermine" the priority system (*id.*) and further encourage "sending a wrecking ball through Idaho Code § 42-201." *Id*. at 26. In casting aspersions[1], Riverside ignores the fact that the Cities take on the increasingly expensive task of treating municipal effluent to state and federal water quality standards, generally without complaint; the legislature made provision for cities to avoid or minimize expensive facility upgrades by allowing cities to divert effluent for land application as a means of effluent disposal without having to obtain a water right. There is nothing particularly fun about undertaking disposal of human waste (flushed down the toilet or sent down the garbage disposal) or other forms of waste, but cities undertake this job without complaint and little acclaim, all the while doing so generally under limited budgets and ever-expanding regulations. Riverside's invidious comparisons are unproductive at best.

It is possible that Riverside's level of animosity towards the positions of Nampa and Municipal Intervenors in this matter arises because its legal arguments have failed to hit the mark. In nearly 80 pages of (largely duplicative) briefing, Riverside's arguments assume the

[1] In response to Caldwell's statement that it has discussed discharge of its effluent to the Riverside Canal, Riverside states that "Caldwell has never brought such a proposal to the Riverside Board." *Reply*. at 1, fn.2. Although Caldwell's discussions with Riverside are irrelevant to the issues raised in this proceeding, the City of Caldwell would like to correct the implication that it misrepresented the facts. While the above-quoted Riverside statement is strictly correct (no formal proposal has been made), it is also true that the City of Caldwell has had discussions regarding effluent discharge to the Riverside Canal with Riverside's Manager, and those discussions are expected to continue.

predicate: that Pioneer's contract for disposal of Nampa's effluent subjects Pioneer to the requirements of Idaho Code § 42-201(2). Riverside's assumptions notwithstanding, the language of Idaho Code § 42-201(8) demonstrates that Nampa's effluent is not a legal supply of water that Riverside is entitled to appropriate from the Phyllis Canal. In authorizing cities to reuse effluent through land application on acres not identified as an existing place of use for an irrigation water right, the legislature has shaped the contours of the municipal right to reuse and, by its terms, excluded municipal effluent from water supplies that appropriators may legally rely on. So, while Riverside may have a historical physical reliance on the discharge of Nampa's effluent into Indian Creek, it cannot claim *injury* if Nampa ceases that discharge, even if Riverside is *impacted*. Full stop. It doesn't matter if Nampa ceases the discharge so that it can put the water to use on land within its service area, or ceases discharge so that it can "gift" the effluent to another water user for uses on their lands, or to enter into a contract for use such as the one it entered into with Pioneer.

At the end of the day, and Riverside's arm-waving notwithstanding, this matter involves Nampa's exercise of its authority to reuse its effluent pursuant to Idaho Code § 42-201(8) by contracting with Pioneer to allow the land application of Nampa's effluent on Pioneer's lands. The response briefs filed by Nampa, Pioneer and the Municipal Intervenors thoroughly address Riverside's original arguments contained in *Petitioner's Opening Brief*. While Riverside's *Reply* doesn't really raise anything new, the Municipal Intervenors have responded to several of Riverside's more absurd arguments. In addition, Municipal Intervenors endorse and incorporate by reference arguments made by Nampa and Pioneer, both in their Response briefs and in their sur-reply briefs.

II. ARGUMENT

A. The idea that cities are "privileged" is a Riverside red herring.

Riverside begins by asserting that Nampa's utilization of a statute written for municipalities (Idaho Code § 42-201(8)) vests Nampa with "privileged status" (*Reply* at 1), which runs afoul of Idaho Code § 42-101's language that the State must "equally guard against all the various interests involved." *Id*. at 2. This position necessarily asserts that all water users are treated with absolute equality under all aspects of Idaho water law, and that cities were the first to receive an accommodation for circumstances that present difficulties to a certain class of the water user community. This is simply not the case. To wit:

- Irrigation districts (including Riverside) have two additional statutory defenses to forfeiture that other water users do not enjoy; Idaho Code § 42-223(7)-(8); *see also* Idaho Code § 42-223(11) (extending another exception to forfeiture to the mining industry);
- As an entity operating a canal, Riverside could install a hydroelectric facility on its canal without getting a water right for this water use, which under general Idaho water law is clearly an enlargement.[2] *Id*. § 42-201(9);

[2] Enlargement is described as an increase or expansion of what the express water rights elements provide for:

> The term "enlargement" has been used to refer to any **increase in the beneficial use to which an existing water right has been applied**, through water conservation and other means. *See* I.C. § 42–1426(1)(a). An enlargement may include such events as an increase in the number of acres irrigated, an increase in the rate of diversion or duration of diversion.

Fremont-Madison Irrigation Dist. & Mitigation Grp. v. Idaho Ground Water Appropriators, Inc., 129 Idaho 454, 458, 926 P.2d 1301, 1305 (1996) (emphasis added).

- Fire fighters do not have to get a water right before putting out a fire. *Id*. § 42-201(3)(a);
- Six specifically defined "forest practices"[3] do not require first obtaining a water right *Id*. § 42-201(3)(b);
- Nor is a water right required to engage in the immediate emergency cleanup of hazardous substances or petroleum. *Id*. § 42-201(3)(c);
- Finally, ground water appropriators are protected only to "reasonable" pumping levels rather than simple priority administration. *Id*. § 42-226.

Riverside can categorize these water users, along with municipalities, as "privileged," but it doesn't invalidate the exceptions to general rules under Title 42 imposed by the legislature to address certain circumstances involving public health and welfare. And while Riverside selectively quotes from Idaho Code § 42-101—"shall equally guard all the various interests involved"—the following sentence in section 101 directs the State "to supervise their appropriation and **allotment** to those diverting the same therefrom for any beneficial purpose" (emphasis added). The state of Idaho has acted well within its bounds to supervise the "allotment" of water to address specific water situations with statutory amendments such as those described above.

[3] Idaho Code § 38-1303(1) defines forest practices. "'Forest practice' means (a) the harvesting of forest tree species; (b) road construction associated with harvesting of forest tree species; (c) reforestation; (d) use of chemicals or fertilizers for the purpose of growing or managing forest tree species; (e) the management of slashings resulting from harvest, management or improvement of forest tree species; or (f) the prompt salvage of dead or dying timber or timber that is threatened by insects, disease, windthrow, fire or extremes of weather."

B. The plain language of Idaho Code § 201(8) describes the contours of the municipal exception and does not foreclose Nampa's contractual relationship with Pioneer.

Riverside argues that "Pioneer is not a municipality with a statutory right to reuse effluent for water quality purposes. Pioneer is content to piggy-back and rely on whatever rights Nampa may have." *Reply* at 1. What Riverside refers to as "piggy-back[ing]" is understood by Cities according to its more traditional terminology—"contracting." Riverside's arguments that put at issue Cities' right to contract with others to carry out certain municipal responsibilities are without legal basis. Cities have an unquestioned right to "contract and be contracted with" under Idaho Code § 50-301 (Corporate and Local Self-Government Powers). Despite this, Riverside argues:

> Nothing in the legislative history contemplates the exemption would be extended to any other entity that was not a municipality, a sewer district or a publicly owned treatment work. There is no mention of the landowners to which the effluent would be land applied securing a role in the exemption. There is no mention of extending the exemption to supposed "agents" of the cities and sewer districts.

Reply at 24.

Pioneer's role is that of an agent of Nampa, by contract, to dispose of pollution, and nothing under Idaho law prohibits this. It is not necessary that Idaho Code § 42-201(8) specifically authorize this arrangement because Idaho municipal law already provides for it.

C. Nampa is authorized to apply its effluent to "any lands" and the Pioneer contract allows it to accomplish that.

Riverside asserts that the Reuse Permit "requires this effluent to be applied to 17,000 acres of Pioneer land downstream of the point of discharge into Pioneer's Phyllis Canal." *Reply* at 4. As a starting point this mischaracterizes the terms of the Reuse Permit, which makes Nampa's effluent *available* for application on Pioneer's 17,000 acres, rather than

requiring that every acre be served. But even if it did, this is no affair of Riverside's—Idaho Code § 201(8) does not restrict the lands upon which Nampa may land apply its effluent. To wit:

> If land application [of Nampa's effluent] is to take place **on lands not identified as a place of use for an existing irrigation water right,** the municipal provider . . . shall provide the Department of water resources with notice describing the location of the land application.

Riverside reads into the statutory language "on lands not identified as a place of use for an existing *municipal irrigation* water right *of the municipal discharger*".

Nampa can dispose of effluent beyond its borders, and Riverside's reliance on *A&B Irrigation Dist. v. Aberdeen-American Falls Ground Water Dist. (In re SRBA Case No. 39576)*, 141 Idaho 746, 118 P.3d 78 (2005) ("*A&B*") does not change this result. *A&B* stands for the proposition that an irrigator's recapture and reuse of its **waste water** requires a water right; Idaho Code § 201(8) stands for the proposition that a municipality's reuse of its **wastewater** does not. Moreover, Idaho Code § 201(8) did not limit a municipality's authority to reuse its effluent by contracting with another entity (such as Pioneer) to land apply the effluent.

As a practical matter, and as detailed in Nampa and Pioneer's Response briefs, the amount of effluent that will be discharged by Nampa into the Phyllis Canal is less than the amount of water Nampa takes back for use within its municipal service area. See *Nampa Response*, at 47, fn. 33. Thus, from an accounting standpoint, Nampa is reusing all of its effluent on lands within its jurisdiction. *Id.* Riverside, however, suggests that Pioneer is foreclosed from diverting water from the Phyllis Canal composed of mixed irrigation surface water and treated ground water effluent. *Reply* at 8-9. This argument, like many of Riverside's, is made without resort to legal authority. But Riverside's position, if adopted,

would result in a seismic shift in Idaho water law and require the Department to move from accounting-based administration to molecule identification administration—an impossibility. There is no technology that can determine whether a water molecule present in a canal originated from a surface water source or ground water source and Riverside's arguments on this point should be rejected.[4]

D. A transfer is not required, and even if it was, Riverside could not show injury because it is not entitled to continuation of discharge of Nampa's effluent into Indian Creek.

While Riverside's arguments related to the Nampa-Pioneer contractual relationship dive into many rabbit holes of inquiry, at bottom Riverside rests its arguments on the impact to Riverside from the removal of Nampa's effluent from Indian Creek: according to Riverside, there is "no question that the primary purpose of the Nampa-Pioneer scheme is to

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[4] Further, Idaho Code § 42-105(1) allows water users to turn already-diverted water (such as storage water) into a natural waterway to commingle this water with natural flow water and then downstream reclaim the amount of already-diverted water after due allowance is made for evaporation and seepage. There is no requirement in Idaho for the diverted-water owner to engage in molecule identification administration and "track" his water molecules so that only the storage water molecules are diverted. The fact that individual water molecules cannot be tracked is well-explained in the Water District #1 water accounting manual entitled *Concepts, Practices, and Procedures Used to Distribute Water Within Water District #1, Upper Snake River Basin, Idaho*:

> Net gains and losses in a river reach calculated by the water right accounting are the summed effects of unmeasured tributary inflow, spring inflows, irrigation return flow, evapotranspiration, channel seepage, and any other factor that can influence gains and losses within a river reach. Channel seepage can occur because of porous channel substrate and re-emerge as spring inflows in downstream reaches. Channel seepage and spring inflow can also be affected by groundwater withdrawals and aquifer recharge projects. **The Water District #1 surface water right accounting quantifies only the net gain or loss in a river reach from all these influences but does not segregate or quantify each individual effect**.
>
> The purpose of the Water District #1 surface water right accounting is to compute the available natural flow and storage water in each river reach, measure each reach's surface diversions, and regulate the surface diversions according to their water rights and the actual measured quantities of surface water available each day. **The water right accounting does not segregate or quantify specific reasons for any natural flow net gains or depletions within a river reach after the effects of surface diversions and reservoirs have been removed from the reaches**.

Id. at 18 (emphasis added) (*available at* http://www.waterdistrict1.com/water%20accounting %20manual.pdf).

diminish the flows in Indian Creek," and "there is no doubt Riverside will be directly affected." *Reply* at 34. In this regard, Riverside argues that a transfer is required. *Id*. at 31. But being "affected" is not the standard under Idaho Code § 42-222—the question is one of "injury" and that requires possessing something that is capable of injury. In *Colthorp v. Mountain Home Irrigation Dist.*, 66 Idaho 173, 157 P.2d 1005 (1945), the Idaho Supreme Court held:

> And it is further urged that the change injures appellant in this: that appellant would thereby be deprived of the use of the Lockman waste water.
>
> The injury which appellant urges against the right of respondents to change the point of diversion and place of use of the Lockman water is not the kind of an injury that will prevent the making of the change. To prevent a change in the point of diversion and place of use of water, **the injury, if any, must be to a water right**. In the case at bar, it must be kept in mind, appellant does not plead that a change in the point of diversion and place of use of the Lockman water would in any way injure the water or the right to use the water, decreed to the Ake ranch. Undoubtedly, if a change of the point of diversion and place of use of the Lockman water actually injured appellant's use or right to use the water decreed to the Ake ranch, the change could not be made.

Id. at 180-81, 157 P.2d at 1008.

Riverside possesses no right to Nampa's wastewater with either an actual water right or other legal entitlement based on historic use. The starting point for analysis of whether an action will impact another property owner (water rights are defined as real property under Idaho Code § 55-101) is this recognition:

> Generally, "every man may regulate, improve, and control his own property, may make such erections as his own judgment, taste, or interest may suggest, and be master of his own without dictation or interference by his neighbors, so long as the use to which he devotes his property **is not in violation of the rights of others, however much damage they may sustain therefrom**."

McVicars v. Christensen, 156 Idaho 58, 62, 320 P.3d 948, 952 (2014), *as corrected* (Feb. 20, 2014) (quoting *White v. Bernhart*, 41 Idaho 665, 669–70, 241 P. 367, 368 (1925)) (emphasis

added). Stated another way, there may be impacts to an objector like Riverside, but those impacts are not considered injury to others provided that the property owner (Nampa) is acting within its rights. Such is the case here. As thoroughly briefed previously, Riverside has no legal right to Nampa's wastewater. Riverside's arguments otherwise are unpersuasive. The purpose of the Nampa-Pioneer relationship is to dispose of polluted effluent, not impact Riverside's water supply.

III. CONCLUSION

At the end of the day, this case turns on Nampa's authority under Idaho Code § 42-201(8) to reuse its effluent by contracting with Pioneer to land apply within Pioneer's service area. At bottom, Riverside's arguments all rely on Riverside's position that it is entitled to require Nampa to maintain the discharge into Indian Creek to avoid impact to Riverside, unless Pioneer first obtains a water right to put Nampa's effluent to reuse. But under Idaho law, Pioneer is not required to obtain a water right prior to Nampa's placement of treated effluent into Pioneer's system or Pioneer's subsequent application of that effluent to lands within places of use of water rights held by either Pioneer or Nampa. The singular glaring error in all of Riverside's arguments is its failure to recognize that Nampa's treated effluent is *wastewater* that remains under Nampa's dominion and control through its contract with Pioneer to land apply the effluent to Pioneer's service area. Nampa's effluent is not a source of water upon which Riverside can legally rely, even if it formerly profited from the physical supply discharged by Nampa into Indian Creek. Riverside's prior reliance on Nampa's wastewater discharge into Indian Creek from Nampa is not a valid basis to assert injury, nor is it a valid basis to ask the Director to reject the legislature's policy decision enshrined in Idaho Code § 42-201(8). Accordingly, the Director should reject Riverside's request for relief under

its petition for declaratory judgment, and find that it is unnecessary for Pioneer to obtain a water right to accept Nampa's discharge of treated effluent, or to thereafter apply it to lands within the place of use of water rights held by either Pioneer or Nampa.

The Municipal Intervenors do not believe oral argument is necessary, unless the Director would find it helpful.

Dated: December 10, 2020

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right to accept Nampa's discharge of treated effluent, or to thereafter apply it to lands within the place of use of water rights held by either Pioneer or Nampa.

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **NAMPA'S SUR-REPLY BRIEF**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTRODUCTION

This is the City of Nampa's sur-reply to *Riverside's Reply in Support for Petition for Declaratory Ruling* ("Reply") dated November 20, 2020. Although Idaho Power Company vigorously insisted that it be made a party to these proceedings, it did not file a response brief. Nampa employs the same shorthand definitions set out in footnote 1 of *Nampa's Response Brief* ("Nampa's Response") dated October 30, 2020.[1]

Riverside did nothing in its Reply to advance the ball. It employs circular reasoning that ignores the plain meaning and purpose of the pertinent statutes, Idaho Code §§ 42-201(2) and (8). And it insults Nampa's Reuse Project, calling it a "scheme" to injure Riverside. Reply at 1, 34. This denigration of the City's good efforts reflects the weakness of Riverside's substantive arguments.

There is no scheme here. Dealing with sewage is every municipality's least favorite duty. Cities and sewer districts across Idaho shoulder this responsibility with quiet determination and little praise. Nampa has demonstrated significant leadership on this issue. It would be far easier simply to continue sending its effluent down Indian Creek, thereby subjecting its citizens to the crushing burden of paying for ever more costly treatment facilities. Instead, Nampa has addressed its responsibilities proactively through a Reuse Project fully vetted and approved by IDEQ. This undertaking will satisfy all environmental requirements, save its customers twenty million dollars (SOF ¶¶ 29-30), and put its wastewater to further beneficial use. In doing so, it is

[1] *Errata:* Nampa's Response incorrectly referenced a letter from IDWR dated September 29, 2008 (attached to Nampa's Response as Addendum D, item 3, pp. 162-63). The letter was written by Gary Spackman. Nampa's Response incorrectly referred to the author as Mat Weaver.

living up to the good stewardship that is at the core of the State's water policy. In short, Nampa followed the path envisioned by section 42-201(8).

For some time, Riverside has been the incidental beneficiary of Nampa's sewage. It is entitled to continue to take whatever effluent it finds in Indian Creek, so long as Nampa's current sewage treatment practices continue. But Riverside has no property right in Nampa's effluent. It cannot demand that Nampa construct costly and unnecessary treatment facilities so that the current practice may be continued forever.

To suggest that Nampa has "schemed" to hurt Riverside is an undignified assault on the City's integrity. If there is any "scheme" here, it is Riverside's effort to render section 42-201(8) a nullity.

ARGUMENT

I. THE DIRECTOR NEED LOOK NO FURTHER THAN SECTION 42-201(8).

A. Section 42-201(8) relieves Nampa and its agent, Pioneer, from obtaining a water right.

This matter should begin and end with section 42-201(8), by which the Legislature authorized cities and sewer districts to dispose of their effluent without obtaining a water right. Riverside has only one argument, which it relegates to pages 22-28 of its Reply: It notes that subsection (8) applies only to cities, sewer districts, and the like. Thus, Riverside contends, the statute does not shield Pioneer from a perceived requirement to obtain a water right for what Riverside calls Pioneer's "diversion" of effluent delivered by the City to the Phyllis Canal.

Based on misrepresentations of the legislative history discussed below, Riverside reaches the fallacious conclusion that the statute does not protect entities who accept the effluent and apply it to land:

> There is no mention of the landowners to which the effluent would be land applied securing a role in the exemption. There is no mention of extending the exemption to supposed "agents" of the cities and sewer districts. To the contrary, the scenarios presented to the legislature involved the cities and sewer districts land applying their effluent, acquired under their water rights, within the scope of those water rights, with the exemption allowing the cities and sewer districts to simultaneously dispose of effluent acquired from outside sources that comingled with their effluent before disposal.

Reply at 24 (emphasis added).

This is wrong. The scenario presented to the Legislature was McCall's situation. As Nampa has pointed out, and as Riverside continues to ignore, McCall did not land apply its effluent on its own farm land. It employed the agency of third-party farmers to land apply the effluent on the farmers' lands. The Legislature was aware of this (as was the Department, which facilitated the legislation). See Nampa's Response at 17, n. 9. Riverside's contention that the legislation did not allow cities to undertake effluent disposal through the agency of others, and that those who accept a city's effluent must themselves obtain a water right for doing so, ignores the record. And it defies common sense.

Riverside then tacks to the argument that, in any event, Pioneer is not Nampa's agent. Riverside contends this is so because Nampa no longer controls the water once it is in Pioneer's hands:

> Under the Reuse Agreement, Nampa turns the water over to Pioneer at the Phyllis diversion point and Pioneer handles, manages and conveys this water as Pioneer sees fit. Exhibit F, Section B 3. Moreover, the water is not Nampa's and under the Reuse Permit, the water is no longer Nampa's and no longer under DEQ supervision once diverted into the canal. See Exhibit R. p/4, ("the water is considered to be irrigation water").

Reply at 25.

The simple answer is this: Of course Nampa turns the effluent over to Pioneer. Of course Pioneer takes it from there. That is how Nampa has chosen to dispose of the effluent. Pioneer's job is to deliver surface water, now augmented by treated effluent, to landowners within the district in accordance with its statutory and contractual duties. Pioneer will do so in a manner that IDEQ has determined will protect the environment by preventing phosphate loading. Each party has a job to do. That is how the "agency" works. And that is how the Legislature expected it to work in section 42-201(8), based on McCall's example.

There is nothing casual about this agency. This is not a "here's some water, you take it" pass off. This reuse is accomplished with a combination of physical plumbing, IDEQ approval and oversight, contractual obligations under the Reuse Agreement, and legal entitlements for Nampa to receive water back from Pioneer. The statutory authorities for such agreements need not be restated in section 42-201(8).[2]

B. Riverside misrepresents the legislative history.

Riverside rejects all of this based on the disingenuous argument that the section 42-201(8) exemption was intended to apply "narrowly."[3] For this, it quotes Lindley Kirkpatrick of McCall, whose testimony described the legislation as narrow in scope. Reply at 23-24, 25, 26.

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[2] E.g., Idaho Code § 50-301 (authority of cities to enter into contracts and to perform all functions of local self-government); Idaho Code §§ 50-1801, 50-1805, § 50-1805A (authority to enter into agreements for delivery of irrigation district water); Idaho Code § 43-304 (authority of irrigation districts to enter into contracts for a water supply); Idaho Code § 43-403 (apportionment of benefits to landowners within district).

[3] Riverside's approach to the statute oscillates. On the one hand, it says the Director should stick to the words of the statute. Yet Riverside proceeds to discuss and rely on the legislative history. That legislative history, and other pertinent documents, are attached to Nampa's Response as Addenda A through G. In footnotes 3 and 8 of its Reply, Riverside suggests that the Director should disregard these official documents because they were not included among the stipulated exhibits. This suggestion does not appear to be offered seriously. In its initial brief, Riverside itself cited to and quoted from the same legislative history (Opening

Riverside made the same argument in its opening brief at page 26-27. Riverside now repeats it without bothering to address what Nampa said in footnote 12 on pages 19-20 of Nampa's Response (in which the City carefully explained how Riverside misinterpreted Mr. Kirkpatrick's comments and took them out of context).

As for Mr. Kirkpatrick's statement that the legislation is narrow, let us be clear. There is nothing narrow about section 42-201(8) so far as water rights are concerned. It is a sweeping exemption that was intended to avoid the very litigation that Riverside has now instituted.

Mr. Kirkpatrick's testimony about the statute's narrowness was in the context that it only eliminated the water right requirement, and that it did not eliminate, soften, or change in any way the rigorous environmental requirements administered by IDEQ. "He [Mr. Kirkpatrick] said this doesn't change anything about DEQ's reuse tools, it only allows cities to use wastewater on growing crops." Minutes of House Resources and Conservation Committee (Mar. 5, 2012) (attached to Nampa's Response as Addendum C at 121).

Mr. Kirkpatrick also spoke about the statute's narrowness in the context that the statute does not apply to private industries that generate effluent. Riverside misleadingly quotes only the first sentence of what Mr. Kirkpatrick said. The second sentence provides the context:

> We've tried to craft this proposal narrowly to apply to only cities, sewer districts and other publicly-owned treatment works. We don't want to get tangled up with any industrial users or private environmental remediation efforts.

Lindley Kirkpatrick's statement to the House Resources & Conservation Committee (Mar. 5, 2012) (attached to Nampa's Response as Addendum C, p. 125).

Brief at 26-27). In its Reply, it extensively cites, quotes, and discusses the very documents it says the Director should ignore (Reply at 20, 23-26). Meanwhile, Riverside attached its own marked up exhibit to its Reply, notwithstanding that it, like Nampa's Addenda, were not included among the stipulated exhibits.

II. IDAHO CODE § 42-201(2) DOES NOT APPLY TO PIONEER'S ACCEPTANCE AND USE OF WATER DELIVERED BY NAMPA.

Riverside insists that Idaho Code § 42-201(2) compels Pioneer to obtain a water right. This is wrong for several reasons.

A. Section 42-201(8) operates "notwithstanding" any permitting requirements in 42-201(2).

The first word in section 42-201(8) is "notwithstanding." It tells the reader unmistakably that subsection (8) overrides subsection (2). See discussion in Nampa's Response, section I.B at 15-16. The plain meaning of "notwithstanding" is reinforced by the context and legislative history of subsection (8), which make abundantly clear that the override of subsection (2) applies not just to Nampa, but to those with whom Nampa engages to carry out its effluent disposal. See discussion in Nampa's Response, section I.C at 16-20. Finally, subsection (8)'s notice requirement would make no sense if irrigators and/or irrigation districts receiving a city's effluent were required to obtain a water right. See discussion in Nampa's Response, section I.D at 20-22 and below in section III.B at page 15.

Even if section 42-201(2) were applicable to Pioneer, that subsection does not compel Pioneer to obtain a water right to receive and use effluent delivered to it by Nampa. This is so for the reasons discussed below.

B. The effluent provided to Pioneer is not "public water" subject to appropriation.

As Nampa has explained, a water right is required only when one diverts from a public water supply. See discussion in Nampa's Response, section II.A at 25-28. Riverside fairly observes that references in the statutes to "natural watercourse" should be understood to mean

"public water." Reply at 29.[4] But that does not get Riverside very far.

Surely it is obvious that the effluent Nampa collects in its sewer system is not public water so long as it remains under the City's control. Riverside seemingly concedes this. Reply at 29. Then, in the next breath, Riverside makes its most outrageous argument yet. Astonishingly, Riverside says that it or anyone else may place a pump in the Phyllis Canal and "appropriate" the effluent flowing there:

> Even after discharging to the Phyllis Canal, where the effluent will be comingled with Pioneer's water rights, the Intervenors maintain that it is still "private water" that is not subject to appropriation and therefore, not in need of a water right. But the facts are clear – Nampa relinquishes control over the water when it leaves Nampa's pipeline, where Pioneer diverts it into the Phyllis Canal. At that point the water is subject to appropriation.

Reply at 29-30 (emphasis supplied).

However far the concept of "public water supply" may stretch, it does cover water lawfully placed in an artificial conveyance facility under another person's ownership and control. Accordingly, no water right is required for a city or sewer district to collect influent in a sewer system, no water right is required to convert that influent into treated effluent, and no water right is required for Pioneer to accept and use the "gift" of treated effluent transported to it in a pipe under Nampa's dominion and control.

C. Pioneer's acceptance of effluent from Nampa does not require a water right because there is no point of diversion.

Without authority, Riverside insists on describing the point at which Nampa delivers effluent into the Phyllis Canal as a "point of diversion." Without a diversion, there is no

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[4] Both phrases ("public water" and "natural watercourse") are used in section 42-201(8). Riverside and everyone agrees that a water right is required for diversions from drains and ground water, not just "natural watercourses."

requirement to obtain a water right. Idaho Code § 42-201(2); see discussion in Nampa's Response, section II.A at 25-28 and discussion immediately below in section II.D.

Riverside says that it should be called a diversion because Nampa's pipe to the Phillis Canal is no different than piping water from a drain. Reply at 30. Riverside focuses on the wrong end. The pipe may be quite similar. But a drain (from which one may make a lawful appropriation) is not like a sewer system (from which one may not). One may only divert from a public water supply, and there is none here.

D. The word "or" is too slender a reed to support Riverside's argument that section 42-201(2) reaches beyond diversions from public waters.

Riverside urges the Director to ignore the words "public waters" and "natural water courses" in section 42-201(2) because they do not appear after the word "or." Reply at 28-29. The words "water" and "it" appear in the two final clauses of the last sentence, without repetition of the reference to diversion from "public waters" or "natural water courses." Based on this sentence structure, Riverside surmises, the whole thrust of the statute (which was to close a loophole in subsection § 42-201(1)) should be subverted. As Riverside reads subsection (2), the "shall not divert" prohibition is limited to waters from a natural water course (or "public waters" as they are called in the first sentence). But the prohibition against "applying water to land" refers to a broader class of water that includes water not in the public supply such as municipal sewage that has not been released to a natural waterway.

And then there is the third clause: "or apply it to purposes for which no valid water right exists." What does "it" refer to? There are two subjects before the word "it": "water from a natural water course" and "water." The obvious conclusion is that "it" refers to both—because they are one and the same. They both refer to water diverted from a natural water course (i.e., the public water supply).

That simple answer—based on the words of the statute—should dispose of Riverside's "or" argument. The only sensible reading of subsection (2) is that a water right is required only when there is a diversion from the public water supply. Other arguments, based on legislative history, are set out in Nampa's Response, section II.B at 28-30.

III. THERE IS NO BASIS FOR RIVERSIDE'S CONTENTION THAT NAMPA'S EFFLUENT MUST BE USED WITHIN THE CITY'S EXISTING SERVICE AREA.

A. Riverside's argument relies on the false premise that Nampa's effluent must be used within the City of Nampa.

Riverside's case is built on a false premise: the assumption that Nampa cannot provide effluent beyond its municipal borders (or its area of city impact). It pins this assumption on a case that has no such holding: *A&B Irrigation Dist. v. Aberdeen-American Falls Ground Water Dist.*, 141 Idaho 746, 753, 118 P.3d 78, 85 (2005). Reply, sections V, VIII, and IX at 8-9, 11-19. The *A&B* case does nothing to advance Riverside's argument, other than serve as a red herring. *A&B* is relevant only in that it reiterates the undisputed principle that an appropriator may recapture and reuse water and apply it to beneficial use, but only within the scope of the original water right. *A&B*, 141 Idaho at 752, 118 P.3d at 84.

A&B filed enlargement claims seeking rights to irrigate lands beyond the original place of use. The Court found that A&B could have sought a new appropriation in the collected drain water, but elected not to do so (for the obvious reason that it did not want a junior priority date). Instead A&B sought an enlargement right based on the original appropriation, whose source was ground water.[5]

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[5] There is a lot to chew through in the *A&B* case, but its holding is actually pretty simple. The question in the case was: What is the nature of the right that A&B claimed? A&B said it was recapturing and reusing its own water—which it described as waste water. But that argument failed, because the new use was beyond the original place of use. A&B could have sought a new appropriation, which would be an appropriation of waste water. (Just as a third-

Riverside says that *A&B* proves that the effluent collected by Nampa is still ground water. Maybe; maybe not.[6] It does not matter what you call it. The only relevant question is, what can Nampa and Pioneer do with that effluent? *A&B* sheds no light on this question. It does not deal with municipal water rights, nor reuse of effluent.

Where, as in *A&B*, the water user holds an irrigation right, limiting the new use to the scope of the original right is a substantial constraint, because irrigation rights have a fixed place

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party might appropriate some else's waste water.) But A&B was not making a new appropriation; it was making a claim under the amnesty statute. That meant that the claim must be an enlargement of the original right, which, of course, was a ground water right. The enlargement was permissible, but subject to subordination to rights senior to the date of the enlargement statute. All this is fascinating to be sure, but largely irrelevant to the matter now before the Director.

[6] An IDWR guidance memo cites case law saying that effluent is neither ground water nor surface water, but something unique:

> One of the most frequently cited cases is *Arizona Public Service Co. v. Long*, 773 P .2d 988 (Ariz. 1989). In this case, the owners of downstream junior water rights that had historically used the effluent for irrigation following upstream discharge sued the City of Phoenix alleging that the city had no right to contract with a utility for the transport and use of the effluent in the cooling towers of a nuclear power plant. The court upheld the contract, holding that sewage effluent was neither surface water nor ground water, but was simply a noxious byproduct which the city must dispose of without endangering the public health and without violating any federal or state pollution laws. In reaching its decision, the Arizona Court quoted from a much earlier Wyoming decision which upheld the sale by a city of effluent discharged directly into the buyer's ditch, but also held that effluent discharged into a stream became public water subject to appropriation. *Wyoming Hereford Ranch v. Hammond Packing Co.*, 236 P.2d 764 (Wy. 1925). The Arizona Public Service case generally holds that cities may put their sewage effluent to any reasonable use that would allow them to maximize their use of the appropriated water and dispose of it in an economically feasible manner. Beck, *Waters and Water Rights*, § 16.04(c)(6) (1991).

Application Processing Memorandum No. 61 (Memorandum from Phil Rassier to Norm Young, pages 1-2 (Sept. 5, 1996) (emphasis added) (attached to Nampa's Response as Addendum G, item 2, p. 207.)

of use. Municipal rights, in contrast, have a flexible place of use. And, of course, the limitation as to place of use (and everything else) was eliminated altogether by Idaho Code § 42-201(8).

Based on the false premise that land application beyond the City limits or area of city impact is somehow a problem, Riverside goes on at length about how the Reuse Permit contemplates that Nampa will be "spreading" its effluent across 17,000 acres of Pioneer Land[7] (Reply at 4) reaching lands "far beyond any conceivable reach that Nampa might have" (Reply at 5) and "far outside Nampa's boundaries" (Reply at 11). Riverside believes this "puts the final nail in [Pioneer's] coffin" (Reply at 6) because "Nampa's current area of impact has little, if any, room to expand (Reply at 11).

Riverside's assumption that providing effluent to lands beyond the City's current service area is Pioneer's death knell is wrong at many levels, as shown below.

B. Land application outside of the City is authorized by 42-201(8).

Section 42-201(8) expressly requires the City to notify IDWR if its effluent will be applied to lands that do not already have a water right. Obviously then, the Legislature contemplated land application by municipalities would occur outside of the city (as was the case in McCall, which prompted the legislation). Likewise, it is evident that the Legislature did not contemplate that a new water right would be obtained for the land newly brought under irrigation with effluent. See Nampa's Response, section I.D at 20-22. This point alone destroys Riverside's premise that subsection (8) does not authorize use of effluent outside of Nampa. Riverside's Reply offers no response.

[7] Of course, Nampa's effluent is insufficient to reach 17,000 acres of land. The important point from IDEQ's perspective is that Pioneer has more than enough of acreage to absorb the increased nutrient load.

C. Even if section 42-201(8) did not resolve the issue, Riverside's outside-the-service-area argument fails.

In short, the answer to Riverside's alarm over lands far from Nampa receiving irrigation water is "so what?" The whole point of Idaho Code § 42-201(8) was to make this a non-issue. But even if that statute did not exist, Nampa should prevail. Three arguments, offered in the alternative, are set out below.

(1) In an accounting sense, Nampa's effluent stays within its existing service area.

One reason this is a non-issue is found in the particular facts of this case. Nampa is entitled to pump, is physically capable of pumping, and (at peak) actually does pump more water from the Phyllis Canal than it contributes to the Phyllis Canal as effluent. See Nampa's Response, at 47, n. 33.

That Pioneer water is then delivered back to Nampa's customers, all of whom are also Pioneer landowners.[8] Thus, in an accounting sense, all the effluent placed in the Phyllis Canal remains within Nampa's municipal service area. See Nampa's Response at 46-47.

Riverside counters that the Reuse Permit does not contemplate all of the effluent going back to Nampa's customers. Reply at 14. That is true. IDEQ is concerned with where the molecules go, because those molecules include pollutants. So it matters to IDEQ that there be plenty of land over which the phosphorous load may be spread. (See footnote 7 at page 15.) But for water right purposes, molecules don't matter; accounting is the key. Just look to the

[8] Riverside acknowledges that "many Nampa customers are also Pioneer landowners." Reply at 14. In fact, it is "all." Nampa does not serve irrigation water to customers within Pioneer's territory who have excluded their lands from Pioneer. Accordingly, Riverside's concern (Reply at 23) that *Jensen v. Boise-Kuna Irr. Dist.*, 75 Idaho 133, 141 (1954) disallows Pioneer from allowing water in the Phyllis Canal to reach non-Pioneer lands served by Nampa is moot.

Department's refill accounting system, to the allocation of storage water among reservoirs, or to the Department's accounting of diversions from various APODs during times of administration.

(2) Nampa's disposal of the effluent (via delivery to Pioneer) is itself a municipal use, which occurs within Nampa's existing service area.

In prior guidance and communications, the Department has been clear and consistent that treatment or other disposal of effluent undertaken in order to comply with environmental regulations falls within the broad definition of permissible "municipal use." A 1996 formal guidance memo, which remains in effect, noted: "In the case of municipalities, the majority view is that the proper disposal of effluent from waste treatment facilities comes within the parameters of the beneficial use of a municipal water right." *Application Processing Memorandum No. 61* (Memorandum from Phil Rassier to Norm Young, pages 1-2 (Sept. 5, 1996) (attached to Nampa's Response as Addendum G, item 2, p. 207.) Other Departmental guidance is collected in the footnote.[9]

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[9] A Review Memo, p. 6, dated September 23, 2008 prepared by Mat Weaver and sent to Gary Spackman in connection with the Black Rock project in North Idaho (attached to Nampa's Response as Addendum D, item 2, p. 161) stated: "Based on the discussion in the BACKGROUND section of this memo it seems to me that not only is the land application of treated wastewater allowed for under the municipal use general heading, but should be encouraged as a valid and worth while conservation effort."

"Waste water treatment necessary to meet adopted state water quality requirements is considered by IDWR as part of the use authorized under a municipal right so long as the treatment process complies with the best management practices required by the Idaho Department of Environmental Quality, the U.S. Environmental Protection Agency, or other state or federal agency having regulatory jurisdiction." Letter from Garrick L. Baxter to Christopher H. Meyer (Sept. 7, 2011) (emphasis added) (attached to Nampa's Response as Addendum F, item 2, p. 198).

Similarly, the Department counseled the City of Nampa on another occasion as follows: "You confirmed my understanding that a city may recapture and reuse its municipal effluent and apply it to other municipal uses within its growing service area." Letter from Garrick Baxter to Christopher Meyer dated May 26, 2011 (emphasis original) (attached to Nampa's Response as Addendum E, item 3, p. 183). "You also confirmed that, if required to meet environmental regulations, treatment utilizing an infiltration basin would be viewed as being within the existing

Here, the disposal of effluent occurs by way of Nampa delivering it to the Phyllis Canal pursuant to an agreement with Pioneer and a Reuse Permit issued by IDEQ. That municipal use (i.e., disposal) happens at the point of delivery to the canal. Once that delivery is made, the effluent is no longer Nampa's responsibility, and the municipal use is complete.[10]

The point of delivery is within Nampa's existing service area.[11] This moots Riverside's argument that Nampa's service area may not expand to include Pioneer's territory.

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use." Letter from Christopher Meyer to Garrick Baxter and Jeff Peppersack dated May 24, 2011 (attached to Nampa's Response as Addendum E, item 4, p. 188).

A letter from counsel for the City of Nampa to Steven Strack summarized the views stated by Garrick Baxter and Jeff Peppersack in a prior meeting: "It was their view than an infiltration project to meet mandatory water quality requirements would constitute a municipal use of water." Letter from Christopher Meyer to Steven Strack, p. 2, dated May 19, 2011 (attached to Nampa's Response as Addendum E, item 1, p. 167).

Similarly, a letter from counsel for the City of Nampa to Garrick Baxter and Jeff Peppersack Strack stated: "You also confirmed that, if required to meet environmental regulations, treatment utilizing an infiltration basin would be viewed as being within the existing municipal use." Letter from Christopher Meyer to Steven Strack, p. 1, dated May 24, 2011 (attached to Nampa's Response as Addendum E, item 4, p. 174).

Mr. Baxter responded to that letter, confirming: "The context of our conversation was the treatment of water by infiltration, not recharge per se." Letter from Garrick Baxter to Christopher Meyer, p. 1, dated May 26, 2011 (attached to Nampa's Response as Addendum E, item 3, p. 183). In other words, using the effluent for recharge—thereby allowing new uses unrelated to the original use—might not be a municipal use. But treatment or other disposal necessitated by the original use is considered part of the municipal use.

[10] Indeed, Riverside appears to acknowledge that Nampa's disposal is complete at the point of delivery:

> Under the Reuse Agreement, Nampa turns the water over to Pioneer at the Phyllis diversion point and Pioneer handles, manages and conveys this water as Pioneer sees fit. Exhibit F, Section B 3. Moreover, the water is not Nampa's and under the Reuse Permit, the water is no longer Nampa's and no longer under DEQ supervision once diverted into the canal. *See* Exhibit R. p/4, ("the water is considered to be irrigation water").

Reply at 25.

[11] SOF ¶ 40; *Reuse Proponents' Submission of Exhibits A-F*, Exhibit C, p. 11 ("Map showing proposed alternatives for discharge of recycled water to Phyllis Canal (Attachment to Reuse Agreement")). This map also appears at the end of Exhibit F, p. 21. By the way, Nampa

(3) Nampa's municipal service area may expand to include the portion of Pioneer's District below the delivery of effluent to the Phyllis Canal.

There is yet another way of looking at this.[12] Rather than viewing the municipal use of Nampa's effluent as occurring within the area served by Nampa's non-potable delivery system, or at the point of delivery to the Phyllis Canal, the use could be seen as occurring throughout Pioneer's territory downstream of the point of delivery. If the Department wishes to approach it that way, that is permissible based on Nampa's expanding service area.

Idaho's water code defines municipal "service area" as follows:

> "Service area" means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes. For a municipality, the service area shall correspond to its corporate limits, or other recognized boundaries, including changes therein after the permit or license is issued. The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality's established planning area if the constructed delivery system for the area shares a common water distribution system with lands located within the corporate limits. . . .

Idaho Code § 42-202B(9) (emphasis added).

Riverside mistakenly assumes that the referenced "planning area" means "area of city impact." This is not so.

This point was discussed in a letter seeking the Department's view of this provision in the context of the City of McCall's land application of wastewater outside the city. The upshot is that "planning area" is not a defined term and should be understood to mean long-term planning

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has now selected among the options earlier. It is essentially Option 1A, except the pipe will run on the other side of the Fred Meyer store (the large building under the label "Option 1A").

[12] Riverside complains that it is "disingenuous" for Nampa and its supporters to argue, on the one hand, that Pioneer is Nampa's agent in land application, and, on the other hand, that the delivery of water to Pioneer is merely a disposal. Reply at 30. There is nothing disingenuous about presenting alternative legal theories or ways of looking at this.

undertaken in reference to the City's water supply and management. That would certainly include Nampa's planning with respect to the Reuse Project.

Here is the exchange:

> First, the land application must be "within the municipality's established planning area." "Planning area," however, is not a defined term. It is an informal term generally understood to refer to the area used by a city for water rights planning purposes as it plans for current and future water requirements. [footnote: The term "planning area" in the 1996 Act should not be confused with the city's "area of city impact." The latter is a distinct term meaningful in the context of annexation rules under the Local Land Use Planning Act, Idaho Code § 67-6526.] In other words, the 1996 Act requires that land application outside the city limits must be undertaken as part of a city's long-term water planning effort.

Letter from Christopher Meyer to Garrick Baxter (Aug. 18, 2011) (attached to Nampa's Response as Addendum F, item 1, at 195).

Mr. Baxter replied (following further information submissions):

> Based upon the representations in your letter, the Department agrees that the lands served outside the City of McCall's corporate limits share a common water distribution system with lands located within the corporate limits. So as long as the City of McCall is land applying its captured municipal effluent as part of a treatment process to meet adopted state water quality requirements (this issue was discussed in my letter to you dated September 7, 2011), the Department agrees that the use (and location) is in conformance with City of McCall's municipal water right.

Letter from Garrick Baxter to Christopher Meyer (Sept. 19, 2011) (parentheticals original) (attached to Nampa's Response as Addendum F, item 4, p. 202).

In sum, because Nampa's WWTP will be plumbed directly into the Phyllis Canal, Nampa's service area may expand to encompass all 17,000 acres of lands below the delivery point of effluent to the Phyllis Canal.

Riverside says this cannot happen because that would overlap Caldwell's service area. Reply at 18. But nothing in the water code prohibits overlapping service areas. What is prohibited, at least with respect to RAFN rights, is this: RAFN rights may not be obtained to serve municipal entities that have overlapping and conflicting comprehensive plans. Idaho Code §§ 42-202B(8). That is not happening here.[13] If Nampa's effluent firms up Pioneer water supplies already available to both Caldwell and Nampa, that is a good thing.

The definition of municipal "service area" includes water delivered outside of the city limits "if the constructed delivery system for the area shares a common water distribution system with lands located within the corporate limits." Idaho Code § 42-202B(9).

In guidance provided to the City of McCall, counsel for the Department initially stated that it did not have enough information to say whether McCall's service area could extend to the lands applying the effluent:

> In the City's case, the Department understands that the City uses a series of privately owned irrigation ditches to transport effluent to lands outside the city limit. The Department has questions regarding the process in which the City delivers effluent to the lands outside the city limits. A measure of control and supervision is at least implied for a delivery system to be considered a "common" water distribution system.

Letter from Garrick Baxter to Christopher Meyer dated September 7, 2011 (emphasis added) (attached to Nampa's Response as Addendum F, item 2, p. 199). McCall's counsel then clarified that the effluent is piped from the treatment plant to a mixing station three miles outside the city and from there to farms under contract with the city. Letter from Christopher Meyer to Garrick

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[13] This language from the 1996 Municipal Water Rights Act is aimed at ensuring that municipal entities are not allowed to acquire duplicative future needs water rights as each hopes to serve the same growth areas. That is obviously not happening here. Neither city has comprehensive plans aimed at invading each other's areas of impact; nor would that be allowed under the Local Land Use Planning Act, Idaho Code §§ 67-6501 to 67-6538.

Baxter dated September 16, 2011, page 1 (attached to Nampa's Response as Addendum F, item 3, p. 200). In response, IDWR's counsel replied that "the Department agrees that the lands served outside the City of McCall's corporate limits share a common water distribution system with lands located within the corporate limits." Letter from Garrick Baxter to Christopher Meyer dated September 19, 2011 (attached to Nampa's Response as Addendum F, item 4, p. 202).

To be fair, the Department's guidance to McCall could be distinguished from Nampa's situation. Unlike McCall, Nampa is not itself delivering the effluent in its own pipes to the headgates of each farm or other user.[14] Instead, it is delivering effluent in its own pipes to Pioneer and then relying on a formal, public agreement with Pioneer to deliver that water to land within Pioneer's boundaries.

Although this is a distinction, Nampa urges it is a distinction without a difference. What is important under section 42-202B(9) is that the water be delivered under physical control without entering public waters, and that it be delivered to land areas that can be precisely described to the Department. The portion of Pioneer's service area downstream of Nampa's effluent delivery point is large but readily describable. That is what matters.

Again, however, section 42-201(8) moots the question. It was enacted to eliminate the need for lawyers to engage in these semantic debates.

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[14] McCall explained in its letter to the Department that the effluent will "not simply be used to augment the water supply of an irrigation district without the ability to determine which land actually receives the effluent." Letter from Christopher Meyer to Garrick Baxter dated September 16, 2011, page 2 (attached to Nampa's Response as Addendum F, item 3, p. 201).

IV. NAMPA'S POTABLE SYSTEM WATER RIGHTS ARE PLUMBED INTO THE POTABLE DELIVERY SYSTEM; NOTHING IN THE WATER RIGHTS LIMITS WHERE THE WATER MAY BE USED.

Riverside continues to insist that because Nampa's effluent derives from its potable system water rights, the effluent may not be used within its non-potable system. Reply, section VI at 9-10. This is premised on these words which appear on some of Nampa's water rights: "This right is part of the potable water delivery system for the City of Nampa."

Nampa has long operated two delivery systems, potable and non-potable. In the last decade, Nampa has worked hard, with the cooperation and support of the Department, to integrate its delivery systems in order to make more efficient use of both water and infrastructure. As a result, water from the potable delivery system can and is moved to the non-potable delivery system at the flick of a switch.

Each delivery system is physically connected to specific wells. (Potable system wells are designed differently and are subject to different regulatory standards.) As Nampa's water rights were developed over time in conjunction with specific wells, the associated water right was often labeled depending as being "part of" one delivery system or the other. The wells within each of the two systems are now gradually being converted to APODs—but only within their respective delivery systems. In that sense, and that sense only, the systems remain separate.

None of this is a constraint on where the water may move once it is diverted. As noted, water today moves from the potable delivery system into the non-potable delivery system, with the knowledge and approval of the Department. Much less is there a constraint on where subsequently captured effluent may move. This is clear from the words on the water right. The statement says the right is "part of" the potable system or "part of" the non-potable system. It is

part of that system because those wells are plumbed to that system. It does not say that water diverted under those rights may never be used elsewhere.

The foreign case relied on by Riverside, *City of Marshall v. City of Uncertain*, 206 S.W.3d 97 (Tex. 2006), is telling. Marshall owned municipal water rights far in excess of what it needed. "The record suggests that Marshall was negotiating to sell the [excess] water to a power company and possibly to other industrial users." *Marshall* at 99-100. The case stands for the obvious proposition that when a city changes the nature of use from municipal to industrial, a change is required. Apparently, Texas defines municipal water as potable only. *Marshall* at 99. Idaho, of course, does not. Idaho Code § 42-202B(6). Unlike Marshall, Nampa is not selling off unneeded municipal water to a non-municipal user who instead will divert that water from the ground. Nampa will continue to pump all of its municipal water rights and place them to beneficial use, just as before. Nampa is authorized by common law and by Idaho Code § 42-201(8) to capture its municipal effluent and make further use of that water—or dispose of it in accordance with environmental regulations—as it sees fit. Because of those laws, doing so is not an enlargement or expansion of the municipal right.

V. THE "USE SURFACE WATER FIRST" CONDITION APPLIES ONLY TO THE FIRST USE OF A MUNICIPAL RIGHT.

In its Reply, Riverside repeats its argument that standard "supplemental use" conditions (which require Nampa to use some of its ground water rights only when surface water is unavailable) pose a problem. Reply, section X at 19-21. Nampa already has responded to this. Nampa's Response, section III.D.2.b at 43 (quoting Mat Weaver's Review Memo at 5 (attached to Nampa's Response as Addendum D, item 2, p. 156)).

In its Reply, Riverside does nothing beyond suggesting that Mr. Weaver was wrong in his analysis. He was not.

VI. *RANGEN* IS INAPPOSITE.

Riverside cites *Rangen, Inc. v. IDWR*, 159 Idaho 798, 806, 367 P.3d 193, 201 (2016), a case dealing with the finality of decrees (holding that a water user may not end-run its water right decree by claiming historical uses inconsistent with the decree). Reply, section IV at 6-8. The case finds no parallel here. Mr. Rangen got into trouble for asserting authority to divert from diversion points not included in the decree. In contrast, the effluent Pioneer receives from Nampa is a not based on a water right. It is, as Riverside says, a gift. Pioneer has no rights to the continuation of that gift (beyond whatever contract rights be found in its agreement with Nampa). Pioneer is not trying to convert that gift into an enforceable water right. Accordingly, there is no "finality of decree" issue here, because there is no decree. *Rangen* simply does not come into play.

The flaw in Riverside's analysis permeates its entire briefing. Riverside repeatedly assumes and asserts that Pioneer needs a water right. Riverside then cites to cases involving people who actually have water rights and try to enlarge them or change their described elements. That has nothing to do with Pioneer's acceptance of a gift of effluent from Nampa—effluent that is not part of the public water supply.

VII. RIVERSIDE'S CONSTITUTIONAL ARGUMENT CONTINUES TO UNRAVEL.

In its Reply, Riverside continues its half-hearted constitutional challenge to Idaho Code § 42-201(8).

First, there is the procedural problem. Nampa pointed out the Director is without power to question a statute's constitutionality. Riverside now suggests that the Director may sidestep that limitation by applying a canon of construction available to courts. Courts, unlike the Director, have the power to decide constitutional questions. Hence, courts may interpret statutes

so as to avoid constitutional frailties they may perceive. The Director's job is simpler—apply the statute, period.

Nampa addressed the merits in Nampa's Response, section I.E at 23-25. Riverside says not to worry about the "parade of horribles" that would follow if the Director rules for Riverside. Worry not, it says, because its constitutional challenge is "as applied" not "facial." Reply at 33. That is a bogus distinction. Riverside's perceived "injury" is no different than any other "injury" that would occur under any application of the statute.

At the end of the day, Riverside's constitutional argument melts away. There is no injury because nothing in our Constitution requires every use of water to occur pursuant to a water right. In other words, the Constitution does not prohibit the Legislature from exempting some water uses from the permitting process. Likewise, Riverside has no protectable property interest by which it may force Nampa to forever send its effluent its way.

At least Nampa thought that was Riverside's constitutional argument. Nampa was giving the benefit of the doubt to Riverside, as it tried to fill in the unarticulated basis of the claim. Nampa did so by tying Riverside's poorly expressed claim to the only constitutional moorings that come to mind: the "right to divert" and "takings." But Riverside says, no thanks. It says it is <u>not</u> alleging an unconstitutional enlargement of Nampa's water right. Rather, it is asking "whether Idaho Code § 42-201(8) should be enlarged." Reply at 33. Whether a statute should be enlarged is a statutory question, not a constitutional one. Frankly, the Reply leaves Nampa wondering what Riverside's constitutional gripe is.

CONCLUSION

The path to obtain a Reuse Permit was neither easy nor inexpensive. The stipulated exhibits and the explanation in Pioneer's sur-reply brief document the meticulous planning

undertaken by Nampa and Pioneer and the exhaustive environmental review undertaken by IDEQ. The Legislature made clear that nothing in the section 42-201(8) exemption lessens that environmental burden. That is as it should be. But that exemption was intended the eliminate the very financial burden that Nampa, Pioneer, and the Municipal Intervenors have shouldered in defending Riverside's flawed challenge.

Riverside's Reply does nothing to repair its flawed analysis. Accordingly, Nampa urges the Director to issue a declaratory ruling stating that neither Nampa nor Pioneer is required to obtain a new water right in order to undertake the Reuse Project.

Should the Director disagree and find that a water right is required, Nampa urges the Director to include in his declaratory ruling a statement that if Pioneer were to seek an appropriation of the waste water delivered to it by Nampa, Pioneer would not be required, as a matter of law, to mitigate or otherwise compensate Riverside for any corresponding reduction in Nampa's discharge of that wastewater to Indian Creek. (This point is addressed in the reply brief of Municipal Intervenors.)

ORAL ARGUMENT IS NOT REQUESTED

Nampa does believe oral argument is necessary, unless the Director would find it helpful.

Respectfully submitted this 11th day of December, 2020.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of December, 2020, the foregoing, together with exhibits or attachments, if any, was filed, served, and copied as shown below.

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Christopher H. Meyer

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER RESUE PERMIT NO. M-225-01	Docket No. P-DR-2020-001

INTERVENOR PIONEER IRRIGATION DISTRICT'S SUR-REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

I.
INTRODUCTION

Intervenor Pioneer Irrigation District ("Pioneer" or "District") submits this Sur-Reply to Riverside Irrigation District, Ltd.'s ("Riverside") *Reply in Support for Petition for Declaratory Ruling* (Nov. 20, 2020) ("Reply") pursuant to the Department's *Amended Scheduling Order* (Sept. 11, 2020). For the reasons discussed in Pioneer's *Response to Petitioner's Opening Brief* (Oct. 30, 2020) ("Pioneer Response") and those discussed herein, Pioneer need not obtain a water right to implement the Nampa-Pioneer Reuse Agreement and the resultant DEQ-issued Reuse Permit. Riverside's contentions render Idaho Code Sections 42-202B(9) and 42-201(8) meaningless; contravene well-settled wastewater principles; and Riverside possesses no legally cognizable right in Nampa WWTP effluent entitling it to the relief it seeks in this proceeding.

II.
ARGUMENT

A. Riverside's Land Application-Based "Water Spreading" and "Service Area" Arguments Ignore Nampa's Pioneer-based Delivery Entitlement and Fundamentally Misunderstand the DEQ Reuse Permit and its Supporting Technical Analyses

Riverside alleges 17,000 acres of "enlargement" and "water spreading" in hopes of manufacturing "per se injury" in an attempt to defeat the Nampa-Pioneer recycled water project. Reply, pp. 3-6; and 10-19. However, Riverside's arguments ignore Pioneer system plumbing vis-à-vis Nampa deliveries and Nampa water delivery entitlement from Pioneer, and its arguments fundamentally misunderstand the water treatment (land application aspect) of the DEQ Reuse Permit regarding Nampa's discharge of WWTP effluent to the Phyllis Canal. Riverside's assertion that 17,000 acres of Pioneer landmass is necessary to effectively treat Nampa's WWTP effluent and, therefore, requires the "spreading" of Nampa's WWTP effluent

across 17,000 acres of Pioneer landmass is incorrect and misreads the Reuse Permit and its supporting materials.

1. Nampa Entitlement to Pioneer Water Delivery and Pioneer's Corresponding Water Delivery System to Those Nampa-Related Lands

Sensitive to Riverside's enlargement and water spreading "scheme" arguments, but not beholden to them because Idaho Code Sections 42-202B(9) and 42-201(8) provide and hold otherwise, Pioneer nonetheless detailed the legitimate purposes, including Nampa reuse opportunities, of the Reuse Permit and the parties' Reuse Agreement. *See, e.g.*, Pioneer Response, pp. 20-23. Riverside continues ignoring the legal and physical realities of Nampa's Pioneer-based water delivery entitlement and the Phyllis Canal diversion locations supplying that water within the first approximately four miles of canal downstream of the proposed Nampa discharge point.[1]

In terms of Nampa water delivery entitlement from Pioneer, it is undisputed that Nampa's pressurized irrigation Non-Potable System alone irrigates 2,985 acres of Pioneer lands within Nampa's jurisdiction. *Stipulation of Facts by All Parties* (Sept. 11, 2020) ("SOF"), ¶ 20. Beyond that, Pioneer also makes additional gravity-based (*i.e.*, non-pressurized) deliveries to Nampa City (*i.e.*, Nampa-owned properties) locations totaling 116.23 acres. *Id.* And, these two groupings of deliveries to Nampa City are but a subset of a larger universe of additional deliveries Pioneer makes to Nampa citizens and lands that are not presently irrigated from Nampa's Non-Potable System. *Id.*, ¶¶ 57-60. All-told, Pioneer deliveries from the 15.0 Lateral, Hatfield Lateral, Stevens Lateral, Stone Lateral, and McCarthy Lateral serve approximately

[1] Pioneer appreciates that there are various pipeline discharge routes proposed under the Reuse Permit. *See, e.g.*, Ex. G (Reuse Permit) at p. 30. However, all of the proposed points of discharge to the Phyllis Canal are located upstream of the 15.0 Lateral diversion from the canal. *See, e.g.*, Ex. H (DEQ Staff Memo), p. 20, Fig. 10.

3,400 acres of Pioneer lands overlapping Nampa corporate limits and larger Area of Impact. Ex. H, p. 20 (Fig. 10), and pp. 49-50 (Figs. 14 and 15). In terms of statutory apportioned benefit under Idaho Code Section 43-404, Pioneer's delivery obligations to the aforementioned lands total approximately 60 cfs to Nampa's Non-Potable System; 2.3 cfs to Nampa City properties via gravity-based deliveries; and 68 cfs in total to the 3,400 acres of Nampa and Nampa citizen-related properties lying within Pioneer's boundary. SOF, ¶ 1.

In terms of Pioneer water distribution network serving these approximately 3,400 acres of land in relation to the larger 17,000 acre landmass under the Phyllis Canal downstream of Nampa's proposed WWTP effluent discharge point, Pioneer delivers to those Nampa-related lands from the 15.0, Hatfield, Stevens, Stone, and McCarthy Laterals within the first approximately four miles of the Phyllis Canal downstream of the proposed discharge point. SOF, ¶¶ 58-59; *see also*, Exs. H (DEQ Staff Memo) generally (repeatedly acknowledging future use of the recycled water by "[Nampa] municipal irrigation utility customers" and "Nampa's [or City's] pressurized irrigation system"), at Figure 10 and Table 4 (schematically depicting the distribution systems, including acres served and cfs diverted per lateral facility), and at p. 24 (explaining that the Phyllis Canal flows for another 12 miles past the Wilson Drain crossing, which crossing is immediately upstream of the McCarthy Lateral diversion); and Ex. J (Preliminary Technical Report) at pp. 7-5 thru 7-8 (detailing Pioneer deliveries to Nampa and its citizens from the above-referenced facilities beginning with the 15.0 Lateral to the Midway Park Pump Station just downstream of the McCarthy Lateral—all deliveries occurring within roughly four miles of the proposed WWTP effluent discharge point(s)) and Figures 8 and 9 (depicting these Nampa-related ditch facilities, the location of the lands served by the facilities, and locating

and identifying the Nampa City Non-Potable System pump stations located on the various facilities).

In terms of simple mass balance calculation, Nampa and its citizens divert (or are entitled to divert) over two times the quantity of water from the Phyllis Canal (~68 cfs) than will be discharged to the canal from the WWTP under the Reuse Permit (31 cfs). Even the 41 cfs of WWTP effluent discharge contemplated in the parties' Reuse Agreement, but not yet permitted under the Reuse Permit, is far outstripped by Nampa's 68 cfs delivery entitlement—a quantity of water Pioneer is statutorily obligated to deliver to Nampa and its citizens in accordance with Idaho Code Section 43-404.

Consequently, Riverside's suggestion (or worse, assertion) that Nampa and its citizens will not be the primary (if not sole) beneficiary of the WWTP effluent it discharges to the Phyllis Canal is unsupported, inflammatory rhetoric. This is further demonstrated by the pollutant loading analyses supporting the Reuse Permit discussed immediately below.

2. Nampa's Discharge to the Phyllis Canal is a Small Fraction of Larger Phyllis Canal Flows, and Nampa's Discharge is Effectively Treated from an Environmental Perspective Within the First 3,300 Acres of Pioneer Deliveries Downstream of the Discharge Point—Which 3,300 Acres are Located Almost Entirely Within Nampa's Jurisdiction

There is no question that the DEQ Reuse Permit and supporting materials define the "Area of Analysis" and "Land Application Site" under the permit to be the approximately 17,000 acre Pioneer landmass irrigated from the Phyllis Canal downstream of the proposed Nampa WWTP effluent discharge sites. But, there is equally no question that Nampa WWTP effluent treatment (*i.e.*, land application) under the permit is not dependent upon water application to that entire 17,000 acre Pioneer landmass contrary to Riverside's allegations and assertions otherwise. Instead, Riverside fundamentally misunderstands the permit's pollutant loading analysis by losing sight of the fact that the analysis evaluates ***total Phyllis Canal flows and preexisting***

canal background constituent loads cumulatively with Nampa's proposed discharge inputs (*i.e.*, the permit analysis does not focus on Nampa discharge loads and land application landmass needs in isolation).

This total flow (as opposed to Nampa-only flow) evaluation is illustrated by Preliminary Technical Report Tables 8-1, 8-2, 8-3, and 8-4 (Ex. J, pp. 8-1 thru 8-4); *see also*, *id.*, Appendix F. As explained and acknowledged by DEQ, Nampa's proposed discharge to the Phyllis Canal at full build out under the Reuse Permit (31 cfs) will comprise approximately 13% of the canal's typical 200 cfs flow rate at the proposed point of discharge. Ex. H (DEQ Staff Memo), p. 23. The constituent loading of that Nampa flow is then quantified and ***added to*** the existing Phyllis Canal flows and corresponding background constituent loads for purposes of the permit's overall analysis. *Id.*, pp. 26-32 (*see*, particularly, Tables 10, 11, and 12 comparing and contrasting "Background Phyllis Canal Data" with "Estimated Water Quality" and "Estimated Nutrient Loading" following the "Addition of Recycled Water" and "before and after recycled water is added"). Exhibit J (Preliminary Technical Report) Tables 8-1, 8-2, 8-3,and 8-4 demonstrate similarly (Table 8-4 identifies and quantifies Nampa WWTP effluent discharge constituent loading in isolation, while Tables 8-1, 8-2, and 8-3 aggregate water flows and constituent loads (Phyllis flows ***plus*** Nampa discharge flow)).

Preliminary Technical Report Appendix F and Report Table 8-3 further underscore the cumulative nature of the Reuse Permit's constituent loading analysis. Report Appendix F plainly states that the "Total Water Available" evaluated under the constituent loading and land application analysis is:

Typical volume in the Phyllis Canal at the proposed discharge location
+ Recycled water from the Nampa WWTP
+ Pumping and inputs from drains and tailwaters of neighboring irrigation districts
- Losses to groundwater from the bottom of the Phyllis Canal and Laterals
- Losses to the atmosphere from the water surface in the Phyllis Canal and Laterals
= Total Water Available

Ex. J (Preliminary Technical Report), at Appendix F, p. 5 (emphasis added and emphasis in original). And, Report Table 8-3, note 1 clarifies that Nampa's 31 cfs discharge (13% subset of overall Phyllis Canal flows) viewed in isolation would include "only assumed vegetated percentage of land within the 3,300-acre sample area described above" (*i.e.*, the 3,400 acres of Nampa-related properties lying within Pioneer's boundary served by the 15.0, Hatfield, Stevens, Stone, and McCarthy Laterals). Of course a large landmass is required to "uptake" nutrients from 230+/- cfs of water. But, again, Nampa's flow contribution at build out is only 13% of that total flow. Ex. H, p. 23.

That Nampa's constituent loading viewed in isolation is not a concern requiring land application to a 17,000 acre (or more) landmass is further demonstrated by the groundwater and surface water anti-degradation analyses performed under the permit, together with the Reuse Permit's focus on eliminating operational spills from the 15.0 Lateral system to the Moses Drain only.

Regarding groundwater concerns, DEQ "focused on the area just downstream of where recycled water will be added to the Phyllis Canal." Ex. H, p. 13. In both groundwater evaluations (one where canal flow at the point of WWTP effluent discharge was assumed to parallel groundwater flow, and a more conservative one where the canal flow was assumed to be perpendicular to groundwater flow), groundwater was modeled to slightly ***improve*** for constituents of concern (N and TDS), ultimately leading to the conclusion that "ground water is not expected to be negatively impacted by the proposed recycled water reuse." *Id.*, p. 16; *see*

also, *id.* ("the proposed recycled water use is protective of ground water"). In other words, Nampa's WWTP effluent discharge to the Phyllis Canal will dilute groundwater constituent concentrations of concern, not exacerbate them.

Regarding potential surface water pathways of concern, DEQ acknowledged and understood that from a mass balance perspective (as opposed to Riverside's apparent molecular accounting perspective), all 31 cfs of the Nampa WWTP effluent discharged would be immediately diverted into the 15.0 Lateral system (32 cfs) within one mile of the effluent discharge point. Ex. H, pp. 19-20 (including Table 10). Consequently, the 15.0 Lateral system spill to the Moses Drain became a potential spillway of concern back to jurisdictional waters (Indian Creek). *Id.*, p. 23. To mitigate this risk, the Preliminary Technical Report, DEQ Staff Memo, and the Reuse Permit control/mitigate this potential by eliminating this "small operational spill." Ex. J (Preliminary Technical Report), p. 7-7 and Figure 9, Nos. 10 and 11, including note "b" (identifying the "small operational spill" of the 15.0 Lateral system to the Moses Drain as the "spill" to be eliminated); Ex. H (DEQ Staff Memo), p. 23 (identifying the 15.0 Lateral system spill as that to be eliminated); and Ex. G (Reuse Permit), p. 8 (CA-255-02, eliminating Pioneer's operational spill back to Moses Drain).

DEQ's focus on eliminating spill from the 15.0 Lateral system alone demonstrates the close-in re-diversion and reuse of Nampa's proposed WWTP effluent discharge. Broader conveyance and use of Nampa's effluent over a larger 17,000 acre landmass as Riverside contends would have implicated/raised concerns over many more spill pathways than just the 15.0 Lateral spill to the Moses Drain within the first mile of Phyllis Canal downstream of the effluent discharge point.

Finally, because Nampa will be treating to Class A recycled water standards, DEQ had no additional concerns of the immediate suitability of the WWTP effluent for irrigation purposes. This is why the end of Nampa's proposed pipeline at the Phyllis Canal is the Reuse Permit compliance point. Ex. G (Reuse Permit), p. 11 (Section 4.5) ("the requirements herein shall apply to the point where the water is discharged to the Phyllis Canal"); *see also*, *id.*, p. 14 (Section 5.1.1) (requiring Class A water quality sampling to occur at the point where the water is discharged to either the Phyllis Canal (MU-255-01), or to the proposed industrial reuse loop yet to be built (MU-255-02)) and p. 15 (Section 5.1.2) (requiring flow monitoring at the discharge points to the canal and industrial reuse loop and ***upstream*** of the canal discharge point); *see also*, Ex. H (DEQ Staff Memo), pp. 29-32 (Section 4.6.3) (explaining that Class A recycled water treated to 30 mg/L total nitrogen, 0.35 mg/L total phosphorus, and 700 mg/L TDS is immediately suitable for irrigation use at these "end of pipe concentration limits" and will not cause environmental degradation upon discharge to the Phyllis Canal in the immediate vicinity, let alone many miles downstream: "In reality, the concentration in the water available for users of the water will change quickly and in the far reaches of the Phyllis Canal will be very different than the values presented here.").

Just because 17,000 acres of Pioneer landmass is ***available*** downstream of the proposed Nampa discharge points, does not mean that all 17,000 acres are ***necessary*** to treat the WWTP effluent discharged. Instead, DEQ mass balance-based and diversion accounting-based analyses demonstrate differently.

Riverside's "water spreading" and "service area" arguments are hollow and misinformed. All of Nampa's WWTP effluent discharge to the Phyllis Canal ***and more*** (68 cfs versus 31 cfs) is rediverted and used on approximately 3,400 acres of land receiving water from the first four

miles of Phyllis Canal downstream of the WWTP effluent discharge point. In fact, all of Nampa's WWTP effluent discharge to the Phyllis Canal ***and more*** (32 cfs versus 31 cfs) is rediverted and used on approximately 1,600 acres of land receiving water from the 15.0 Lateral system alone approximately one mile downstream of the Nampa WWTP. Contrary to Riverside's assertions otherwise, the WWTP effluent is not being used throughout Caldwell or locations farther west (*e.g.*, Greenleaf). Instead, the Nampa WWTP effluent discharge is going to be reused by Nampa and its citizens, and the Reuse Permit and its supporting analyses embrace and recognize this undisputed fact.

B. Riverside Cannot Have its Agency Arguments Both Ways; Nampa Can Delegate Section 42-201(8)-Based Effluent Disposal Authorities to Pioneer and Pioneer Can Accept that Delegation

As discussed in Pioneer's Response, and continued in Riverside's Reply, Riverside spends a great deal of effort attempting to foreclose Pioneer and Nampa from implementing Idaho Code Section 42-201(8) through the parties' Reuse Agreement. *See* Pioneer Response, pp. 6-10 and Riverside Reply, pp. 22-28. Riverside rejects Pioneer and Nampa's agency arguments under their Reuse Agreement (*i.e.*, that Nampa can delegate its effluent disposal authorities under the statute to Pioneer and that Pioneer can, by operation of the Reuse Agreement, serve as a land application agent/extension of Nampa). Riverside Reply, pp. 22-28.

Conversely, Riverside at least implicitly, if not explicitly, embraces an agency relationship between Pioneer and Nampa under the Reuse Agreement for purposes of advancing its erroneous Section 42-201(2)-based arguments. Riverside does so by ascribing to Pioneer Nampa's Potable System wellheads as Pioneer points of diversion for water right permit requirement purposes. Riverside Reply, *e.g.*, at pp. 6-9 (asserting illegal Pioneer use of water where the District "has no water right identifying Nampa's groundwater as the source of that water."). The crux of Riverside's contention is that the Nampa-Pioneer Reuse Agreement

creates a construct by which Pioneer is effectively diverting and using Nampa-sourced groundwater in absence of a valid water right to do so. *See*, *e.g.*, *id.*, pp. 3 and 30 (referring to the Nampa WWTP effluent discharge point in the Phyllis Canal as Pioneer's "point of diversion" and location where "Pioneer diverts [the effluent]" (*i.e.*, "ground water") for which it does not have a water right), and pp. 6-9 ("THE SOURCE OF NAMPA'S EFFLUENT IS GROUNDWATER").

As Pioneer explained in its Response, Nampa could not gain access to Pioneer's Phyllis Canal for discharge purposes but for the parties' Reuse Agreement. And, Pioneer likewise could not gain access to, or use, Nampa's WWTP effluent piped directly to the canal but for the parties' Reuse Agreement. Pioneer Response, p. 6. There is nothing improper with the parties' contractual arrangement.

The Department has already plowed this ground in the context of the City of McCall years ago (municipal effluent land application through use of the private water distribution infrastructure and private lands of others under contractual agreements between the parties). Pioneer Response, pp. 9-10. Similarly, Nampa possesses the authority to delegate its land application authorities to others, and Pioneer has the authority to accept that delegation and the water that comes with it. *See*, *e.g.*, and *compare*, IDAHO CODE §§ 50-301 (authorizing cities to "contract and be contracted with" for lawful purposes) and 43-304 (authorizing irrigation districts to do the same, among other actions, so that "sufficient water may be furnished to the lands in the district for irrigation purposes"); *see also*, *Abbott v. Nampa School Dist. No. 131*, 119 Idaho 544, 550-552, 808 P.2d 1289, 1297-1297 (1991) (contract-based delegation of authority inherent to one (NMID), but not inherent to another (Nampa School District) is permissible).

Riverside's agency arguments are irreconcilable (Pioneer ***is*** Nampa's agent for water diversion purposes on the front end, but Pioneer ***is not,*** and cannot be, Nampa's agent for water quality-related effluent land application purposes under Section 42-201(8) on the back end). And, they are incorrect. While Pioneer is clearly Nampa's agent for land application under Section 42-201(8), Pioneer's back-end acceptance of Nampa's WWTP effluent under the parties' Reuse Agreement does not constitute a Pioneer act of physical diversion from a natural source on the front end because the Reuse Agreement provides Pioneer no property interest in, or measure of management or control over Nampa's Potable Water System. If Nampa pumps and diverts no Potable System groundwater, Pioneer receives nothing. If Nampa pumps and diverts (and the WWTP produces) less than 31 cfs of recycle wastewater effluent, then Pioneer will receive that lesser amount. *See, e.g.*, Ex. F (Reuse Agreement), p. 4 (Section B.3) (City is not obligated to, nor guarantees any delivery of recycled water to Pioneer). Pioneer simply has no say or control over inputs into Nampa's Potable System and its WWTP on the front end; Pioneer performs no physical act of diversion.

C. Riverside's Reliance on *A&B Irrigation District* Continues its "Round Peg-Square Hole" Problem—Superimposing Traditional and More Restrictive Irrigation Water Right Principles on More Modern and More Flexible Municipal Water Right Uses

Riverside spills considerable ink trying to bootstrap water right "enlargement" and "per se injury" concepts from *A&B Irr. Dist. v. Aberdeen-American Falls Ground Water Dist.*, 141 Idaho 746, 118 P.3d 78 (2005), where those concepts simply do not apply either factually or legally. Reply, pp. 8-9, 11-14, and 18.

As explained in Pioneer's Response, there is no water right enlargement resulting from implementation of the parties' Reuse Agreement. Pioneer Response, pp. 16-18. One cannot enlarge the consumptive use of a class of water rights (municipal water rights) that is already

considered wholly consumptive and can be used to extinction. There further is no enlargement of the Nampa Potable System water rights through Pioneer landowner (including Nampa) irrigation use of the effluent sourced from the same because, unlike *A&B*, there is no irrigation of "additional acres" devoid of existing water rights. *Id.* There further is no expansion because there is no increase in the quantity (volume) of groundwater diverted by Nampa into its Potable System on the front end.

Pioneer is confused by, and misunderstands Riverside's application of *A&B* not because the District misunderstands the holdings of the case, but because Riverside's reliance on the same is inapposite at most and tortured and convoluted at least. For example, Pioneer concedes the very point Riverside finds so important, that the source of Nampa's WWTP effluent continues to be groundwater. Pioneer Reply, p. 15 ("Nampa's Potable System groundwater continues to be waste-based 'groundwater' under Nampa's exclusive physical possession and control from its WWTP to its piped point of discharge into the Phyllis Canal."). But, there is more to the analysis than the source alone. *Id.*, p. 15 ("Nampa's discharge is not commingled with other flows and it is not 'unappropriated' water from a comingled source as was the case with A&B Irrigation District's practices.").

Riverside fails to recognize the difference between appropriable wastewater (that which has comingled with other waters after a measure lost physical control) and non-appropriable wastewater effluent (that which has not yet comingled with other waters and that which is still physically controlled in its entirety within a closed, private system). Reply, pp. 28-31. The *A&B* case (and other authorities relied upon by Riverside) applies to, and analyzes the recapture and reuse of commingled and appropriable (*i.e.*, public) wastewater. It does not speak to the implementation of the Nampa-Pioneer Reuse Agreement which involves the affirmatively-

controlled and intentional discharge of private water (WWTP effluent conveyed and discharged through a closed pipeline that has not commingled with other diffuse sources outside of Nampa's physical control and dominion) to another private, non-appropriable water conveyance (the Phyllis Canal) pursuant to contract. *See e.g.*, IDAHO CODE § 42-110 ("Water diverted from its source pursuant to a water right is the property of the appropriator while it is lawfully diverted, captured, conveyed, used or otherwise physically controlled by the appropriator"); *see also*, *Washington Irr. Dist. v. Talboy*, 55 Idaho 382, 389-90, 43 P.2d 943, 946 (1935) (water stored or conveyed in manmade reservoirs and ditches is already appropriated and no longer "public water[ ]" subject to appropriation by others).

The most glaring example of Riverside's confusion in this regard is its statement that upon discharge to the Phyllis Canal, Nampa's WWTP effluent somehow becomes appropriable public water again. Reply, pp. 29-30 ("But the facts are clear—Nampa relinquishes control over the water when it leaves Nampa's pipeline, where Pioneer diverts it into the Phyllis Canal. At that point the water is subject to appropriation."). This is an astonishing assertion. Both because there is no physical act of "diversion" by Pioneer, and because at least some amongst Riverside's leadership and shareholders would certainly disagree that water flowing in the Riverside Canal (a private ditch like Pioneer's Phyllis Canal) is somehow open to appropriation by others. Regarding the "diversion" point issue in particular, Riverside finally lets slip that discharge to the Phyllis Canal is not an act of physical "diversion" by Pioneer. Rather, the parties' Section 42-201(8)-based Reuse Agreement is based on Pioneer's "***acceptance and delivery*** of Nampa's effluent." Reply, p. 6 (emphasis added).[2]

[2] Counsel for Pioneer is flattered that Riverside cites his IWUA presentation (Exhibit S) as legal precedent, no matter how out of context the citation is used. Reply, p. 30. Counsel's quotation is correct, Nampa's closed pipeline discharge to the Phyllis Canal is not a diversion

Finally, Riverside's contention that Nampa loses all physical control of its WWTP effluent at the point where that water enters the Phyllis Canal is superficial and incomplete. Reply, pp. 29-30. Pioneer agrees that once Nampa's WWTP effluent enters the Phyllis Canal, the distribution and use of that effluent is left to Pioneer's (not Nampa's) canal operations and management. But, as explained above, Nampa and its citizens are the direct (and primary) beneficiaries of those Pioneer canal operations within the first four (or so) miles of the Phyllis Canal downstream of Nampa's discharge. And, the parties' Reuse Agreement expressly obligates Pioneer to manage the conveyance and use of Nampa's effluent in a manner accomplishing the land application-based environmental regulatory treatment of that water. Ex. F (Reuse Agreement), p. 4 (Section B.3) (Pioneer acknowledging Nampa's need to access the Phyllis Canal "for effluent and temperature mitigation" and obligating Pioneer to "handle, manage and convey" Nampa's WWTP effluent "as in integrated part of [Pioneer's] irrigation operations"); *see also*, *id.*, (Section C.2) (Obligating Pioneer to a 25-year contract term (barring the occurrence of certain enumerated circumstances) because of Nampa's "long term NPDES Permit compliance requirements"). Pioneer cannot simply spill Nampa's WWTP effluent water

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from a "typical drain." This is, again, because there is no comingling of the WWTP effluent with other diffuse sources of water after relinquishment of physical control as is the case of diversions from a "typical drain." But, "it's not very different either" because it is a form of wastewater that neither Pioneer, nor Riverside, can compel Nampa to waste for their respective benefit but for Pioneer's contractual entitlement under the Reuse Agreement. Pioneer has been consistent and clear on this important point of physical control/diffuse water commingling distinction, while Riverside ignores it altogether. Pioneer Response, pp. 6 (Pioneer could not access or use Nampa's WWTP effluent but for the parties' Reuse Agreement), 12-13 (Pioneer cannot obtain and perfect a water right because it fails the physical diversion from a natural source requirement; rather the water Pioneer receives from Nampa is Nampa's private property—that "already appropriated and in the physical control of Nampa"), and 23 ("Pioneer can no more compel others to waste water for its benefit in the Fivemile Drain system (or any of its other drain systems) than Riverside can compel Nampa to waste for its benefit in Indian Creek.")

from its system prior to its land application-based irrigation use, or otherwise deliver that water to another entity outside its boundaries.

Regardless of its inapposite "source" arguments under *A&B*, Riverside additionally (and mistakenly) places great weight on the condition that Nampa's Potable System "municipal" purpose water rights cannot be used for irrigation purposes except when surface water rights are not available for the irrigation of the proposed reuse lands. Reply, pp. 19-22. However, Nampa is not violating its applicable water right conditions on the front end. *See, e.g.*, Water Right 63-12474. This is because Nampa is not irrigating with its Potable System water rights until after that water is first used for non-irrigation "municipal" purposes (*e.g.*, potable residential, commercial, industrial uses). The parties already agree that municipal irrigation use water ***does not*** generate the "sewage" collected and piped to, and treated by, Nampa's WWTP. SOF, ¶¶ 23-25. Implementation of the Nampa-Pioneer Reuse Agreement and corresponding DEQ Reuse Permit is dependent upon the discharge and land application of the spent Potable System water residual—the Nampa WWTP effluent that has not improperly been used for irrigation purposes prior arrival at the WWTP.

Absent an irrigation use violation on the front end, Riverside contends that Nampa's Potable System spent residual (that treated and exiting its WWTP) still cannot be used for back end irrigation purposes either. Reply, pp. 20-21. Riverside criticizes Nampa's prior briefing on the subject stating that there is "no legal or statutory authority for the proposition that [the] surface water use condition only applies to the first [Potable System] use." *Id.*, p. 20. Again, though Pioneer is by no means an expert in municipal water rights issues, it disagrees with Riverside's "no legal authority" assertions.

"Municipal" uses of water include the use of water for "residential, commercial, industrial, irrigation of parks and open space, ***and related purposes*** . . . which a municipal provider ***is entitled*** or obligated to supply." IDAHO CODE § 42-202B(6) (emphasis added). Section 42-202B(6) is not an exhaustive or exclusive list of uses. The question then becomes what other "related purposes" might be. It is expressly clear under Section 42-201(8) that one of those "related purposes" is the "collection, treatment, storage or disposal of effluent from a publicly owned treatment works . . . including land application . . . employed in response to state or federal regulatory requirements." IDAHO CODE § 42-201(8). Nampa is statutorily "entitled" to pursue this land application path, even though it is not "obligated" to do so. For a variety of legitimate reasons already briefed by Nampa and Pioneer, Nampa has chosen to pursue this statutory authority (*i.e.*, "entitlement").

Riverside then continues to read terms into Section 42-201(8) that do not exist. As noted by Pioneer in its Response (p. 8, including note 4), the statute embraces the Nampa-Pioneer Reuse Agreement construct because it speaks of "land application" generally. The statute does not require that the "land application" in response to "state or federal regulatory requirements" be wholly performed, or accomplished on lands wholly owned by, the "municipality," "municipal provider," "sewer district," or "regional public entity operating a publicly owned treatment works" proceeding under the statute. Thus, Idaho Code Sections 42-202B(6) and 42-201(8) provide plenty of "legal authority" Riverside finds lacking.

To the extent more legal authority needs be brought to bear, the act of land application need not necessarily mean, or include, end "irrigation" use. Nampa could, consistent with Riverside's irrigation use prohibition, deposit its WWTP effluent on unsown, uncultivated or sterile land, or volcanic ash or gravel to accomplish the environmental treatment benefits of that

land application via soil profile percolation out in the desert south of town. But, that type of "land application" that municipalities are clearly entitled to perform as a "municipal" use under Sections 42-202B(6) and 42-201(8) would be a shame when the spent WWTP effluent could be harnessed and used as a resource promoting meaningful irrigation instead.

Rather than divorcing the act of land application from the additional irrigation benefit that could (and should) be derived as matter of sound public policy, Nampa and Pioneer's Reuse Agreement and the Reuse Permit promote the conservation of water resources consistent with Idaho Code Sections 42-203A(5)(f) and 42-222(1), and they maximize the beneficial use of the water resource. *See, e.g., Nettleton v. Higginson*, 98 Idaho 87, 91, 558 P.2d 1048, 1052 (1977) ("The governmental function in enacting . . . the entire water distribution system under Title 42 of the Idaho Code is to further the state policy of securing the maximum use and benefit of its water resources."). The Nampa-Pioneer recycled water project conserves water resources by potentially lessening Pioneer's reliance on other publicly appropriable water supplies and, hopefully, will conserve some modicum of storage water supply in drought years (though as explained at Pioneer Response pages 20-21, it is more likely that Nampa's WWTP effluent will result in an offset to Pioneer source declines elsewhere/upstream in the Fivemile Drain system). The Nampa-Pioneer recycled water project promotes the maximum beneficial use of the state's water resources by land applying spent WWTP effluent for beneficial irrigation purposes as opposed to depositing that water on otherwise unproductive ground—Nampa's effluent which can already be used to extinction will provide additional irrigation use benefit on its way to that extinction.

Riverside's "no legal authority" assertions are unfounded. And, they render Idaho Code Sections 42-201(8) and 42-202B(9) meaningless; leading to absurd restrictions and results

contrary to the conservation and maximum beneficial use of the state's water resources. The question of "to what end?" is addressed immediately below.

D. The Emperor Has No Clothes—Riverside's Focus on Nampa and Pioneer Activities Under the Reuse Agreement Ignores and Deflects Attention Away From Its Own Legally Infirm Motives

Riverside states: "[T]he primary purpose of the Nampa-Pioneer scheme is to diminish the flows in Indian Creek." Consequently, "there is no doubt Riverside would be directly affected." Reply, p. 34. Riverside makes these assertions without explaining whether or how they are true, or how they implicate any legally cognizable injury to Riverside.

Pioneer will not re-plow the legitimate purposes of the Nampa-Pioneer recycled water project. Pioneer Response, pp. 20-23. Pioneer, likewise, will not reiterate the millions of dollars Nampa citizens (which citizenry includes Pioneer landowners) stand to save, or the wet water benefit they stand to receive. Instead, Pioneer defers to the statements of Nampa and the Municipal Intervenors in these regards, including the public policy and planning choices they implicate. Suffice it to say, there is no "scheme" here, certainly nothing designed to harm the legal entitlements of others, including Riverside no matter how loudly and how often it speaks in such terms.

Riverside's injury allegations are thinner than the pieces of paper comprising this brief. Riverside fails to account for or rebut the general wastewater principles that defeat its conclusory injury allegations. Pioneer Response, pp. 13-18. Worse, Riverside's arguments suggest that Nampa and all other water users, Riverside included, have no control or opportunity in their wastewater—not even that still remaining in their physical control and that which has not been released to commingle with other diffuse sources of water.

Let's not allow ourselves to be fooled into thinking that Riverside is pursuing this water right question as a White Knight for other water users at large. Instead, let's recognize

Riverside's underlying petition for what it is: an attempt to defeat the Nampa-Pioneer recycled water project with the end goal and practical effect of obligating Nampa to continue wasting water to Indian Creek for Riverside's benefit—a concept rebuffed by more than a century of Idaho legal precedent.[3]

Nampa's WWTP effluent flows artificially augment Indian Creek flows. SOF, ¶¶ 27-31. Riverside's Indian Creek-sourced water rights entitle it to the ***natural flow*** of the creek, or the augmented flow of the creek after others upstream of it have lost physical control and dominion over those wastewater spills. But, under no circumstances does the natural flow of Indian Creek include the groundwater-sourced water rights Nampa diverts into its Potable Water System until after Nampa freely and affirmatively disposes of that WWTP effluent to Indian Creek. What is Riverside's "distinct and palpable injury" in this matter, an injury that is not otherwise a "generalized grievance" shared by others? *Miles v. Idaho Power Co.*, 116 Idaho 635, 639-641, 778 P.2d 757, 761-763 (1989).

Riverside's position is nothing more than a complaint that ***it*** will no longer get to use and benefit from Nampa's WWTP effluent while Pioneer will. Nampa's WWTP effluent will be used for the same irrigation purposes just on different lands. It is this "different lands" result that truly irks and motivates Riverside. Under the Nampa-Pioneer recycled water project, Nampa and its citizens, who are also Pioneer landowners, will finally derive benefit from effluent Nampa used to relinquish to others.

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[3] "Affected" is far different than "legally entitled" or "injured." Reply, p. 34. Even if Riverside could compel others to continue wasting water for its benefit—which it cannot—the Idaho Legislature expressly ended the possibility of any such entitlement upon enactment of Idaho Code Section 42-201(8) concerning the situation at issue here: the collection, treatment, and land application-based disposal of municipal effluent in response to state or federal regulatory requirements.

Pioneer maintains its request for a declaratory ruling that Riverside possesses no legally cognizable injury going forward in this matter in the event that Pioneer is required to apply for a water right to implement the parties' Reuse Agreement and the Reuse Permit. Riverside cannot seek declaratory relief in a vacuum and Pioneer is not interested in reserving substantive consideration of Riverside's conclusory injury assertions in a subsequent contested case proceeding.

III.
CONCLUSION

For the foregoing, Pioneer requests that Riverside's *Petition for Declaratory Ruling* be denied in its entirety on the grounds that Pioneer need not obtain a water right to implement the Nampa-Pioneer Reuse Agreement and the related DEQ Reuse Permit.

Pioneer further requests an affirmative declaration that Riverside possesses no legally cognizable injury even should a water right be required of Pioneer. Riverside cannot compel Nampa to waste water to Indian Creek for Riverside's downstream use and benefit.

Pioneer does not request oral argument in this matter.

DATED this 11th day of December, 2020.

SAWTOOTH LAW OFFICES, PLLC

By _____
Andrew J. Waldera
Attorneys for Pioneer Irrigation District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of December, 2020, I caused a true and correct copy of the foregoing **INTERVENOR PIONEER IRRIGATION DISTRICT'S SUR-REPLY BRIEF** to be served by the method indicated below, and addressed to the following:

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BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-01 **SUBSTITUTION OF COUNSEL**

TO: THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO et.al.

YOU ARE HEREBY NOTIFIED That NANCY STRICKLIN, Mason & Stricklin, LLP, is withdrawing as attorney of record in and for the Hayden Area Regional Sewer Board (HARSB) in the above entitled matter, and that henceforth HARSB will be represented by:

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All pertinent pleadings, notices and correspondence shall be forwarded to the address outlined above.

DATED the 4th day of January, 2021.

KEISHA L. OXENDINE
Substituting Attorney

NANCY STRICKLIN
Withdrawing Attorney

CERTIFICATE OF SERVICE

I certify that on this 7th day of January, 2021, a true and correct copy of the foregoing document was filed, served, and copied as shown below.

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/s/ Keisha L. Oxendine

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Kimberle English

Kimberle English

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF RIVERSIDE'S PETITION FOR DECLARATORY RULING REGARDING NEED FOR A WATER RIGHT TO DIVERT WATER UNDER REUSE PERMIT NO. M-255-01	Docket No. P-DR-2020-001 **ORDER ON PETITION FOR DECLARATORY RULING**

BACKGROUND

On February 24, 2020, Riverside Irrigation District ("Riverside") submitted a *Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01* ("Petition") to the Idaho Department of Water Resources ("Department"). Riverside petitions the Department for a declaratory ruling as to the applicability of Idaho Code § 42-201(2) to Reuse Permit No. M-255-01 ("Reuse Permit"). *Petition* at 3. The Reuse Permit was issued by the Idaho Department of Environmental Quality ("DEQ") to the City of Nampa ("Nampa") on January 21, 2020. Under the Reuse Permit, Nampa intends to discharge effluent from its wastewater treatment plant ("wastewater plant") to Phyllis Canal and Pioneer Irrigation District ("Pioneer") will use the effluent to supplement Pioneer's irrigation supply. *Stipulation of Facts by All Parties* ("Facts") ¶¶ 34, 49, 51.

Riverside seeks a declaratory ruling that:

1) Pioneer cannot divert or accept effluent from Nampa or apply Nampa's effluent to land in Pioneer's boundaries under the Reuse Permit without first obtaining a water right.

2) Any attempt by Pioneer or Nampa to divert water under the Reuse Permit to Pioneer without applying for a water right is in contravention to Idaho law.

Petition at 3.

Petitions to intervene were timely filed by Nampa, Pioneer, and Idaho Power Company. Timely petitions to intervene were also filed by the Association of Idaho Cities, the Hayden Area Regional Sewer Board, and the Cities of Boise, Caldwell, Idaho Falls, Jerome, Meridian, Pocatello, Post Falls, and Rupert.

Pursuant to IDAPA 37.01.01.557, the parties submitted *Stipulation of Facts by All Parties* and *Stipulation Regarding Exhibits A-T and Other Evidence*.[1] This *Order* adopts the stipulated facts and exhibits as evidence.

[1] The Parties numbered each exhibit starting with the pleadings. This Order will refer to the pagination as set out in

Pioneer is an Irrigation District which owns water rights to irrigate approximately thirty-four thousand acres of land. *Facts* ¶ 1. Some of the land Pioneer serves is located in north and northwest Nampa. *Facts* ¶ 2. Pursuant to an agreement with Nampa, Pioneer delivers water, from Phyllis Canal and its laterals, to Nampa's non-potable irrigation system. *Facts* ¶ 20; Exhibits D, E, and L.

Nampa is an Idaho municipal corporation and is a municipality and municipal provider under Idaho Code § 42-202B. *Facts* ¶ ¶ 6, 7. Nampa owns and operates two municipal water delivery systems, one for potable water, and one for non-potable irrigation water. *Facts* ¶ 8. Nampa's potable water is exclusively sourced from ground water. *Facts* ¶ 9. Nampa's irrigation delivery system receives water from multiple sources. Approximately sixty percent of the water is sourced from three irrigation districts, one of which is Pioneer. *Facts* ¶ 15. The remaining water is sourced from a combination of surface and ground water rights owned by Nampa. *Facts* ¶ 16.

Sewage generated from residents, businesses, and institutions in Nampa is treated at Nampa's wastewater plant. *Facts* ¶ 23. Currently, Nampa discharges effluent from the wastewater plant to Indian Creek. *Facts* ¶ 27. The discharged effluent is primarily derived from Nampa's potable water system. *Facts* ¶ 25. The water quality of that discharge is regulated by National Pollutant Discharge Elimination System ("NPDES") Permit No. ID0022063. Exhibit J, pp. 132-184. The NPDES Permit establishes a compliance schedule to meet discharge limits for mercury, total phosphorus, copper, and temperature. *Id.* at 141. By September 2026, Nampa must meet the limits for mercury, total phosphorus, and copper. *Id.* at 143. Nampa must meet the temperature limits by September 2031. *Id.* The limitations on total phosphorus and temperature are imposed during the irrigation season. *Id.* at 139, 143.

To meet the NPDES Permit discharge limits, Nampa must upgrade the pollution control systems in the wastewater plant. *Facts* ¶ 38. To reduce the cost of those upgrades, Nampa chose to pursue the Reuse Permit. *Facts* ¶¶ 40-43. To facilitate the Reuse Permit, Nampa and Pioneer entered into a Recycled Water Discharge and Use Agreement ("Reuse Agreement"). Exhibit F. The Reuse Agreement allows Nampa to discharge up to 41 cfs of effluent to Phyllis Canal. *Id.* at 15. In exchange, Pioneer will "handle, manage, and convey [Nampa's effluent] as an integrated part of its irrigation operations." *Id.* at 17. Pioneer also acknowledges that Nampa needs the use of Phyllis Canal for temperature mitigation. *Id.* Pioneer does not have a water right authorizing the use of Nampa's effluent. *Facts* ¶ 35.

Under the Reuse Permit, Nampa will discharge its effluent to Phyllis Canal instead of Indian Creek during the irrigation season. Because irrigation canals are not considered waters of the State, Phyllis Canal is not subject to Idaho's water quality standards. Exhibit H, p. 30. With the proposed upgrades to the wastewater plant, Nampa can treat its sewage to standards established for irrigation but the effluent would not meet the standards for Indian Creek. *Id.* DEQ's analysis of the Reuse Permit application noted that Nampa and Pioneer had sufficiently demonstrated that Nampa's effluent will not return to jurisdictional water of the state. Exhibit H

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the pleadings. In addition, the Parties submitted Exhibits A-F and K-T combined in two pleadings. The page numbering in the pleadings are not separated by exhibit. For ease of reference, this Order will refer to the specific exhibit and when referring to a specific page, provide the page number associated with the pleading.

at 32. Nampa and Pioneer accomplished this demonstration by discussing the plan to install an automated flow control system on 15.0 Lateral. *Id.*; Exhibit J, at 60.

Riverside diverts water from Indian Creek downstream of Nampa's discharge point. *Facts* ¶ 33; Exhibit J, p. 127. During the irrigation season, Riverside diverts most of the flow of Indian Creek into the Riverside Canal. *Facts* ¶ 31. Nampa discharging its effluent to Phyllis Canal, instead of Indian Creek, will reduce the flow of water in Indian Creek.

ANALYSIS

A water right is required to "divert any water from a natural watercourse or apply water to land." Idaho Code § 42-201(2) ("Subsection 2"). However, a municipal provider is not required to obtain a water right for the land application of effluent from a publically owned treatment works, employed in response to regulatory requirements. Idaho Code § 42-201(8) ("Subsection 8"). The question before the Director in this case is whether a water right is needed when a municipality contracts with a third party to land apply the municipality's effluent on land not owned by the municipality. Specifically, does Subsection 8 exempt Pioneer from needing to obtain a water right to land apply the effluent discharged into Phyllis Canal by Nampa, in accordance with the Reuse Agreement and Reuse Permit?

The relevant portions of Subsection 8 state:

> Notwithstanding the provisions of subsection (2) of this section, a municipality or municipal provider ... shall not be required to obtain a water right for the... disposal of effluent from a publicly owned treatment works ... where such... disposal, including land application, is employed in response to state or federal regulatory requirements. If land application is to take place on lands not identified as a place of use for an existing irrigation water right, the municipal provider... shall provide the department of water resources with notice describing the location of the land application, or any change therein, prior to land application taking place.

Riverside offers two overarching arguments that Subsection 8's exemption does not apply in this situation. First, Riverside argues that Subsection 8 only applies to Nampa and not to Pioneer. Second, Riverside argues Pioneer's use of Nampa's effluent constitutes a new diversion and new source of water, implicating Subsection 2. In addition, Riverside argues that, as applied to the Reuse Permit and Reuse Agreement, Subsection 8 is unconstitutional.

Pioneer does not need a water right to land apply Nampa's effluent

Riverside states that "any exemption Nampa may have claimed under subsection (8) evaporates upon discharge to the Phyllis Canal for delivery and use by Pioneer" because Subsection 8 "applies solely to municipalities." *Petitioner's Opening Brief* at 26. Riverside goes further, arguing Subsection 8 does not mention "extending the exemption to supposed 'agents' of the cities." *Riverside's Reply in Support for Petition for Declaratory Ruling* ("Petitioner's Reply") at 24. To address whether or not Pioneer needs a water right to land apply Nampa's effluent, the first question to answer is, does Nampa need a water right to land apply its effluent within Pioneer's place of use?

A "statute should be considered as a whole, and words should be given their plain, usual, and ordinary meanings," and "the Court must give effect to all the words and provisions of the

statute so that none will be void, superfluous, or redundant." *Farber v. Idaho State Ins. Fund*, 147 Idaho 307, 310 (2009). The plain language of Subsection 8 does not limit land application to the service area of a municipality. It does not restrict the land on which water is used. In fact, land application may occur "on lands not identified as a place of use for an existing irrigation water right." Therefore, under Subsection 8, Nampa may land apply its effluent on any land, if it informs the Department the land is not a place of use for an existing irrigation water right. This reasoning leads to the conclusion that Nampa may land apply its effluent within Pioneer's place of use without obtaining a water right.

The next question is whether Pioneer may land apply effluent on Nampa's behalf without obtaining a water right. Nampa suggests it is employing Pioneer as "an agent or contracting party to effectuate its disposal of effluent." *Nampa's Response Brief* at 15. Nampa argues that agents or contractors of exempted entities are also exempt under Subsection 8. *Id.* Riverside argues that Subsection 8's exemption does not apply to agents of the exempted entities and even if they did, Pioneer is not an agent of Nampa. *Petitioner's Reply* at 25.

The characteristics of agency plainly allow an agent of a Subsection 8 exempted entity to benefit from Subsection 8's exemption. "An agent is a person who has been authorized to act on behalf of a principal towards the performance of a specific task or series of tasks." *Humphries v. Becker*, 159 Idaho 728, 735 (2016). An agency relationship is created when a principal expressly, impliedly, or apparently grants the agent authority to conduct certain actions on the principal's behalf. *Id.* "In addition, where an agency relationship exists, the principal has a right to control the agent." *Id.* at 735-736. The Reuse Agreement explicitly addresses that Pioneer will dispose of Nampa's effluent. However, the Reuse Agreement does not give Nampa the right to control Pioneer. For example, "Pioneer authorizes [Nampa] to discharge up to 41 cfs (annual average) of Recycled Water to the Phyllis Canal each year…" but Nampa must "forecast and provide Pioneer the estimated flow rates" during the irrigation season and coordinate and receive Pioneer's approval to discharge to Phyllis canal outside the irrigation season. Exhibit F at 15-17. Because Nampa does not have the right to control Pioneer, there is no formal agency relationship.

Despite absence of a formal agency relationship, Subsection 8's exemption may still apply in this case. The Director agrees with Nampa that Nampa and Pioneer are so intertwined in this matter that Subsection 8's exemption applies to Pioneer. The Reuse Agreement contractually obligates Pioneer to dispose of Nampa's effluent. The Reuse Agreement requires an ongoing relationship between Nampa and Pioneer. Nampa must apprise Pioneer of when it will discharge effluent to Phyllis Canal. Pioneer is obligated to accept up to 41 cfs of effluent from Nampa during the irrigation season. Pioneer is obligated to cooperate with Nampa to obtain permits and approvals.

The Reuse Permit further ties Nampa and Pioneer together. DEQ granted Nampa's Reuse Permit based on its analysis of Pioneer's irrigation operations. Pioneer's place of use is included in the area of analysis. Exhibit H at 17-18. The analysis further considered that Nampa's effluent would be "very diluted by the existing irrigation water" and that "nutrient needs of the crops are greater than that provided by the additional nutrient." Exhibit H at 37-38. To ensure water quality of jurisdictional waters, Nampa and Pioneer will install an automated flow control system on 15.0 Lateral so the effluent will not return to jurisdictional waters. Exhibit J, at 60. Nampa may not have legal control over Pioneer, but both are intimately

involved in the process of land applying Nampa's effluent in response to a regulatory requirement. Given the contractual and regulatory ties between Nampa and Pioneer and under the specific set of facts presented here, the Director concludes Subsection 8's exemption applies and it is not necessary for Pioneer to obtain a separate water right to accept water from Nampa and apply that water to land in the Pioneer district boundaries.

Subsection 2 is not implicated

The majority of its Riversides' briefing explains how Pioneer's use of Nampa's effluent constitutes a new diversion and new source of water, implicating Subsection 2. Accepting Riverside's arguments would ignore the language of Subsection 8. The legislature's inclusion of "notwithstanding," plainly removes Subsection 8 from inclusion in the requirements of Subsection 2. Because Subsection 8 applies in this situation, there is no need to further evaluate Riverside's Subsection 2 arguments.

As applied, Subsection 8 is constitutional

Riverside argues, "[i]f the Director determines that Idaho Code § 42-202(8) applies, and grants Pioneer an exemption under the municipal carveout, Riverside's existing water rights will most certainly be injured, in violation of the Idaho Constitution." *Petitioner's Opening Brief* at 29. Idaho Case law has established that downstream water users cannot compel upstream users to continue wasting water. *Hidden Springs Trout Ranch v. Hagerman Water Users*, 101 Idaho 677, 680-681 (1980). Riverside will be impacted by the proposed use of Nampa's effluent because there will be less water available in Indian Creek without the influx of effluent. However, Riverside is not entitled to Nampa's wastewater. Without that entitlement, there is no injury to Riverside. Without injury, there isn't a violation to the constitution.

CONCLUSION

Subsection 8 exempts municipalities from needing a water right to land apply effluent from a publicly owned treatment works employed in response to regulatory requirements. The Reuse Agreement and Reuse Permit allow Pioneer to land apply Nampa's effluent under the exemption of Subsection 8. In addition, since Riverside is not entitled to Nampa's wastewater, there is no injury to Riverside's water rights and no constitutional violation.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that Pioneer may accept effluent from Nampa and apply it within Pioneer's boundaries under the Reuse Permit without obtaining a water right.

DATED this 3rd day of May 2021.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of May 2021, I served a true and correct copy of the foregoing document on the following by the method(s) indicated:

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Kimberle English
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EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "**Final Order**" issued by the department pursuant to section 67-5246, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4), Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

i. A hearing was held,
ii. The final agency action was taken,
iii. The party seeking review of the order resides, or
iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

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5/28/2021 12:43 PM
Third Judicial District, Canyon County
Chris Yamamoto, Clerk of the Court
By: Marah Meyer, Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RIVERSIDE IRRIGATION DISTRICT,

Petitioner,

vs.

THE IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN in his official capacity as Director of the Idaho Department of Water Resources,

Respondents,

IN THE MATTER OF REUSE PERMIT NO. M-255-01, IN THE NAME OF THE CITY OF NAMPA

Case No. CV CV14-21-05008

NOTICE OF REASSIGNMENT

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, declares that all petitions for judicial review made pursuant to I.C. § 42-1701A of any decision from the Department of Water Resources be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District, and

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, vests in the Snake River Basin Adjudication District Court the authority to adopt procedural rules necessary to implement said order, and

WHEREAS ON July 1, 2010, the Snake River Basin Adjudication District Court issued an Administrative Order regarding the Rule of Procedure Governing Petitions for Judicial Review or Actions for Declaratory Relief of Decisions from the Idaho Department of Water Resources.

//

THEREFORE THE FOLLOWING ARE HEREBY ORDERED:

1. The above-matter is hereby assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District for disposition and further proceedings.

2. Pursuant to the SRBA Court's Administrative Order Regarding Transition to Electronic Filing System dated December 3, 2020, all further documents filed or otherwise submitted in this matter are to continue to be filed electronically in this County in accordance with the procedures governing Idaho's electronic filing system.

CLERK OF THE COURT

By:_____

Deputy Clerk

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Attorneys for Riverside Irrigation District

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RIVERSIDE IRRIGATION DISTRICT, Petitioner, vs. THE IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN in his official capacity as Director of the Idaho Department of Water Resources, Respondents, IN THE MATTER OF REUSE PERMIT NO. M-255-01, IN THE NAME OF THE CITY OF NAMPA	Case No. CV CV14-21-05008 **Fee Category L.3** **NOTICE OF APPEAL AND PETITION FOR JUDICIAL REVIEW OF AGENCY ACTION**

COMES NOW, the Petitioner, the Riverside Irrigation District ("Riverside"), by and through its counsel of record, Barker Rosholt & Simpson, LLP and hereby files this Petition seeking judicial review of a final agency action of the Director of the Idaho Department of Water Resources.

//

STATEMENT OF THE CASE

1. This Petition is a civil action filed pursuant to Idaho Code §§ 67-5270 and 67-5279 seeking judicial review of the Order on Petition for Declaratory Ruling entered by the Director of the Department of Water Resources on May 3, 2021, in the above-referenced contested case.

JURISDICTION AND VENUE

2. This petition is authorized by Idaho Code §§ 67-5270 and 67-5279.

3. This Court has jurisdiction over this action pursuant to Idaho Code §§ 42-1701A and 67-5272.

4. Venue lies in this Court pursuant to Idaho Code § 67-5272 and the Snake River Basin Adjudication Court's July 1, 2010, *Administrative Order Adopting Procedures for the Implementation of the Idaho Supreme Court Administrative Order dated December 9, 2009.* Petitioner Riverside's primary place of business lies in Canyon County, Idaho, and the real property that was the subject of the agency decision is located in Canyon County, Idaho.

5. Pursuant to the Idaho Supreme Court's *Administrative Order* issued on December 9, 2009 "all petitions for judicial review of any decision regarding administration of water rights from the Department of Water Resources shall be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District." The SRBA Court's procedures instruct the clerk of the district court in which the petition is filed to issue a *Notice of Reassignment*. The Petitioners have attached a copy of the SRBA Court's *Notice of Reassignment* form for the convenience of the clerk.

6. The Director's Order on Petition for Declaratory Ruling was issued on May 3, 2021. The Director's Order on Petition for Declaratory Ruling is a final agency action subject to

review pursuant to Idaho Code § 67 5270(3). This Petition is timely as it is filed within 28 days of the date of service of a final order. Idaho Code § 67 5273(2).

PARTIES

7. Petitioner Riverside is a duly organized and operating non-profit corporation operating in the State of Idaho as an irrigation delivery entity.

8. Respondent, Idaho Department of Water Resources is a state agency with its main office located at 322 E. Front Street, Boise, Idaho. Respondent, Gary Spackman, is the Director of the Idaho Department of Water Resources.

STATEMENT OF INITIAL ISSUES

9. Petitioners assert the following issues on judicial review:

a. Whether the Director committed reversible error by interpreting I.C. § 42-201(8) as a matter of law to include and authorize water use by Pioneer Irrigation District without a water right, when Pioneer is not a municipality or municipal provider as defined in Idaho Code § 42-202B(4) or (5)?

b. Whether the Director improperly concluded as a matter of fact and law that Pioneer was acting on behalf of the City of Nampa when Pioneer claimed that it would be applying water for the beneficial use of Pioneer's water right users?

c. Whether the Director committed reversible error by concluding that Pioneer Irrigation District is not required to obtain a water right under Idaho Code § 42-201(2) when Pioneer diverts water without a water right and puts it to beneficial use on Pioneer lands outside the City of Nampa and/or the City of Nampa's Service Area?

d. Whether the Director committed reversible error by concluding that, as applied, Riverside has no standing to contend that the Director's interpretation of Idaho

Code § 42-201(2) violates Article XV, § 3 of the Idaho Constitution?

e. Whether the Director committed reversible error by failing to acknowledge that Nampa's water rights contain conditions precluding the use of its water rights for irrigation when surface water is available and failing to acknowledge that surface water is available for the lands where Pioneer intends to apply this water, and whether Pioneer's scheme to place Nampa's water rights on Pioneer's irrigated land as an additional water supply for lands with surface water rights is therefore an enlargement of the water rights?

f. Whether the Director committed reversible error by essentially authorizing Pioneer to capture and put to use a third party's waste water without a water right.

g. Whether the Director committed reversible error by failing to apply the Supreme Court's holding in *A&B Irrigation District v. Aberdeen-American Falls Ground Water District*, 141 Idaho 746, 118 P.3d 78 (2005) as to the source of the water at issue.

AGENCY RECORD

10. Judicial review is sought of the Director's May 3, 2021, Order on Petition for Declaratory Ruling.

11. Petitioners request that all documents filed with the Department, and all exhibits, be included in the agency record.

12. The estimated cost of the preparation of the agency record is $20.00, according to the agency, which sum has been paid to the Idaho Department of Water Resources.

13. Service of this Notice of Appeal and Petition for Judicial Review has been made on the Respondents at the time of filing of this Petition.

//

JUDICIAL REVIEW I.R.C.P. 84(c) INFORMATION

14. **Name of Agency for Which Judicial Review is Sought:** Idaho Department of Water Resources, an executive department existing under the laws of the state of Idaho pursuant to Idaho Code § 42-1701 et seq., with its state office located at 322 E. Front St., Boise, Ada County, Idaho 83702.

15. **Title of District Court to Which Petition is Taken:** In the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon.

16. **Case Caption and Action for Which Judicial Review is Sought**: In the Matter of Riverside's Petition for Declaratory Ruling Regarding Need for a Water Right to Divert Water Under Reuse Permit No. M-255-01; Docket No. P-DR-2020-001.

17. **Hearing Recording:** A hearing was not held in this matter, as the matter was submitted to the Director on a Stipulated Statement of Facts. Accordingly, there is no hearing recording.

18. **Statement of Issues of Judicial Review:** Whether the Director committed reversible error in his Order on Petition for Declaratory Ruling Regarding the Need for a Water Right to Divert Water Under a Reuse Permit.

19. **Designation of Whether a Transcript is Required:** A hearing transcript is not being requested as this matter was submitted to the hearing officer based on a Stipulated Statement of Facts.

20. **Attorney Certification:** I, Albert P Barker, counsel for the Petitioner, certify the following: 1) service of this petition has been made upon the Department; and 2) that the clerk of the agency has been paid the estimated fee for the preparation of record after my assistant contacted Megan Jenkins of the Department, who provided the estimate of $20.00, which I then

paid by mailing a check for the amount to the Department's state office, located at 322 E. Front St., Boise, Idaho 83702.

DATED this 28th day of May 2021.

BARKER ROSHOLT & SIMPSON LLP

/s/ Albert P. Barker
Albert P. Barker
Sarah W. Higer
Attorneys for Petitioner Riverside Irrigation District

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May 2021, I caused to be served a true and correct copy of the foregoing **Notice of Appeal and Petition for Judicial Review of Agency Action** by the method indicated below, and addressed to each of the following:

Idaho Department of Water Resources 322 E. Front St. P.O. Box 83720 Boise, ID 83700-0098	☐ ☐ ☐ ☒ ☒	U. S. Mail Hand Delivered Overnight Mail iCourt E-mail
Director Gary Spackman Idaho Department of Water Resources 322 E. Front St. P.O. Box 83720 Boise, ID 83700-0098 Gary.Spackman@idwr.idaho.gov	☐ ☐ ☐ ☒ ☒	U. S. Mail Hand Delivered Overnight Mail iCourt E-mail
Christopher H. Meyer Michael P. Lawrence Givens Pursley LLP 601 W. Bannock Street P.O. Box 2720 Boise, ID 83701-2720 chrismeyer@givenspursley.com mpl@givenspursley.com	☐ ☐ ☐ ☐ ☒	U. S. Mail Hand Delivered Overnight Mail iCourt E-mail
Robert L. Harris Holden, Kidwell, Hahn & Crapo P.O. Box 50130 1000 Riverwalk Drive, Ste. 200 Idaho Falls, ID 83405 rharris@holdenlegal.com	☐ ☐ ☐ ☐ ☒	U. S. Mail Hand Delivered Overnight Mail iCourt E-mail
Jayme B. Sullivan Deputy City Attorney Boise City Attorney's Office 150 N. Capitol Blvd. P.O. Box 500 Boise, ID 83701-0500 jsullivan@cityofboise.org	☐ ☐ ☐ ☐ ☒	U. S. Mail Hand Delivered Overnight Mail iCourt E-mail

Nancy Stricklin Mason & Stricklin, LLP P.O. Box 1832 Coeur D'Alene, ID 83816 nancy@mslawid.com	☐ ☐ ☐ ☐ ☒	U. S. Mail Hand Delivered Overnight Mail iCourt E-mail
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Chris Bromley Candice McHugh McHugh Bromley, PLLC 380 S. 4th Street, Ste. 103 Boise, ID 83720 cbromley@mchughbromley.com cmchugh@mchughbromley.com	☐ ☐ ☐ ☐ ☒	U. S. Mail Hand Delivered Overnight Mail iCourt E-mail
Andrew J. Waldera Sawtooth Law Offices, PLLC 1101 W. River Street, Suite 110 P.O. Box 7985 Boise, ID 83707 andy@sawtoothlaw.com	☐ ☐ ☐ ☐ ☒	U. S. Mail Hand Delivered Overnight Mail iCourt E-mail
John K. Simpson Barker Rosholt & Simpson 1010 W. Jefferson St., Ste. 102 P.O. Box 2139 Boise, ID 83701-2139 jks@idahowaters.com jlw@idahowaters.com	☐ ☐ ☐ ☐ ☒	U. S. Mail Hand Delivered Overnight Mail iCourt E-mail

/s/ Albert P. Barker
Albert P. Barker

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RIVERSIDE IRRIGATION DISTRICT, Petitioner, vs. THE IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN in his official capacity as Director of the Idaho Department of Water Resources, Respondents. IN THE MATTER OF REUSE PERMIT NO. M-225-01, IN THE NAME OF THE CITY OF NAMPA	Case No. CV14-21-05008 **PROCEDURAL ORDER**

A *Petition for Judicial Review* was filed in the above-entitled district court seeking judicial review of an order issued by the Director of the Idaho Department of Water Resources ("Department" or "agency"). This *Order*, together with Rule 84, Idaho Rules of Civil Procedure, (I.R.C.P.), applicable statutes, and the *Administrative Order Regarding Transition to Electronic Filing System* issued by this Court on December 3, 2020, govern all proceedings before the Court.[1]

THEREFORE, THE FOLLOWING ARE HEREBY ORDERED:

1. **Petition for Judicial Review and Reassignment of Case**: The *Petition* was filed on May 28, 2021. The case was reassigned by the clerk of the court to this Court.

[1] A copy of the Court's *Administrative Order Regarding Transition to Electronic Filing System* is attached as Exhibit A.

2. **Appearances by persons or entities who were a party to the underlying administrative proceeding but who were not made a named party in the *Petition for Judicial Review***: Where a person or entity who was a party to the underlying administrative proceeding is not made a named party in the *Petition*, and is not otherwise a Petitioner, such person or entity may file a *Notice of Appearance* in this matter within fourteen (14) days from the issuance of this *Procedural Order*. This Court will treat the *Notice of Appearance* as a *Motion to Intervene* and will treat the party filing the *Notice of Appearance* as an Intervenor.[2] Under such circumstances, the Court will automatically issue an order granting the *Motion to Intervene* unless one or more parties to the action files an opposition to the *Motion* within 10 days of the filing of the *Notice of Appearance*. A person or entity not a party to the underlying administrative proceeding who desires to participate in this action, and is not otherwise a Petitioner, must proceed in accordance with Idaho Appellate Rule 7.1.

3. **Stays**: Unless provided for by statute, the filing of a petition or cross petition does not automatically stay the proceedings and enforcement of the action before the Department. I.C. § 67-5274. Any application or motion for stay must be made in accordance with I.R.C.P. 84(m).

4. **Form of Review**: Pursuant to I.R.C.P. 84(e)(1), when judicial review is authorized by statute, judicial review shall be based upon the record created before the Department rather than as a trial de novo, unless the statute or the law provides for the procedure or standard. If the statute provides that the district court may take additional evidence upon judicial review, it may order the same on its own motion or the motion of any party. If the statute provides that review is de novo, the appeal shall be tried in the district court on any and all issues, on a new record. Pursuant to I.R.C.P. 84(e)(2), the scope of review on petition from the Department to the district court shall be as provided by statute.

5. **Preparation of Agency Record; Payment of Fees**: Pursuant to I.R.C.P. 84(f), when the statute provides what shall be contained in the official record of the agency upon judicial review, the Department shall prepare the record as provided by statute. Otherwise, the documents listed in paragraph (3) of I.R.C.P. 84(f) shall constitute the agency record for review. Petitioner (and cross-petitioner) shall pay all fees as required for preparation of the agency record in accordance with I.R.C.P. 84(f)(4). **The clerk of the Department shall lodge the record with the Department within 14 days of the entry of this *Order*, or no later than June 17, 2021.** Any extension in time for preparation of the agency record shall be applied for by the agency to the district court.

6. **Preparation of Transcript; Payment of Fee**: It is the responsibility of the petitioner (or cross-petitioner as the case may be) to timely arrange and pay for preparation of all portions of the transcript reasonably necessary for review, if any. Pursuant to I.R.C.P. 84(g), the

[2] The parties should note that in such instances the Court will treat the *Notice of Appearance* as a *Motion to Intervene* for housekeeping purposes. In doing so, it is the Court's intent to have the record in this matter clearly reflect which persons and/or entities are participants in this action. It is also the Court's intent to have the caption of this matter properly reflect all those parties who are participating in this action and to identify in what capacity those parties are participating (i.e., Petitioner, Respondent, or Intervenor).

responsible party shall contact the agency clerk to determine the estimated cost of the transcript, and pay the estimated cost in accordance with I.R.C.P. 84(g)(1)(A) or (2)(A) as the case may be. **The transcript, if one is requested, shall be lodged with the Department within 14 days of the entry of this *Order*, or no later than June 17, 2021.** The transcriber may apply to the district court for an extension of time, for good cause shown.

7. **Settlement of Transcript and Record**: Pursuant to I.R.C.P. 84(j), and unless otherwise provided by statute, upon receipt of the transcript and upon completion of the record, the Department shall mail or deliver notice of lodging of transcript and record to all attorneys of record or parties appearing in person and to the district court. The parties shall have 14 days from the date of mailing of the notice to pick up a copy of the transcript and agency record and to object to the transcript or record. All fees for the preparation of the transcript and record shall be paid by the responsible party at or before the pick-up of the agency record and transcript. Any objection to the record shall be determined by the Department within 14 days of the receipt of the objection and the decision on the objection shall be included in the record on petition for review. Upon the failure of the party to object within 14 days, the transcript and record shall be deemed settled. The settled record and transcript shall be lodged with the district court no later than **July 15, 2021.**

8. **Augmentation of the Record – Additional Evidence Presented to District Court – Remand to Agency to Take Additional Evidence**: Pursuant to I.R.C.P. 84(l) the agency record and/or transcript on review may be augmented upon motion to this court by a party within 21 days of the filing of the settled transcript and record in the manner prescribed by Idaho Appellate Rule (I.A.R.) 30. The taking of additional evidence by the district court and/or agency on remand shall be governed by statute or I.R.C.P. 84(l).

9. **Briefs and Memoranda**: The petitioner's brief shall be filed with the clerk of the court within 35 days after lodging of the settled transcript and record with the district court. The respondent's (and cross-petitioner's brief) shall be filed within 28 days after service of petitioner's brief. Any reply brief shall be filed within 21 days after service of respondent's brief. The organization and content of briefs shall be governed by I.A.R. 35 and 36. Pursuant to I.R.C.P. 84(p) only one (1) original signed brief may be filed with the court and copies shall be served on all parties.

10. **Extension of Time**: Motions to extend the time for filing a brief or modify order of briefing shall be submitted in conformity with I.A.R. 34(e). All other requests for extension of time shall be submitted in conformity with I.A.R. 46.

11. **Motions**: All motions shall be submitted in conformity with I.R.C.P. 84(o) and shall be heard without oral argument unless ordered by the Court.

12. **Oral Argument**: Oral argument will be heard **October 21, 2021, at 1:30 p.m. (Mountain Time)** at the Snake River Basin Adjudication District Court, 253 3rd Avenue North, Twin Falls, Idaho. Oral argument will be conducted via Zoom with instructions to be provided to the parties at a later date. The form and order of argument shall be governed by I.A.R. 37.

13. **Judgment or Decision**: The Court's decision will be by written memorandum as required by I.R.C.P. 84(t)(1). In compliance with I.R.C.P. 54(a), as amended effective July 1, 2010, a separate judgment will also issue contemporaneously therewith. Pursuant to I.R.C.P. 84(t)(2), if no petition for rehearing is filed the time for appeal to the Idaho Supreme Court shall begin to run after the date of the filing stamp of the clerk of the court appearing on the judgment. If a petition for rehearing is filed, the time for appeal shall begin to run after the date of the filing stamp of the clerk of the court appearing on either an order denying rehearing or on any modified judgment.

14. **Petitions for Rehearing:** Petitions for rehearing shall be governed by the time standards and procedures of I.A.R. 42. If rehearing is granted, the Court will issue an order granting same and setting forth a briefing schedule for responsive briefing, a reply, and oral argument. Unless otherwise ordered, the brief filed in support of rehearing will be treated as the opening brief.

15. **Remittitur**: If no notice of appeal to the Idaho Supreme Court is filed within forty-two (42) days after filing of the Court's written decision, the clerk shall issue a *remittitur* remanding the matter to the agency as provided in I.R.C.P. 84(t)(4). The Court will then notify the clerk of the district court where the petition was originally filed regarding completion of the case.

16. **Failure to Comply**: Failure by either party to timely comply with the requirement of this ***Order*** or applicable provisions of the Idaho Rules of Civil Procedure or Idaho Appellate Rules, if applicable, shall be grounds for imposition of sanctions, including, but not limited to the allowance of attorney's fees, striking of briefs, or dismissal of the appeal pursuant to I.R.C.P. 11 and 84(n) and I.A.R. 11.1 and 21.

Dated June 3, 2021

ERIC J. WILDMAN
District Judge

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS.

RE: PETITIONS FOR JUDICIAL REVIEW OR ACTIONS FOR DECLARATORY JUDGMENT OF DECISION FROM THE IDAHO DEPARTMENT OF WATER RESOURCES	))))))	**ADMINISTRATIVE ORDER REGARDING TRANSITION TO ELECTRONIC FILING SYSTEM**

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, declares that all petitions for judicial review made pursuant to Idaho Code § 42-1701A of any decision from the Department of Water Resources be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District, and

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, vests in the Snake River Basin Adjudication District Court of the Fifth Judicial District the authority to adopt procedural rules necessary to implement said Order, and

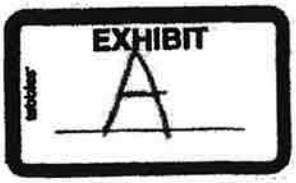
WHEREAS on July 1, 2010, the Court entered an *Administrative Order Adopting Procedures for the Implementation of the Idaho Supreme Court Administrative Order dated December 9, 2009*, and

WHEREAS, the Idaho Courts have transitioned to a new electronic filing system as part of Idaho's larger effort to modernize the State's court system.

THEREFORE, THE FOLLOWING ARE HEREBY ORDERED:

1. As of the date of this *Order*, any petition for judicial review pursuant to Idaho Code § 42-1701A, or an action for declaratory judgment, of any decision from the Idaho Department of Water Resources must be filed electronically with the appropriate County using Idaho's electronic filing system. This includes fee category L.3.a. filings. Such filings must be made in accordance with Idaho's Rules for Electronic Filing and Service.

2. The clerk of the district court in the county where the action is filed will reassign the case to the presiding judge of the Snake River Basin Adjudication District Court. All filings made subsequent to reassignment are to continue to be filed electrically in the County where the action was filed in accordance with the procedures governing Idaho's electronic filing system.



3. This *Order* applies to petitions for judicial review or actions for declaratory judgment filed after its issuance. It does not affect the processing of petitions for judicial review or actions for declaratory judgment filed prior to its issuance.

4. This *Order* does not apply to or affect any proceeding for the general adjudication of water rights pending before the Snake River Basin Adjudication District Court. For rules of procedure governing such adjudications, please see the Court's website at www.srba.idaho.gov.

5. The Court's *Administrative Order Adopting Procedures for the Implementation of the Idaho Supreme Court Administrative Order dated December 9, 2009* is superseded by this *Order* and is hereby withdrawn.

DATED this 3rd day of December, 2020.

ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF SERVICE

I certify that on this day I served a copy of the attached to:

Albert P. Barker Sarah W. Higer BARKER ROSHOLT & SIMPSON PO Box 2139 Boise ID 83701-2139 apb@idahowaters.com swh@idahowaters.com	[X] By E-mail [ ] By mail [ ] By fax (number) [ ] By overnight delivery / FedEx [ ] By personal delivery
Director Gary Spackman Idaho Department of Water Resources 322 E. Front St. P.O. Box 83720 Boise, ID 83700-0098 Gary.Spackman@idwr.idaho.gov	[X] By E-mail [ ] By mail [ ] By fax (number) [ ] By overnight delivery / FedEx [ ] By personal delivery
Idaho Department of Water Resources 322 E. Front St. P.O. Box 83720 Boise, ID 83700-0098 Gary.Spackman@idwr.idaho.gov	[X] By E-mail [ ] By mail [ ] By fax (number) [ ] By overnight delivery / FedEx [ ] By personal delivery

Dated: 6-3-21

Clerk of the Court

By _____
Deputy Clerk

LAWRENCE G. WASDEN
Attorney General

DARRELL G. EARLY
Deputy Attorney General
Chief, Natural Resources Division

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Attorneys for the Respondents

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RIVERSIDE IRRIGATION DISTRICT,

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN in his official capacity as Director of the Idaho Department of Water Resources,

Respondents

IN THE MATTER OF REUSE PERMIT NO. M-225-01, IN THE NAME OF THE CITY OF NAMPA

Case No. CV14-21-05008

NOTICE OF APPEARANCE

NOTICE IS HEREBY GIVEN that GARRICK BAXTER, Deputy Attorney General, of the Idaho Department of Water Resources enters an appearance as counsel of record for Respondents Idaho Department of Water Resources and Director Gary Spackman. All filings and correspondence should be delivered to Respondents' counsel at the address above, or electronically through the iCourts system.

DATED this 8th day of June, 2021.

/s/ Garrick Baxter
GARRICK BAXTER
Deputy Attorney General IDWR

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of June, 2021, I caused to be served a true and correct copy of the foregoing by iCourts:

Albert P. Barker, ISB #2867
Sarah W. Higer, ISB #8012
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson St., Ste. 102
P.O. Box 2139
Boise, ID 83701-2139
apb@idahowaters.com
swh@idahowaters.com

/s/ Garrick Baxter
GARRICK BAXTER
Deputy Attorney General IDWR

Filed: 06/14/2021 at 8:30 AM.
Third Judicial District, Canyon County
Chris Yamamoto, Clerk of the Court
By: *Marah Meyer*, Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

Riverside Irrigation District Petitioner, vs. The Idaho Department of Water Resources,Gary Spackman Respondent.	Case No. CV14-21-05008 Notice of Reassignment SRBA

WHEREAS Idaho Supreme Court Administrative Order dated December 9, 2009, declares that all petitions for judicial review made pursuant to I.C. § 42-1701A of any decision from the Department of Water Resources be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District,

THEREFORE IT IS HEREBY ORDERED that the above-matter is hereby assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District for disposition and further proceedings.

Chris Yamamoto
Clerk of the Court

Dated: 06/14/2021

By: *Marah Meyer*
Deputy Clerk

CERTIFICATE OF SERVICE

I certify that on this day I served a copy of the attached to:

Judge Wildman
Paul Harrington

(X) Odyssey Queue
(X) pharrington@idcourts.net

Chris Yamamoto
Clerk of the Court

Dated: 06/14/2021

By: *Marah Meyer*
Deputy Clerk

LAWRENCE G. WASDEN
Attorney General

DARRELL G. EARLY
Deputy Attorney General
Chief, Natural Resources Division

GARRICK BAXTER #6301
MEGHAN CARTER #8863
SEAN COSTELLO #8743
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Attorneys for the Respondents

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RIVERSIDE IRRIGATION DISTRICT,

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN in his official capacity as Director of the Idaho Department of Water Resources,

Respondents.

IN THE MATTER OF REUSE PERMIT NO. M-225-01, IN THE NAME OF THE CITY OF NAMPA

Case No. CV14-21-05008

MOTION FOR EXTENSION OF TIME TO LODGE AGENCY RECORD

COMES NOW Respondent, the Idaho Department of Water Resources ("IDWR"), by and through its undersigned attorney of record, and moves the Court pursuant to I.R.C.P. 84(k) and 84(o) for an extension of time to lodge the agency record with the agency.

Respondent's Motion for Extension of Time to Lodge the Agency Record is based upon the following:

1. Pursuant to this Court's Order of June 3, 2021, the agency record in this matter is due to be lodged with the agency on or before June 17, 2021.

2. Due to staff work load, IDWR requires additional time to lodge it with the agency.

3. IDWR reasonably expects that it will be able to lodge the agency record with the agency on or before July 16, 2021.

Accordingly, Respondent requests an order from the Court extending the time to lodge the agency record with the agency to July 16, 2021 consistent with the foregoing.

DATED this 16th day of June, 2021.

LAWRENCE G. WASDEN
Attorney General

DARRELL G. EARLY
Chief, Natural Resources Division

/s/ Sean Costello
SEAN COSTELLO
Deputy Attorneys General
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of June, 2021, I caused a true and correct copy of the foregoing document to be filed with the Court and served on the following parties by iCourts e-service:

ALBERT P BARKER
SARA HIGER
apb@idahowaters.com
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CHARLES HONSINGER
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/s/ Sean Costello
SEAN COSTELLO
Deputy Attorneys General

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RIVERSIDE IRRIGATION DISTRICT, Petitioner, vs. THE IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN in his official capacity as Director of the Idaho Department of Water Resources, Respondents. IN THE MATTER OF REUSE PERMIT NO. M-225-01, IN THE NAME OF THE CITY OF NAMPA	Case No. CV14-21-05008 **ORDER GRANTING MOTION FOR EXTENSION OF TIME**

On June 3, 2021, the Court entered a *Procedural Order* in this matter. It set June 17, 2021, as the deadline to lodge the agency record with the agency. On June 16, 2021, the Respondents filed a *Motion* requesting an extension of time in which to lodge the agency record with the agency to July 16, 2021. For good cause appearing, and in an exercise of discretion, the Court will grant the *Motion.*

THEREFORE, BASED ON THE FOREGOING, THE FOLLOWING ARE HEREBY ORDERED:

1. The Respondents' *Motion for Extension* is hereby granted.

2. The deadline to lodge the agency record with the agency is hereby extended to July 16, 2021.

IT IS SO ORDERED.

Dated June 23, 2021

ERIC J. WILDMAN
District Judge

CERTIFICATE OF SERVICE

I certify that on this day I served a copy of the attached to:

Gary Spackman Director – Idaho Department of Water Resources PO Box 83720 Boise ID 83720-0093 gary.spackman@idwr.idaho.gov	[X] By E-mail [ ] By mail [ ] By fax (number) [ ] By overnight delivery / FedEx [ ] By personal delivery
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Dated: 10-24-21

Clerk of the Court
By _____
Deputy Clerk

LAWRENCE G. WASDEN
Attorney General

DARRELL G. EARLY
Chief, Natural Resources Division

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Attorneys for Respondent

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RIVERSIDE IRRIGATION DISTRICT, Petitioner, v. IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN in his official capacity as Director of the Idaho Department of Water Resources, Respondents	**Case No. CV14-21-05008** **NOTICE OF LODGING AGENCY RECORD WITH THE AGENCY**
IN THE MATTER OF REUSE PERMIT NO. M-225-01, IN THE NAME OF THE CITY OF NAMPA	

TO: CLERK OF THE ABOVE COURT AND ALL PARTIES OR THEIR COUNSEL OF RECORD:

In accordance with I.R.C.P. 84(j), YOU ARE HEREBY NOTIFIED that the agency record, having been prepared pursuant to I.R.C.P. 84(f) and (g), is lodged with the agency for the purpose of settlement.

A copy of the agency record is contained on one (1) DVD. The Petitioner has pre-paid $20.00 for preparation of the record. The agency will mail a copy of the DVD to all parties of record subsequent to this filing.

The parties have fourteen (14) days from the date of this notice to file any objections to the transcript and record. The agency's decisions on any objection timely filed along with all evidence, exhibits, and written presentation on the objection shall be included in the record. If no objections are filed, the transcript and record will be deemed settled after which the agency will lodge the settled record with the District Court pursuant to I.R.C.P. 84(k).

DATED this 8TH day of July, 2021.

LAWRENCE G. WASDEN
Attorney General

DARRELL G. EARLY
Chief, Natural Resources Division

/s/ Sean Costello
SEAN COSTELLO
Deputy Attorney General
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8TH day of July, 2021, I caused a true and correct copy of the foregoing *NOTICE OF LODGING OF AGENCY RECORD WITH THE AGENCY* is e-filed with iCourt to the following:

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/s/ Sean Costello
SEAN COSTELLO
Deputy Attorney General
Idaho Department of Water Resources

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Attorneys for Respondents

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RIVERSIDE IRRIGATION DISTRICT, Petitioner, v. IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN in his official capacity as Director of the Idaho Department of Water Resources, Respondents.	**Case No. CV14-21-05008** **ORDER SETTLING THE AGENCY RECORD**
IN THE MATTER OF REUSE PERMIT NO. M-225-01, IN THE NAME OF THE CITY OF NAMPA	

TO: THE DISTRICT COURT AND THE PARTIES OF RECORD

On July 8, 2021, the Idaho Department of Water Resources ("Department") served its *Notice of Lodging Agency Record with the Agency* ("Notice") in this matter pursuant to I.R.C.P 84(j).[1] The Notice gave the parties fourteen (14) days from the date of the Notice to file any objection to the agency record. No objections to the agency record have been filed with the Department.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that, with no objections to the agency record having been filed, the agency record is deemed settled.

IT IS FURTHER ORDERED that, pursuant to I.R.C.P. 84(j), this order shall be included in the record on the petition for judicial review. The Department shall provide the parties with a copy of the agency record on one (1) DVD consistent with this order.

DATED this 27th day of July 2021.

GARY SPACKMAN
Director
Idaho Department of Water Resources

[1] No hearing was held so no transcript was requested.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July 2021, I caused to be served a true and correct copy of the foregoing by iCourt e-filing to:

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Attorneys for Respondents

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RIVERSIDE IRRIGATION DISTRICT, Petitioner, v. IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN in his official capacity as Director of the Idaho Department of Water Resources, Respondents.	**Case No. CV14-21-05008** **AGENCY'S CERTIFICATE OF RECORD**
IN THE MATTER OF REUSE PERMIT NO. M-225-01, IN THE NAME OF THE CITY OF NAMPA	

TO: THE DISTRICT COURT AND THE PARTIES OF RECORD

I, Gary Spackman, Director of the Idaho Department of Water Resources, do hereby certify that the above and foregoing record in the above-entitled matter was compiled under my direction, and is a true and correct record of the pleadings, papers and proceedings therein as shown in the index to this record.

IN WITNESS WHEREOF, I have hereunto set by hand and affixed the seal of the Department of Water Resources at Boise, Idaho this 27th day of July 2021.

Gary Spackman

GARY SPACKMAN
Director
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July 2021, I caused to be served a true and correct copy of the foregoing by iCourt e-filing to:

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Attorneys for Respondents

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

RIVERSIDE IRRIGATION DISTRICT, Petitioner, v. IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN in his official capacity as Director of the Idaho Department of Water Resources, Respondents.	**Case No. CV14-21-05008** **NOTICE OF LODGING THE SETTLED AGENCY RECORD WITH DISTRICT COURT**
IN THE MATTER OF REUSE PERMIT NO. M-225-01, IN THE NAME OF THE CITY OF NAMPA	

TO: THE DISTRICT COURT AND THE PARTIES OF RECORD

On July 8, 2021, the Idaho Department of Water Resources ("Department") served its *Notice of Lodging Agency Record with the Agency* ("Notice") in this matter pursuant to I.R.C.P 84(j).[1] The Notice gave the parties fourteen (14) days from the date of the Notice to file any objection to the agency record. No objections to the agency record have been filed with the Department.

On July 27, 2021, the Director issued his *Order Settling the Agency Record*. The agency record is deemed settled pursuant to I.R.C.P. 84(j).

YOU ARE HEREBY NOTIFIED that the settled record is being filed with the District Court pursuant to I.R.C.P. 84(k), by providing one (1) DVD dated July ___, 2021, in OCR format. Copies of the DVD are also being mailed with this Notice to the parties.

DATED this 27th day of July 2021.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

SEAN COSTELLO
Deputy Attorney General
Idaho Department of Water Resources

[1] No hearing was held so no transcript was requested.

CERTIFICATE OF SERVICE

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