Response to Comments on the National Pollutant Discharge Elimination System (NPDES) Permit for

City of Boise,
Ada County Highway District,
Boise State University,
Garden City,
Ada County Drainage District #3,
and the Idaho Transportation Department-District #3
Municipal Separate Storm Sewer Systems (MS4s),

NPDES Permit No. IDS-027561

December 11, 2012 - Final

NPDES Permits Unit
Office of Water and Watersheds
U.S. Environmental Protection Agency, Region 10

Table of Contents

Introduction

On October 28, 2011, the U.S. Environmental Protection Agency Region 10 (EPA) proposed to reissue a National Pollutant Discharge Elimination System (NPDES) Permit for discharges from the municipal separate storm sewer systems (MS4s) owned or operated by the City of Boise (Boise), Ada County Highway District (ACHD), Ada County Drainage District #3 (DD3), Boise State University (BSU), Garden City, and Idaho Transportation Department-District 3 (ITD3). All six entities are referred to as "the Permittees," and NPDES Permit #IDS027561 is referred to as "the Permit." The public comment period ended on January 30, 2012.

This document responds to public comments received on the Permit as proposed, and is organized in the order the topic or issue is found in the Permit. In some cases, the exact comment is presented. In other cases, portions of the comment are excerpted or summarized. Comments were received from the Permittees (as a group); BSU; DD3; Idaho Rivers United (IRU); and the Idaho Department of Environmental Quality (IDEQ). The Administrative Record contains complete copies of each comment letter. Where indicated, EPA has made changes to the final Permit.

Several comments referred to EPA's basis for the proposed Permit conditions in its Fact Sheet accompanying the proposed Permit. It is EPA policy to not revise its original Fact Sheet based on public comment; instead, EPA uses this Response to Comments document to clarify those issues as necessary. Where appropriate, revisions are reflected within the corresponding EPA response; in a few cases, revisions to the final Permit are reflected in their entirety within the Appendices of this document. Finally, the Administrative Record contains all information and materials considered by EPA throughout the permit development process.

State Certification under Clean Water Act §401

EPA received comments from IDEQ on preliminary drafts of the proposed Permit. EPA chose not to request IDEQ to provide a draft certification of the Permit prior to the public comment period. During the comment period, IDEQ submitted comments indicating that, if EPA made the changes to the Permit, IDEQ would consider issuing a certification consistent with Clean Water Act Section 401 that the Permit will result in compliance with the Idaho water quality standards.

EPA revised the Permit based on IDEQ's recommendations after considering all other public comments submitted. On June 5, 2012, EPA requested IDEQ's certification of the proposed final Permit.

IDEQ received public comments on its draft 401 certification of the proposed final permit during a 30-day comment period which ended on September 20, 2012. IDEQ's final certification, dated November 1, 2012, is included in Appendix E of this document, and includes:

1) A table summarizing each waterbody Assessment Unit (AU), impairment status, and applicable Total Maximum Daily Load (TMDL) analyses for the portions of the Lower Boise River and its tributaries receiving MS4 discharges; EPA used this table to correct Table II.C in the final Permit.

2) A condition for EPA to include total mercury within Table IV.A of the final Permit as a parameter for which stormwater outfall discharges must be analyzed. In addition, IDEQ recommended that the Permittees engage in a cooperative methylmercury fish tissue sampling effort within the Lower Boise River watershed.

See Response to Comment (RtC) #45 for discussion of revisions to the final Permit resulting from IDEQ's final §401 certification.

Summary of Revisions to the Final Permit

EPA has made the following revisions to the final Permit since its proposal:

- Corrected references to the AUs, impairment status, and applicable TMDLs for the Lower Boise River, based on public comment and input from IDEQ. See RtCs #5, 6,7, 39, 40, and Appendix A.

- Added text to the Stormwater Management Program Requirements in Permit Parts II.A, II.B.4.c.iii, and II.B.6 based on public comment. See RtCs #10 - 15, 33, 37 and 38, and Appendices B, C and D.

- Revised the Monitoring, Recordkeeping and Reporting Requirements in Permit Table IV.A , Part IV.A.8, and IV.C.2, pursuant to the conditions specified by the November 1, 2012, IDEQ §401 certification. See RtC #44 and Appendix E.

- Revised the Reporting Requirements in Permit Part IV.C.3.a and added new Table IV.C, based on public comment, to specify Annual Report due dates and associated reporting periods. Narrative references to SWMP implementation compliance dates in Permit Parts II, IV, and Table III.A are updated to specify explicit calendar dates and expected content of each Annual Report. See RtC #45.

- Added mandatory standard NPDES permit conditions to Part V which had been inadvertently omitted from the Permit as proposed. See RtC #46.

- EPA has made general editorial corrections throughout the final Permit to improve grammar, punctuation, and increase overall clarity of the narrative provisions, without altering the requirement as originally proposed.

Response to Comments

General Topics

1. **(IRU):** The draft Permit is an improvement over the existing Permit, and provides increased protection from pollutants discharged in stormwater into the Boise River.

   Response: Comment noted.

2. **(IRU):** The draft Permit does not protect the Boise River to the maximum extent practicable (MEP); it allows continued pollution of the Boise River which is "evidenced in the lack of requirements for low impact development and in the … extended timeframes for implementation of many Permit conditions."

   Response: EPA determined that the existing storm water management program (SWMP) as implemented by the Permittees under the previous permit effectively prohibits the discharge of non-stormwater, and requires controls necessary to reduce the discharge of pollutants from the MS4 to the MEP. In addition, the reissued Permit requires additional activities compared with the previous permit and clarifies some minimum control measures which were unclear in the previous Permit. Further, the following Low Impact Development (LID) requirements are included in the reissued Permit:

   - The Permittees' existing requirements for new development and redevelopment sites must be revised to specify a volume-based onsite stormwater management standard (See Permit Part II.B.2.a.i, ii, and iii);
   - The Permittees must require detention and treatment of stormwater flows from those new development and redevelopment project sites with potential for excessive pollutant loading, and may consider implementing an offsite mitigation program or other means to reduce pollutants and manage stormwater flow volumes from those sites where onsite stormwater management may be technically infeasible(See Permit Part II.B.2.a.i, ii, and iii);
   - The Permittees must complete planning documents for at least two subwatersheds within the permit area; these subwatershed plans must identify appropriate means to minimize the potential impact of impervious surfaces on aquatic resources and other beneficial uses and to maintain or restore water quality (See Permit Part II.A.4);
   - Additional LID techniques must be evaluated by the Permittees through pilot projects; once identified as effective and feasible, the Permittees must consider adopting such LID techniques for use within the Permittees' jurisdictions. (These additional LID techniques are in addition to those permanent stormwater controls currently allowed through existing Permittee requirements. See Permit Part II.B.2.c);
   - The Permittees must implement a Green Infrastructure/LID Incentive Strategy intended to motivate the increased use of infiltration,

evapotranspiration, reuse and/or other appropriate site design practices and/or policies (See Permit Part II.B.2.c); and

- The Permittees must evaluate the feasibility of retrofitting existing stormwater control devices, to provide greater pollutant removal in stormwater discharges to the impaired water body segments listed in Part II.C. This evaluation must identify feasible retrofit locations, possible funding sources and outline project timelines for retrofit projects designed to better control the discharge of those pollutants of concern to the Boise River (See Permit Part II.B.4.g.i & ii).

The commenter has not explained why these specific LID requirements are insufficient and/or what additional requirements should be added to the Permit. Therefore, no additional LID requirements have been added to the Permit as the result of this comment.

3. **(IRU):** The Permit should focus on preventing the loss of native vegetation and increased impervious areas, and require the restoration of degraded landscapes. The commenter believes the Permit allows for the "continued use of a largely failed approach to stormwater regulation."

   Response: EPA has included provisions intended to motivate the increased use of site-based stormwater management requirements at new development and redevelopment sites. Such site based requirements may include nonstructural controls, such as better site design specifications and incentives or requirements for retaining native vegetation at new development sites. See Response to Comment #2. The commenter does not state what specific provisions of the Permit need to be modified, nor has the commenter provided additional activities that should be added to the Permit.

4. **(IRU):** "Climate change will change the amount of precipitation and the severity, duration and timing of storms…the Permittees must be required to develop a plan within three years of issuance of the Permit that addresses the impacts of climate change on stormwater in the watersheds that discharge to the MS4 system and the measures that are necessary to make sure such changes do not contribute addition pollutant load to the Boise River and its tributaries."

   Response: At this time, revisions which accommodate consideration of the impacts associated with climate change have not been made to the Idaho water quality standards, the federal stormwater management requirements applicable to this Permit, or to the approved total maximum daily loads (TMDLs) for the Lower Boise River. EPA's recent Draft National Water Program Response to Climate Change, dated March 27, 2012, (found at ***http://water.epa.gov/scitech/climatechange/2012-National-Water-Program-Strategy.cfm*** proposes to address the need for improved stormwater management in the context of climate change. This draft EPA document states: "…*EPA must*

work with other agencies to create revised tools and storm frequency maps, etc. …and promote increased use of LID and green infrastructure (such as water harvesting, and reuse) in NPDES Permits." If new analyses, program requirements, or protocols for evaluating such impacts are developed, EPA will use these analyses/requirements/protocols to direct additional action when this Permit is reissued. In the interim, the Permit requires the Permittees to evaluate the effectiveness of additional LID requirements for use within their jurisdictions. Permittees are encouraged to consider the local impacts of climate change relative to the implementation of their SWMPs at any time.

Receiving Water Quality and Applicable Total Maximum Daily Loads

5. **(*Permittees, IDEQ*):** References to IDEQ's Integrated Report, waterbody impairment listings, and applicable TMDLs for the Lower Boise River on Fact Sheet (FS) pages 11-16 should cite the IDEQ's 2010 Integrated Report, approved by EPA Region 10 on September 29, 2011. The following editorial revisions to the FS are also necessary:

   - On FS page 11, summarize all waterbody segments receiving discharges authorized by the Permit in ***Table 1- Idaho's Waterbody Assessment Units, Beneficial Uses, Impairment and TMDL Status***, by deleting sediment as a pollutant of concern for the Waterbody Assessment Unit ID17050114SW011a_06 (Boise River, from the Diversion Dam to River Mile 50); and adding Assessment Units ID17050114SW008_03 (for Tenmile Creek), ID17050114SW001_06 (for the Lower Boise River, from Middleton to Indian Creek) and ID17050114SW005_06b, (for Lower Boise River from Indian Creek to the mouth). Add associated listings for sediment, *E. coli*, total phosphorus and temperature in each Assessment Unit.

   - On FS page 12, the discussion of sediment and bacteria TMDLs should reference the 2008 TMDL amendment for bacteria and sediment, and the associated 50 mg/L suspended solids concentration (which does not represent Idaho's narrative sediment standard, but is one value of a dual-value TMDL target - i.e., 50 mg/L for no more than 60 days, 80 mg/L for no more than 14 days between April and September- as approved by EPA in 1999).

   - On FS page 13, refer to the Lower Boise River Assessment Units listed as impaired for nutrients in the 2010 Integrated Report; cite the *Lower Boise River Implementation Plan Total Phosphorus* (December 2008) in footnote #6; acknowledge both point sources and nonpoint sources have been identified as contributing nutrients to the Lower Boise River; and correctly state that the Snake River-Hells Canyon TMDL establishes a load allocation for total phosphorus (not total dissolved phosphorus).

   - On FS page 14, state in EPA's conclusion that each of IDEQ's approved and pending TMDLs are intended to reduce (not eliminate) pollutants in regulated MS4 discharges.

Response: EPA incorrectly cited IDEQ's 2008 Integrated Report, and should have cited to the 2010 Integrated Report. To address the comments set forth above, EPA revises the FS discussion of Receiving Water Quality and Applicable TMDLs, as reflected in Appendix A of this document. Table II.C of the Permit was revised as indicated in the IDEQ final certification dated November 1, 2012 (See Appendix E).

These revisions do not substantively alter the SWMP activities as proposed and now required in the final Permit.

6. **(IRU**): There is only one TMDL for the Lower Boise River – the sediment and bacteria TMDL approved by EPA in 2000. (There are numerous references in the Fact Sheet to "TMDLs for the Lower Boise River.")

Response: EPA agrees with the commenter. To clarify, EPA's Fact Sheet refers to the TMDL as multiple "TMDLs" because IDEQ completed two separate analyses for sediment and bacteria within a single document. The *Lower Boise Subbasin Assessment, Total Maximum Daily Loads (September 1999,)* is found online at ***http://www.deq.idaho.gov/water-quality/surface-water/tmdls/table-of-sbas-tmdls/boise-river-lower-subbasin.aspx*.**

7. **(IRU):** The Lower Boise River is impaired for nutrients, but no draft or approved nutrient TMDL exists. IDEQ has not specified actions needed to reduce nutrient loading from NPDES regulated municipal stormwater discharging to the Lower Boise River or its tributaries. EPA should not interpret IDEQ's preliminary analysis of Lower Boise River phosphorus allocations for the Snake River –Hells Canyon nutrient TMDL (approved by EPA in 2004) as specifying actions necessary to reduce nutrient loading from regulated stormwater discharges. Instead, EPA should require SWMP activities that are more effective than those in the TMDL Implementation Plan. For example, EPA should require LID activities.

Response: EPA agrees with the commenter that a TMDL addressing nutrients does not exist for the Lower Boise River and that the Lower Boise River is now listed as impaired for nutrients. The Permit lists total phosphorus as a "pollutant of concern."

Despite the absence of an EPA-approved nutrient TMDL, however, at least three IDEQ documents reference the estimated contribution of phosphorus to the River from urban runoff discharging from MS4s: the *Lower Boise River TMDL Subbasin Assessment, Total Maximum Daily Loads*, [Revised: September 29, 1999]; the *Implementation Plan for the Lower Boise Total Maximum Daily Load, Appendix B [*December 2003]; and the *Lower Boise River Implementation Plan Total Phosphorus* (December 2008).(The revised text in Appendix A of this document includes a corrected citation for the December 2008 *Lower Boise River Implementation Plan Total Phosphorus*, which is available online at http://www.deq.idaho.gov/media/451497-

_water_data_reports_surface_water_tmdls_boise_river_lower_lbr_total_phosphorus_plan_final.pdf) and addresses the reduction of total phosphorus from tributary sources in order to attain concentration-based tributary targets outlined in the Snake River-Hells Canyon TMDL. EPA has used each of the IDEQ documents listed above to inform the content of the Permit.

The final Permit requires specific activities that, when effectively conducted by each Permittee, will reduce the discharge of sediment, *E. coli*, temperature and total phosphorus/other nutrients from the Permittees' MS4s to the maximum extent practicable. In this situation, EPA believes that, because NPDES permit requirements are enforceable under the CWA, such permit requirements are more effective tools for reducing pollutants of concern, such as nutrients, than are voluntary stormwater management measures.

See Response to Comment #2 regarding the LID provisions in the Permit.

MS4 Descriptions

8. **(Permittees):** Regarding the description of BSU's jurisdictional area on Fact Sheet pages 7-8, BSU covers 205 acres (not 153 acres) of land adjacent to the Boise River south of Julia Davis Park; there are ten (10) stormwater outfalls, not eight, that discharge from the campus to the Boise River.

   Response: Comment noted. EPA described the Permittees' MS4s using information provided by the Permittees in previously submitted Annual Reports. EPA expects that BSU (and each of the Permittees) to maintain and make available an accurate narrative MS4 description within their SWMP documentation as required in Permit Part II.A.1.b. In addition, EPA expects each Permittee to update their MS4 maps and outfall inventories as specified in Permit Part II.B.4.a.

9. **(*DD3*)**: EPA's description of the DD3 MS4 described on Fact Sheet page 7 is inaccurate. DD3 only owns or controls four (not 8) known storm water outfalls that drain into waters of the United States; the remaining 4 locations actually drain into DD3's stormwater system or into ACHD's system. In its comment letter, DD3 clarified specific locations of its MS4 in detail.

   Response: The term "outfall" is defined in the federal NPDES stormwater regulations at 40 CFR 122.26(b)(9) as *.." a point source as defined by 40 CFR 122.2 at the point where a municipal separate storm sewer discharges to waters of the United States and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the United States and are used to convey waters of the United States."*

   As noted in Response to Comment #8, EPA described the Permittees' MS4s using information provided by the Permittees previously submitted Annual Reports.

DD3 has clarified locations where their MS4 does not drain directly to waters of the U.S. As noted above, EPA expects each Permittee to maintain an accurate narrative MS4 description within their SWMP documentation (including acknowledgement of any physical interconnections with other MS4s) as required in Permit Part II.A.1.b. In addition, EPA expects each Permittee to update their MS4 maps and outfall inventories as specified in Permit Part II.B.4.a.

EPA agrees that DD3's description of Drain C, Drain D, and Little Pump are examples where the DD3-operated MS4 is physically interconnected to another regulated MS4 at these locations (in this case, connected to the ACHD's MS4). The commenter's description of the Big Pump location is also an example of where DD3's MS4 is physically interconnected to a conveyance leading to waters of the U.S. (i.e., DD3's MS4 discharges to a man-made canal leading to the Boise River). Though Drain C, Drain D, Little Pump and Big Pump are not formal "outfalls" in the context of the NPDES regulations, each location is a unique component of the DD3 MS4 which should be acknowledged through narrative description and MS4 inventory, in compliance with the final Permit.

Stormwater Management Program (SWMP) Requirements (Part II)

10. **(IRU):** Regarding the SWMP Documentation and Public Involvement requirements (Permit Parts II.A.1.b and II.B.6), the Permit fails to require public involvement for development and update of the SWMP. The commenter suggests within one year, draft SWMP documents should be released for review, and three public meetings should be hosted by Permittees to explain the programs. At least 45 days must be allowed for public comment. The final written SWMP document should include response to comments. SWMP updates during the Permit term should use a similar public process. SWMPs should be redrafted at the beginning of the next Permit term to provide a robust public review every five years. EPA must ensure the practices, techniques and methods used by the Permittees (as described in the SWMP documentation) will reduce the discharge of pollutants to the maximum extent practicable, and the Permittees must, therefore, submit their SWMP to EPA and receive approval before discharging.

    Response: EPA agrees that public involvement is a part of the development of SWMP documentation. EPA has revised Parts II.A.1.b and II.B.6 to clarify that Permittees must provide a public comment process on the SWMP documentation, consistent with applicable state or local public notice requirements. These changes are similar to public involvement requirements specified by other MS4 permits issued by EPA in the State of Idaho. A complete summary of revisions to Parts II.A.1.b and II.B.6 is provided in Appendices C & D of this document.

    The SWMP documentation serves to concisely summarize how individual Permittees uniquely implement their SWMP requirements. The document will help EPA and the public better understand the breadth and scope of the ordinances, guidance documents, and other materials which are crucial (and unique) components of each Permittees' SWMP. Public involvement in the

development of ordinances, etc, is an important part of effective SWMP implementation. Although the SWMP documentation was not previously required by EPA, all information regarding the Permittees' SWMP has been available within their prior Annual Reports, on which EPA relied to develop the terms of the reissued Permit.

EPA declines to include all changes suggested by the commenter, and disagrees the Agency must review and approve SWMP documentation "prior to discharge." Activities/actions in the reissued Permit reflect the Permittees' SWMP, and EPA has concluded that implementation of the SWMP will ensure that pollutants are reduced in MS4 discharges to the maximum extent practicable.

11. **(DD3):** Regarding Part II.A.2, clarify whether DD3 can comply with the Permit's SWMP requirements by obligating any party seeking to discharge into DD3's MS4 to comply with another Permittee's existing Storm Water Management Program requirements by contract. Requiring DD3 to implement and enforce its own separate Storm Water Management Program is duplicative. For example, due to overlapping geographic boundaries, a party seeking to discharge stormwater into DD3's MS4 is already subject to the City of Boise's requirements for construction site runoff control (Part II.B.1); post construction stormwater management from new development and redevelopment (Parts II.B.2a, d, and f); stormwater management from Industrial and Commercial Facilities/Activities (Part II.B.3(b)) ; as well as the spill prevention and proper disposal of oil/ toxic materials (Parts II.B.5.a,f and g.). To comply with Permit requirements, DD3 also relies on the City of Boise's existing enforcement capacity to enforce the construction, development, industrial, and spill prevention requirements on parties which discharge to the DD3 MS4.

Response: DD3 (or any of the Permittees) may elect to implement one or more mandatory SWMP element(s) in its jurisdiction by relying on the program or actions of another entity, pursuant to Permit Part II.A.2. However, DD3 should be aware that the responsibility and any liability for Permit compliance remains with individual Permittees.

EPA does not expect any of the Permittees to implement or enforce separate, duplicative SWMP activities. EPA encourages intergovernmental cooperation. Where it makes sense to do so, and where overlapping geographic locations provide the opportunity, the Permittees should work together to control pollutants discharged into and from their MS4s. EPA recognizes that each Permittee represents a unique government organization under Idaho state law, and each possesses different police powers and associated responsibilities. As a result, no one organization within the boundaries of the City of Boise or Garden City possesses complete administrative powers to successfully control pollutant discharges into and from the MS4s. Therefore, EPA expects that the Permittees will continue their cooperation, relying upon and referencing one another's unique contributions to the comprehensive SWMP.

In such instances, a Permittee's SWMP documentation should clearly articulate the exact means by which the Permittee complies with a specific SWMP requirement. For example, DD3 should explain in their SWMP document the agreement with City of Boise allowing DD3 to reference City's requirements in its contracts, and to rely on City enforcement of those requirements. The SWMP document may include or reference example contract language as used to govern the actions of parties seeking to permission to discharge stormwater into the MS4 operated by DD3, and describe any consequences imposed by DD3 if discharges to the MS4 do not comply with the City of Boise requirements. DD3 and City of Boise must report its ongoing shared implementation of these SWMP requirements in the Annual Reports required by Permit Part IV.

Watershed Planning (Permit Part II.A.4)

12. **(IRU):** The Permit provides insufficient detail to support the requirements as written. At least two watershed plans must be completed by the Permittees, yet EPA failed to define the boundaries of the target watersheds. Watersheds within the corporate boundaries of Boise and Garden City originate outside those boundaries; the commenter suggests that the Permittees maintain or increase stormwater infiltration, evapotranspiration or rainfall harvesting/reuse, or use other site based LID practices in areas upstream of the corporate boundaries.

    Response: EPA agrees that the proposed Permit language is unclear, and clarifies several aspects of the required watershed planning process as follows:

    Regarding whether the Permittees can control activities in upstream areas, the Permit authorizes MS4 discharges only in areas located within the corporate boundaries of Boise and Garden City served by the MS4s owned or operated by the Permittees (See Permit Part I.A.). EPA cannot compel the Permittees to conduct SWMP activities or impose SWMP requirements outside their jurisdictions. EPA cannot require the participation of other entities which are not named in this NPDES Permit. The Permittees may choose to expand their watershed planning efforts to include other governmental jurisdictions outside of the Boise and Garden City boundaries.

    *Regarding the scope and purpose of the planning proces*s, EPA's fact sheet on page 19 contains an incorrect reference to Permit Part II.A 4 – *Watershed Planning*, but nonetheless describes the intended scale of the planning effort as follows:

    > ***"Permit Part II.A…*** *requires the permittees to complete watershed plans for at least two Boise/Garden City sub-watersheds. Watershed planning is a valuable opportunity to engage the community and identify necessary choices and actions that will maintain or restore watershed quality. Such plans must*

be developed in concert with the Storm Water Management for New Development/Redevelopment requirements outlined in Permit Part II.B.2."

EPA clarifies that the Permit is intended to address impacts from the Permittees' MS4 discharges to receiving waters, and requires the Permittees to complete at least two Boise/Garden City subwatershed plans. EPA has therefore revised Permit Part II.A.4 to specify that areas selected by the Permittees should represent "subwatersheds," specifically those areas served by the MS4s that drain to impaired waterbodies within the Permit area. EPA also revised Part II.A.4 to clarify that the Permittees must complete two smaller scale watershed plans in areas drained by the MS4s, and such areas may be wholly located within the Permittees' jurisdictional boundaries. EPA has replaced the proposed term "Watershed Planning" for this subpart with "Subwatershed Planning."

In addition, EPA has included definitions in Part VII of the Permit for the terms "subwatershed" and "storm sewershed" which reflect the common usage of both terms as cited in various watershed planning reference documents such as IDEQ's *Environmental Planning Tools and Techniques Linking Land Use to Water Quality Through Community-based Decision Making* (1997); Chapter 6 of the National Research Council's Report, *Urban Stormwater Management in the United States (October 2008),* and /or guidance documents from the Center for Watershed Protection.

13. **(IRU):** Commenter supports the requirement that the planning process require public comment, but requests clarification. A brief web site announcement that invites public comment is not sufficient. The public should be educated about the purpose of the watershed planning process and involved in the selection of watersheds and development of plans. A citizen advisory committee should be formed to assist Permittees in the development and implementation of the strategy.

Response: EPA encourages the Permittees to engage the public during the subwatershed planning efforts within their jurisdictions. EPA has revised Part II.A.4 in order to clarify EPA's expectation that the Permittees will engage interested stakeholders when developing the required subwatershed planning documents. See Permit Part II.A.4. EPA declines to require the creation of a citizen advisory committee for this effort, but encourages the Permittees to do so; EPA notes that Permittees have convened advisory committees in the past to develop other aspects of their SWMPs.

14. **(IRU):** Regarding watershed plan content, each plan should identify priority resources within the watershed, and provide a prioritized list of potential opportunities for stormwater infiltration, evapotranspiration or rainfall harvesting/reuse, or other site based low impact development (LID) practices; quantify the water quality benefits projected to be achieved through implementation of the plan; and identify areas where watershed

planning would assist in reducing harmful impacts of stormwater discharges upon aquatic resources.

Response: EPA agrees, and has revised the text to include such specific expectations for the contents of the subwatershed plan documents. See Response to Comment #12 and Appendix C of this document.

15. **(IRU):** Watershed plans do nothing to reduce the discharge of pollutants; pollutants will be controlled with plan implementation. It is unacceptable to allow the Permittees the entire term of the Permit to complete the plans, and recommends the plans be completed within two years of the Permit effective date.

Response: EPA agrees to revise Part II.A.4 to require completion of the subwatershed plans within a shorter timeframe, but declines to require the timeframe outlined by the commenter. EPA seeks to balance detailed subwatershed-scale planning efforts with the other requirements of the Permit. To address subwatershed plan implementation, EPA will require the Permittees to identify how the priority actions can be accomplished through incentives, enforcement of existing SWMP requirements, or other means.

EPA has revised the Permit such that two final subwatershed planning documents are completed no later than September 30, 2016, and submitted to EPA with the 4rd Year Annual Report. This timeframe allows EPA to consider the Permittees' progress implementing other SWMP requirements and if necessary to alternative implementation provisions in the next Permit. Development and implementation of such subwatershed plans may be motivated in part by the complementary new/re-development requirements of Part II.B.2 (a)(ii), and possibly assist Permittee(s) establish a list of locations for mitigation projects (for example, if the Permittee decides to allow offsite mitigation for development sites where 100% of the minimum stormwater runoff volumes cannot be successfully managed onsite).

Construction Runoff Control Program (Part II.B.1)

16. **(IRU):** The construction site runoff control program must eliminate, not reduce, discharges of pollutants. Requiring construction site operators simply to reduce doesn't set any minimum expectation for the level of effort required and allows the Permittees to make *de minimus* reductions in polluting discharges and constitutes impermissible self-regulation. The Permit must be modified to make clear that anything short of elimination is a violation of the Permit, or must require a minimum level of reduction of pollutant discharge, not effort, that is measurable. Additionally, EPA must review the construction site runoff control program.

Response: Construction site operators disturbing one or more acres must obtain separate NPDES permit coverage for stormwater discharges associated with construction activities. Permittees subject to that separate permit, namely the

EPA-issued *NPDES General Permit for Stormwater Discharge from Construction Activities in Idaho* (now NPDES Permit #IDR12-0000), must manage pollutants in discharges to meet Idaho water quality standards.

EPA disagrees that the municipal construction site runoff program must *eliminate* discharges of pollutants (emphasis added). The federal "Phase I" municipal stormwater program regulations at 40 CFR 122.26((d)(2)(iv)(D)(1-4) require the MS4 operators to …"*implement and maintain structural and nonstructural best management practices to reduce pollutants in stormwater runoff from construction sites to the municipal storm sewer system, which shall include: procedures for site planning…; requirements for structural and nonstructural best management practices; …procedures for identifying priorities for inspecting sites and enforcing control measures;…and, …. appropriate educational and training measures for construction site operators*." The Permit is issued for discharges from the MS4s located in Boise and Garden City; therefore EPA has complied with 40 CFR 122.26(d)(2)(iv)(D)(1-4) by requiring the Permittees to reduce the discharge of pollutants from construction sites through implementation of their municipal construction site runoff control program.

17. **(BSU)**: Permit Part II.B.1.e, *Enforcement Response Policy for Construction Site Management Program*, addresses contractual enforcement responsibilities at sites within the Permittee's jurisdiction. BSU's unique situation in regards to construction projects dictates that the State of Idaho Division of Public Works (DPW) manages all large scale construction projects on BSU; therefore, smaller projects are outside of BSU's scope of enforcement control as the construction property is temporally under direct control by DPW and their contractors. BSU has no jurisdiction to educate contractors, inspect their site, or levy fines. Small scale projects occurring on campus are within BSU jurisdiction, and at such sites BSU can comply with the Permit requirements. Commenter suggests language which differentiates scale of projects from those managed by Boise State University and those managed by DPW for compliance with violation response and referrals.

Response: The commenter raises another example where the responsibilities for SWMP implementation are framed by the Permittee's role and function under Idaho state law. EPA expects BSU (and the other Permittees) to implement the SWMP in areas and circumstances which are under their jurisdictional control – in this case, BSU must oversee all small scale construction sites occurring on BSU property.

Large scale projects occurring on BSU property will be operated by DPW and their contractors as directed by state law; as noted in Response to Comment #16, such projects are separately obligated to comply with the *NPDES General Permit for Stormwater Discharge from Construction Activities in Idaho* (NPDES Permit #IDR12-0000). EPA expects that, as necessary, BSU will advise the Idaho DPW of this separate NPDES permitting obligation.

The description of how BSU implements the construction site management program in its SWMP documentation (required in Permit Part II.A.1.b) will clarify BSU's responsibilities to EPA and the public. BSU must therefore report to EPA through the Annual Reports only on their unique construction site runoff control activities.

18. **(Permittees):** Regarding Part II.B.1, commenters suggest revising the definition of "construction activity" proposed in Permit Part II.B.1, as identified below in ***bold italic text***. The revised definition attempts to address a discrepancy between the Permittees' existing construction site runoff control program specified by EPA's original Permit issued in November 2000, and the proposed definition for the next Permit term:

"*Construction activity" for this Permit includes, at a minimum:*

- *construction involving a total land disturbance of 3,000 square feet or more at a single construction site or as part of a plan of common development;*
- ***construction in environmentally sensitive areas, as determined by the Permittees within their jurisdictions; or***
- ***construction within the MS4 which involving a total land disturbance of 600 square feet or 50 linear feet or more at a single construction site***."

Response: EPA agrees to revise the definition. EPA inadvertently proposed to define construction activity for this Permit in a manner that conflicts with provisions of the original Permit as issued in November 2000. Part II.A.10.a of the original Permit required Permittees to develop and implement a construction site runoff control program that, "*extend[s] to all construction activity within the municipality and all construction sites, regardless of size or ownership*." (emphasis added). Thus, the original Permit did not differentiate activities based on the size of the site or area disturbed. As such, at this time, the Permittees are effectively controlling all construction sites through their existing SWMP. In addition, the definition in EPA's proposal inappropriately narrowed the Permit's definition of "construction activity." By doing so, the proposed Permit provision backslides from the expired Permit, which is prohibited under CWA Section 402(o). Therefore, to ensure that the final Permit complies with CWA Section 402(o), EPA is deleting the sentence defining "construction activity" from this Permit Part in its entirety. A definition of construction activity, consistent with the NPDES regulation at 40 CFR 122.26(b), remains in Permit Part VII (Definitions and Acronyms). The final text of Permit Part II.B.1 now reads as follows:

Construction Site Runoff Control Program. *The Permittees must implement a construction site runoff control program to reduce discharges of pollutants from public and private construction activity within its jurisdiction.* ~~*."Construction activity" for this permit includes, at a minimum, construction involving a total land disturbance of 3,000 square feet or more at a single construction site or as part of a plan of common development.*~~ *The Permittees' construction site management program must include the requirements described below*:

Requirements for New Development and Redevelopment (Part II.B.2)

19. **(IDEQ):** Regarding reference to the 95th percentile storm volume for Stormwater Management for New Development and Redevelopment on Fact Sheet page 25, EPA incorrectly cites 0.06 inches of total rain as the 95th percentile storm volume for the Boise area; EPA uses 0.6 inches of total rain elsewhere in the fact sheet and permit.

    Response: EPA confirms that the volume of water from storms less than or equal to the 95th percentile rainfall event, which was calculated using the long-term rainfall record recorded at the Boise Air Terminal through 2008, is 0.60 inches of total rainfall depth. The calculation is correctly described in EPA Fact Sheet Appendix C, and is correctly referenced elsewhere in the reissued Permit and Fact Sheet.

20. **(Permittees):** Commenters suggests adding the following phrase (in ***bold italic text***) to the first sentence of Permit Part II.B.2:
    *At a minimum, the Permittees must implement and enforce a program to control storm water runoff from new development and redevelopment projects that result in land disturbance of 5,000 square feet or more**, excluding individual one or two family dwelling development or redevelopment.***

    Response: EPA acknowledges that this suggested revision reflects the Permittees' existing SWMP requirements for new and redevelopment sites. EPA agrees to revise the text of Part II.B.2 as requested.

21. **(IRU):** Regarding Part II.B.2: who will approve the siting requirements and the criteria for determining the circumstances under which offsite mitigation may be allowed? How will the Permittee allowing this option create an inventory of appropriate mitigation projects and develop appropriate institutional standards and management systems to value, estimate and track these situations? The Permit condition lacks EPA oversight and constitutes impermissible self-regulation, providing no way to determine if the Boise River is being protected to the maximum extent practicable. The commenter would like the Permit to require full public participation in the creation of siting requirements, criteria and the prioritization of appropriate mitigation projects. Further, the Permit should require the Permittees to work together and develop approaches that are similar as legally possible. EPA must approve of the siting requirements and criteria.

    Response: EPA declines to make changes to the final Permit based on the above comment. The Permit as written compels the Permittees to work together and implement the same or similar approaches to managing discharges to/from the MS4. EPA also notes that the offsite mitigation provisions are optional. If the Permittees with appropriate land use authority choose to adopt/implement offsite mitigation, the specific program would be reflected in a revised SWMP which would be available for review when EPA renews the Permit. Moreover, if the Permittees with land use authority revise any of their ordinances, they would be required to comply with the public involvement requirements set forth in state or local laws.

Permittees who do not have land use authority or ordinance powers under state law (i.e., ACHD, DD3, ITD3 and BSU) are encouraged to involve stakeholders and increase available opportunities for public input during the development of comparable policies/requirements regarding installation and maintenance of permanent stormwater controls.

22. **(BSU):** Decreasing the proposed site disturbance threshold imposing requirements for post construction stormwater management unnecessarily restricts development activities. BSU maintains and develops over 150 acres in accordance with a State Board of Education-approved Master Plan which includes significant capital projects. To better align with what other Universities have been granted for runoff control in areas of new development and redevelopment, BSU is requesting the land disturbance threshold triggering the new development and redevelopment requirements to be increased to one acre. EPA has issued NPDES Permits that allow for one acre disturbance thresholds for other Universities and industrial facilities. BSU proposes the following language (see ***bold italic text***) to be added for BSU:

At a minimum, Boise State University must implement and enforce a program to control storm water runoff from new development and redevelopment projects that result in land disturbance of one acre. Boise State will continue to maintain state of Idaho water quality regulations and will not exceed any TMDL requirements to receiving bodies outlined by this Permit.

Response: EPA declines to revise the site disturbance size threshold triggering the post construction runoff control requirements for new development & redevelopment as requested by BSU. The one acre threshold cited in the comment reflects the minimum site disturbance threshold under the federal Phase II stormwater management program regulations for regulated small MS4s. (see 40 CFR 122.34(b)(4)). While other EPA and State NPDES permitting authorities have specified permit requirements for other state universities based on a 1 acre threshold, in this situation EPA finds that BSU is a cooperating Permittee subject to the federal "Phase I" municipal stormwater permit requirements, therefore the one acre site disturbance threshold triggering runoff control requirements for new development and redevelopment is not applicable in the final Permit.

As previously noted, the construction site runoff control program currently implemented by the Permittees does not specify a disturbance threshold triggering the requirements, and applies in some fashion to all construction activities. EPA believes that the minimum disturbance threshold in the final Permit which triggers additional requirements for post construction stormwater controls at new development and redevelopment sites disturbing 5,000 square feet or more is reasonable, and is comparable to similar requirements imposed on new federal property developments as well as MS4 permit provisions in other states. Further, EPA finds that the provision will help accomplish the pollutant reductions consistent with the assumptions of the Boise River TMDLs.

23. (Permittees): Regarding Part II.B.2.a.ii, the Permittees with land-use jurisdiction request that EPA apply two different on-site stormwater management standards – one for redevelopment and one for new development. Redevelopment, particularly in the fully developed downtown core of cities, creates significant challenges for any performance standard. Elsewhere, EPA has proposed that different retention standards are appropriate for new development vs. redevelopment, which recognizes redevelopment site constraints and encourages redevelopment that can revitalize urban communities, providing incentives for redevelopment over less sustainable new or "greenfield" development. The Permittees request that different on site retention standards be used in this Permit.

> **Response:** EPA believes that the Permit provides sufficient flexibility for the Permittees to apply different requirements for new development and redevelopment projects. Part II.B.2.a.i requires the Permittees to update their respective ordinance or regulatory mechanism to include design standards for all new and redevelopment sites, intended to require management of 100% of the runoff volume associated with the first 0.6" of rainfall from a 24-hour event preceded by 48 hours of no measurable precipitation.
>
> In addition, Part II.B.2.a.ii allows the Permittees to develop an offsite mitigation alternative to the retention requirement if a project is unable to retain 100% of the runoff volume on-site. The Permittees may consider various incentives, thresholds, or other considerations based upon site constraints or other site characteristics. The commenter did not provide any proposed revised language. Since EPA believes the Permit provides sufficient flexibility, EPA declines to revise the Permit.

24. **(BSU):** Regarding Part II.B.2.a.v, the proposed Permit states that the ordinance or other regulatory mechanism must include sanctions (including fines) to ensure compliance, as allowed under state or local law. This section is not something BSU can enforce as a state agency. BSU requests precursory language be added to this section similar to the following phrase (used elsewhere in the Permit): ***.."To the extent allowable pursuant to the respective authority of the individual Permittees under Idaho Law…"***

> **Response:** EPA acknowledges, and understands, the respective authorities and responsibilities of BSU and other Permittees under Idaho law, and declines to add the phrase to this specific Permit provision. BSU should instead clearly articulate in the SWMP document its responsibilities and limitations under Idaho state law pertaining to this SWMP control measure. If new development or redevelopment specifications are not within BSU's responsibility, the SWMP should identify and describe which state entity has such control. See also Response to Comment #42.

25. (IRU): Regarding Part II.B.2.c, the draft Permit fails to meet the MEP standard by not requiring more extensive use of LID techniques. The commenter notes that LID practices are both technologically and economically reasonable to control discharges entering into MS4s, and suggests that EPA must require LID practices in combination with

conventional stormwater management methods. The commenter suggests the following revisions to the permit text:

"Within two years from the effective date of this Permit, the Permittees must adopt enforceable ordinances that require use of LID techniques where feasible in conjunction with conventional stormwater management methods. The Permit must require Permittees to identify barriers to implementation of LID and, in each annual report, identify actions taken to remove barriers identified. Within two years, the Permittees must develop methods of evaluating Green Infrastructure/LID projects as described for the pilot project program in the draft Permit. The Permittees must also monitor the performances of each Green Infrastructure/LID project as described for the pilot project program in the draft Permit."

Response: The Permit outlines a reasonable schedule for the Permittees to investigate the effectiveness of additional onsite stormwater management techniques, beyond those techniques currently accommodated by existing local stormwater management requirements. The Permittees must revise applicable ordinances or policies to specify the appropriate means by which the volume-based onsite stormwater management requirement can be met at new development and redevelopment sites.

EPA agrees that the Permittees must increase use of suitable LID control or techniques where it is feasible to do so. The Permittees must remove any institutional barriers which prevent or discourage use of otherwise effective techniques to manage runoff volumes through storage, reuse, infiltration, evapotranspiration and/or retention, or through nonstructural means such as better site design or restrictions on impervious cover. EPA believes that the Permit provides a reasonable schedule for Permittees to identify additional and allowable LID controls or techniques, and to refine their existing programs; EPA therefore declines to change the Permit as suggested by the commenter. EPA has clarified the text of Part II.B.2.c to reference applicable public involvement requirements, complementary requirements of the Permit, and expected content of the Annual Reports.

Regarding Permit Part II.B.2.c.i, first bullet (which defines the characteristics of candidate Pilot Projects), EPA also clarifies that a candidate Pilot Project site may involve the management of runoff resulting from at least *3,000 square feet of impervious surface* (emphasis added). This specific Pilot Project characteristic is intended to focus a potential Permittee evaluation of LID controls/practices/techniques on project site(s) which would address/manage runoff volumes resulting from larger-scale impervious area(s). This "*3,000 square feet of impervious surface*" candidate Pilot Project area threshold is not intended to coincide with, or match, the site size threshold of 5,000 square feet mentioned elsewhere in the Permit, which triggers SWMP obligations to impose onsite stormwater retention requirements (cited in Permit Part II.B.2, first paragraph, as revised based on public comment), nor match with the definitions of "redevelopment" and/or "repair of public streets, roads, and parking lots" as these

terms are defined in Permit Part VII. Instead, these triggering thresholds/definitions of site size are based on the areal *land disturbance of 5,000 square feet or more* (emphasis added).

26. **(IRU):** Regarding the Riparian Zone Management and Outfall Disconnection in Permit Part II.B.2.c.iii, the timeframe for this requirement should be shortened so Permittees identify and prioritize areas appropriate for acquisition/protection within one year, not five years. Having a list of prioritized areas allows the Permittees to take advantage of land sales and good prices. The Permittees should undertake at least four projects within two years. There should be public participation in the identification and prioritization of riparian areas.

Response: EPA encourages the Permittees to engage the public and other partners in the identification and prioritization of riparian areas needing protection through land acquisition, and candidate areas where outfall disconnection/retrofits may reduce stormwater flows from the MS4. EPA encourages the Permittees to complete more than one outfall retrofit project within the Permit term, as is suggested by the commenter.

The development of two subwatershed plans required in Permit Part II.A.4 may provide a framework for the Permittees to locate riparian areas for protection in concert with other goals of the subwatershed/storm sewershed planning effort. To clarify, the riparian areas identified as candidate sites for Part II.B.2.c.iii need not be located in the subwatersheds targeted for the Part II.A.4 planning effort. However, the subwatershed planning effort may be an appropriate forum in which the Permittees can discuss and consider possible riparian areas suitable for acquisition and protection per Part II.B.2.c.iii.

EPA seeks to balance the importance of riparian zone protection and stormwater outfall retrofits within the Lower Boise River watershed with the realities of municipal capital improvement budgets. In conjunction with the comparable retrofit requirement associated with existing stormwater control devices in Permit Part II.B.4.g, EPA believes the Permittees must be allowed time to identify riparian areas and/or suitable outfall locations, and any available funding to accomplish such projects.

Therefore, EPA revised Part II.B.2.c.iii to require identification of riparian areas for reducing stormwater discharge volumes within three years of the permit effective date; this schedule better aligns with the revised schedule for subwatershed planning in Part II.A.4. To provide better accountability for this activity at the midpoint of the permit term, EPA has clarified Permit Part II.B.2.c.iii to require the Permittees to "*submit the list of prioritized riparian protection areas, and a status report on the planning and implementation of the outfall disconnection project, as part of the 3th Year Annual Report*."

27. **(IRU):** Regarding Part II.B.2.c.iv, the commenter supports the mandate that runoff reduction techniques must be used where such practices are found to be technically feasible.

Response: Comment noted.

28. **(IRU):** Regarding Part II.B.2.f, the Permittees have had 12 years to oversee construction, operation and maintenance of permanent stormwater management controls within their jurisdictions. There is no justification for giving them four years to ensure proper operations. The Permit should require this to be completed within 6 months from the effective date of this Permit. The rest of the requirements in this section must also be met within one year, at the latest.

Response: Since this is not a new activity, EPA erred in giving Permittees additional time to comply. EPA has therefore deleted the following text in Part II.B.2.f: "*within 4 years of the effective date of the permit.*" EPA clarifies that, in addition to their existing inspection/enforcement activities for permanent stormwater controls, the Permittees must refine the new development/redevelopment program in accordance with Permit Parts II.B.2.f.i-iii. EPA reviewed the existing programs for plan review, inspection of installed controls, and operation and maintenance of controls, and has determined the existing programs are adequate.

However, when new controls are allowed for use to meet the onsite stormwater management objectives, Permittees must re-prioritize inspections at certain sites to ensure proper installation of such newly adopted techniques. Therefore, within four years of the permit effective date and in addition to the ongoing site inspection & enforcement activities, the Permittees must prioritize certain controls for more frequent inspections, update inspection checklists, and refine their inspection/enforcement strategies to accommodate the evolving changes to their new development and redevelopment stormwater management requirements.

29. **(IRU):** Regarding Part II.B.2.g, the commenter suggests that the Permittees begin a training program regarding the selection, design, installation, operation and maintenance of permanent storm water controls from the permit effective date, and that other requirements must be met within 6 months.

Response: EPA declines to revise the timeframe for this requirement as requested. The Permittees currently require post construction stormwater management for development sites and generally require onsite stormwater management where feasible; EPA expects these existing requirements to evolve over the permit term as the Permittees expand the suite of LID techniques allowed within their jurisdictions. EPA therefore believes the schedule for providing

education on the permanent stormwater controls is appropriate, in light of these other SWMP requirements.

Industrial & Commercial Discharge Management (Part II.B.3)

30. **(IDEQ):** Regarding the Fact Sheet discussion of Part II.B.3, EPA should include temperature as a pollutant of concern to be addressed by the Permittees when considering industrial/commercial sector management activities; these sectors have potential to contribute to exceedances of the temperature standard in waterbody Assessment Units listed as impaired.

    Response: EPA added temperature to the listed pollutants of concern in Part II.B.3.

31. **(IRU):** Commenter suggests that the Permittees should evaluate "urban agriculture" as a specific commercial activity within the Permit area for which stormwater discharges are not being adequately addressed through existing programs; this recommendation includes the horse stables and race track in Garden City.

    Response: EPA agrees that it may be appropriate for Permittees to evaluate certain urban agricultural activities within the permit area. In April 2012, Boise adopted ordinance amendments clarifying allowable urban agriculture activities within the City of Boise. EPA has added a definition to Part VII of the Permit to reference definitions found within the Boise ordinance and the *Blueprint Boise* comprehensive plan. The Permit includes a definition of "commercial animal facilities" in Part VII. EPA has revised the text of Parts II.B.3.a, Part II.B.6 (Public Education) and Part VII (Definitions) in response to this comment.

Infrastructure and Street Management (Part II.B.4)

32. **(IRU):** Commenter suggests that that the less water applied means less water entering the MS4 and the Boise River; Part II.B.4.c should be revised to require the permittees to use water conservation measures for all landscaped areas.

    Response: EPA declines to make the revision as suggested by the commenter**.** Permit Part II.B.4.c as proposed states that Permittees should consider water conservation measures for all landscaped areas. As part of the adaptive management process inherent in this SWMP control measure, EPA expects the Permittees to evaluate their respective landscape maintenance activities (including the use of fertilizers to enhance landscaped areas) for such impacts, and to incorporate water conservation where excessive landscape irrigation water discharges through the MS4, instead of providing water to the landscape as intended. EPA notes that landscape irrigation water is an allowable non-

stormwater discharge if pollutants are not added to the irrigation water. See Permit Part I.D.1.c.

33. **(Permittees):** Regarding Part II.B.4.c (iii), the commenters suggest revisions, below in ***bold italic text,*** which establishes a size threshold for material storage facilities subject to the requirement:

> *"Within four years of the effective date of this Permit, the Permittees must build covered storage facilities for sand with salt stockpiles* ***which exceed a 15' X 15' footprint (225 square feet)*** *at each of their primary materials storage locations."*

Response: EPA declines to specify a threshold size for this requirement. Instead, EPA has added text to clarify that the Permittees must address pollutants in runoff discharging to the MS4 from any Permittee-owned material stockpiles. EPA agrees that constructing covered storage areas for each material pile may not be necessary or appropriate at every location. However, the goal of this requirement is to prevent pollutants in runoff discharging to the MS4, or to adjacent receiving waters, from any Permittee-owned or operated raw material storage location. EPA has revised the permit text as indicated below in *italic* ~~strikeout~~*/underlined text*.

> ~~***Covered***~~*Manage* ***Sand and Salt Storage Areas. No later than September 30, 2017,*** ~~Within four years of the effective date of this Permit~~, the Permittees must ~~build covered storage facilities for sand with salt stockpiles at each of their primary materials storage locations~~ *address any sand, salt, or sand with salt material stockpiles at each of their materials storage locations to prevent pollutants in stormwater runoff from discharging to the MS4 or into any receiving waterbody. Examples how the Permittee may choose to address runoff from their material storage areas include, but are not limited to: building covered storage areas; fully containing the material stockpile area in a manner that prevents runoff from discharging to the MS4 or a receiving waterbody; relocating and/or otherwise consolidating material storage piles to alternative locations which prevents discharges to the MS4 or a receiving waterbody. The Permittees must identify their material storage locations in the SWMP documentation submitted to EPA with the 1st year Annual Report and reference the average quantity of material stored at each location in the inventory required in Part II.B.4.c.ii. Permittees must document in the* ~~*4th Year*~~ *5th Year Annual Report how their material stockpiles have been addressed to prevent runoff from discharging to the MS4 or a receiving waterbody.*

Comments Regarding Illicit Discharges Management- Part II.B.5

34. **(IRU):** Regarding Part II.B.5, information about illicit discharges, dry season monitoring and screening must be easily available to the public (and not buried in an annual report). The Permittees must eliminate non-storm water discharges from the MS4, particularly discharges that contain pollutants that impair designated beneficial uses of the Boise River. Commenter also expresses concern about the large amount of untested irrigation

water and potential increase in discharges from urban agriculture within the city boundaries.

Response: Information about the illicit discharge program is currently available from ACHD and the other Permittees, by request or through the Permittee's Annual Reports. Through the term of the Permit, the SWMP documentation will provide additional information summarizing how each of the Permittees conduct this program with assistance from ACHD as document in the most current version of the Permittees' intergovernmental agreement.

The Permittees must prohibit any non-stormwater discharges to the MS4 using an ordinance or other regulatory mechanism. *See* Permit Part II.B.5. Moreover, in Permit Part I.D. 1, the Permit prohibits the Permittees from allowing non-stormwater to discharge from the MS4 to waters of the U.S., except: when the discharge is in compliance with a separate NPDES permit; when the discharge is associated with an emergency situation; and when the discharge is one of identified "allowable non-stormwater discharges" and which is not considered to be a source of pollution to waters of the U.S. The prohibitions in Permit Parts I.D.1.c.ii.3, 6, and 8 reference the explicit definitions of deleterious materials, excessive nutrients and sediment, taken from the Idaho Water Quality Standards.

Permit Part I.D.1.c, the Permittees must prohibit the discharge of irrigation water or other types of non-precipitation related flows through the MS4 when such discharge is determined to be a source of pollutants.

35. **(IDEQ):** Regarding dry weather screening provisions in Permit Part II.B.5, add temperature to the list of parameters/constituents to be measured and recorded during through the monitoring program, and correct the fecal coliform reference to *E. coli*, consistent with the TMDL addendum and outfall monitoring requirements. Add suspended sediment concentration (SSC) in mg/L.

Response: EPA has added the parameters to Part II.B.5.d.ii as suggested.

36. **(IRU):** Regarding requirements pertaining to existing development, structural and source control provisions applicable to existing development must set an expectation for level of effort required to reduce impacts from discharges to avoid self-regulation; the Permit must require a minimum level of effort for Permittees in the selection and prioritization of structural stormwater projects and provide for review and approval of EPA.

Response: The SWMP is comprised of a variety of structural and source control provisions for existing developed areas. For example, the inspection and proper operation and maintenance of permanent stormwater management controls in Permit Parts II.B.2 e and f ensure that additional pollutants are prevented by cleaning and maintaining controls before the devices overflow or become inoperable. The catch basin cleaning and street sweeping requirements in Part

II.B.4.b.and d similarly establish expectations for maintenance and performance. EPA may not dictate specific capital improvements for implementation, but instead establishes the enforceable expectations as allowed by the Clean Water Act, namely, that MS4 discharges must be controlled using techniques and other means to reduce the discharge of pollutants to the maximum extent practicable. EPA has established such provisions through the final Permit. As such, these SWMP activities have been considered by EPA during Permit development and, when implemented by the Permittees in compliance with the provisions of the final Permit, do not require separate review and approval by EPA.

Public Education and Involvement (Part II.B.6)

37. **(IRU):** In general, the commenter supports the public education requirements. To strengthen the program, commenter suggests that water wise landscaping, water conservation, water efficiency and reduced use of water in urban farms and gardens (commercial, non-profit, public and private), including, but not limited to, elimination of flood irrigation, must be included in the curriculum for each of the four identified target audiences. Commenter suggests that an additional target audience, urban farmers and managers of public and private community gardens, be included because gardening, farming, landscaping, and keeping of farm animals are known to contribute to the pollutant load of the Boise River. Providing financial assistance to farmers to enable them to switch from flood irrigation to sprinkler or drip irrigation is one obvious measure that can be taken.

    Response: See Response to Comment #38 and Appendix D for all text changes made to Part II.B.6. EPA has added '*urban farmers and managers of public and private community gardens*' to the target audiences for the public education efforts, and has added '*water wise landscaping, water conservation, water efficiency in urban farms and gardens*' to the list of topics to be addressed by the public education program. EPA also added language to Permit Part II.B.6 to emphasize that the public education program must focus on preventing the discharge of pollutants to the MS4. Requirements for providing financial assistance are beyond the scope of the Permit; EPA declines to include the additional provisions suggested by the commenter.

38. **(IRU):** Commenter suggests that the Permittees maintain and promote at least one publicly-accessible website that identifies the SWMP activities and works to educate all audiences referenced in 6(a) (i).

    Response: EPA agrees, noting that the Permittees currently maintain SWMP information at the website, http://www.partnersforcleanwater.org/. EPA has added clarifying language to the Public Education and Involvement Program (Part II.B.6 of the Permit), as summarized in Appendix D of this document.

Impaired Waters, SWMP Resources, and Legal Authority (Permit Parts II.C, II.F and II.G)

39. **(IDEQ)**: The Tenmile Creek Waterbody Assessment Units should be added to the receiving waterbody list in Table II.C, and acknowledged in the text of this Part. IDEQ's 2010 Integrated Report includes impairment listings for temperature in Waterbody Assessment Units located within the permit area, and should therefore be added as a "pollutant of concern" to Table II.C. Illicit discharges and non-stormwater discharges, (such as power washers, carpet cleaners, car washes, irrigation overflow, etc.) are potential contributors of temperature impacts through the MS4s.

    Response: Comment noted. See also Response to Comment #5 and Appendix E. Table II. C of the Permit has been revised as reflected in the final IDEQ certification of the permit.

40. **(Permittees):** Commenters suggest that the Permit reference the 2010 Integrated Report instead of the 2008 Integrated Report, accurately cite the pollutants of concern to be temperature, total phosphorus, sediment, and *E. coli* , and correct the name of the Glenwood Bridge to Veteran's Bridge.

    Response: References to the 2010 Integrated Report and the updated listings in the Lower Boise River have been corrected in Part II.C, and in Table II.C, as clarified by the final IDEQ certification. See Appendices A & E. Upon review of the 2010 Integrated Report, reference for the Diversion Dam to River Mile 50 segment for the Boise River no longer includes the Glenwood/Veteran's Bridge, so that name has been deleted.

41. **(Permittees):** Regarding SWMP Resources (Permit Part II.F), a November 2011 Idaho Supreme Court decision (concerning the ability of public entities to develop funding sources to pay the costs associated with the operation and maintenance of MS4s) impacts the Permittees' ability to develop consistent funding sources for continued NPDES permit program implementation. The Permittees have no specific comment on the text of this section, and provide the court decision through the link provided below for informational purposes.
    (See http://www.isc.idaho.gov/opinions/City%20of%20Lewiston%20%2038116.pdf).

    Response: Comment noted. EPA is aware of the court decision, and recognizes the significant fiscal challenges faced by regulated MS4 operators within the State of Idaho.

42. **(Permittees):** Regarding Legal Authority (Part II.G), commenters suggest revisions to the first sentence of this Part to state:

    "To the extent allowable pursuant to the respective authority granted to the individual Permittees under Idaho law, each Permittee must operate to, at a minimum,……"

Response: EPA has made the suggested revisions to the Permit text.

Schedule for Implementation and Compliance (Part III)

43. **(IRU):** Section 402(p)(4) of the CWA requires compliance with the Permit as expeditiously as possible but in no event later than 3 years after the date of issuance of the Permit. As such, the Permit illegally authorizes some actions to occur more than 3 years after the issuance date of the Permit. It is especially important that inventories, maps, and monitoring results as well as checklists and instruction manuals be completed within the term of permit to inform EPA, and the public, in permit renewal. It is unacceptable to give the Permittees the entire term of the permit to comply. It's especially important that data including inventories, maps, and monitoring results as well as checklists and instruction manuals must be completed will within the term of permit to inform EPA, and the public, in permit renewal. It is unacceptable to give the Permittees the entire term of the permit to comply.

Response: CWA Section 402(p)(4) refers to the first permit issued after the NPDES stormwater regulations went into effect. This understanding is codified as a special condition for initial NPDES Phase I stormwater permits at 40 CFR 122.42(d), which states: "*The initial permits for discharges composed entirely of stormwater issued pursuant to 40 CFR 122.26(e)(7)…shall require compliance with conditions of the permit as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit*."

The Permittees are implementing the fundamental SWMP control measures as cited in the final Permit. The Permit reaffirms those programs currently in place, and establishes a basic schedule for incremental improvement of certain program components. EPA considers the final Permit's implementation timelines to be reasonable, given the broad scope and nature of the MS4s, and the respective responsibilities of each MS4 operator.

Monitoring and Reporting Requirements (Part IV)

44. **(IDEQ)** Monitoring data collected to characterize stormwater discharges during the previous permit cycle does not conclusively show that mercury is not a pollutant of concern for the receiving water bodies. The Permit should contain a monitoring requirement for total mercury to ensure compliance with Idaho WQS. In addition, IDEQ's final certification recommends that NPDES permittees engage in cooperative efforts to collect methylmercury fish tissue data within a specific geographic area of the Lower Boise River Watershed.

    Response: The EPA agrees and has added *total mercury* to the list of parameters to be analyzed in stormwater outfall discharge monitoring in Part IV.A.7, Table IV.A.

    Regarding IDEQ's recommendation that NPDES permittees cooperatively engage in a methylmercury fish tissue sampling program within the Lower Boise River watershed, a Methylmercury Fish Tissue Monitoring program has not yet been developed for the Boise River in which EPA could require the Permittees' participation.

    Development of such program is a requirement in the recently reissued NPDES permits for the City of Boise wastewater treatment plants (See NPDES Permits #ID-002044-3 and ID-002398-1, online at: http://yosemite.epa.gov/r10/water.nsf/NPDES+Permits/Current+ID1319). The EPA considered this permit condition, IDEQ's *2005 Implementation Guidance for the Idaho Mercury Water Quality Criteria*, and other materials related to the methylmercury fish tissue sampling in Idaho. EPA also consulted with other EPA program staff and staff at the U.S. Geological Survey office in Boise.

    In this instance, EPA determines that revising Part IV.A.8 of the Permit is the best means of incorporating IDEQ's recommendation. EPA has revised the Permit to allow the Permittees the option to participate in a cooperative fish tissue sampling activity, adding to the proposed permit text allowing the option to conduct in-stream surface water monitoring. EPA encourages, but does not require, the Permittees to cooperate with other entities to conduct such monitoring within the Lower Boise River watershed. EPA's revised text streamlines expected submittal requirements associated with these optional activities, and specifies the reporting expectations in Part IV.C. 2. In light of these revisions, EPA also reconsidered its proposed text requiring approval of a revised Quality Assurance Plan for the optional in-stream monitoring activity. As revised, the Permittees may cite to any relevant monitoring plan documents as may be developed in the future by the City of Boise, or by other entities with whom the Permittees may be engaged. Finally, EPA added appropriate, comparable references for the regular submittal of collected fish tissue sampling data in Part IV.B (reporting requirements) and a permit-specific definition for "methylmercury fish tissue sampling program" in Part VII (definitions). The revised language in Part IV.A.8 now reads as follows:

"8. Water Quality Monitoring *and/or Fish Tissue Sampling*. At the Permittees' option, one or more of the Permittees may conduct, or contract with others to conduct, water quality monitoring and*/or fish tissue sampling* within the Lower Boise River Watershed to augment the storm water discharge data collection required in Part IV.A.7 above.

a) *If the Permittees elect to conduct in-stream water quality monitoring and/or fish tissue sampling within the Lower Boise River Watershed, the Permittees must revise the stormwater monitoring and evaluation plan and QAP to describe the water quality monitoring and/or fish tissue sampling effort(s) per Part IV.A.2 and IV.A.5, no later than September 30, 2014.* ~~the Permittees must submit a revised QAP supporting such in-stream water quality monitoring per Part IV.A.5 to EPA and IDEQ for approval no later than 270 days from the effective date of this permit.~~

b) *The documentation of the Permittees' in-stream water quality monitoring and/or fish tissue sampling activities must be included in the final updated stormwater monitoring and evaluation plan submitted with the 2nd Year Annual Report required in Part IV.A.2.b.* ~~The approved QAP for in-stream water quality sampling must be included in the revised monitoring and evaluation plan submitted with the 2nd Year Annual Report as required in Part IV.A.2.b.~~

c) ~~Water quality monitoring conducted in accordance with this Part may begin within 30 days of EPA and IDEQ's approval of the QAP~~. *The Permittees are encouraged to engage in cooperative efforts with other organizations to collect reliable methylmercury fish tissue data within a specific geographic area of the Lower Boise River Watershed. The objective of the cooperative effort is to determine if fish tissue concentrations of methylmercury in the Lower Boise River are compliant with Idaho's methylmercury fish tissue criterion of 0.3 mg/kg.*

(i) *In particular, the Permittees are encouraged to cooperate with other organizations to collect data through implementation of the Methylmercury Fish Tissue Sampling requirements specified in NPDES Permits # ID-002044-3 and ID-002398-1 as issued to the City of Boise. Beginning with the 2nd Year Annual Report, the Permittees' may (individually or collectively) submit documentation in each Annual Report which describes their specific involvement over the prior reporting period, and may reference the fish tissue sampling plans and reports as developed or published by others through cooperative watershed effort. "*

45. **(Permittees):** Regarding the Annual Report Submittal Date in Part IV.C.3(a), commenters request that the reporting period be consistent with the local/state fiscal year beginning October 1 and ending September 30; EPA should provide sufficient time for the development of the Annual Report (e.g., between 60-90 days). This is necessary so that all of the data and activities, including lab results/analyses and activity reports, for the reporting year can be more easily summarized and included in the Annual Report, consistent with existing state/local planning periods.

Response: EPA agrees that it is appropriate to establish deadlines which coincide with the Permittees' fiscal year of October 1 – September 30, in order to streamline the Permittees' SWMP planning and reporting efforts. In doing so, EPA has revised the manner in which SWMP implementation and reporting deadlines of the final Permit are expressed, such that those deadlines coincide with the state/local fiscal year.

EPA has revised Permit Part IV.C.3.(a) and other references to compliance dates throughout the final Permit (See *italic text* below) to define the reporting period(s) in a manner consistent with the state and local fiscal planning cycle, and provide time for the development of the Annual Report.

First, NPDES regulations require that MS4 annual reports be submitted by the anniversary of the permit issuance date.[1] The effective date of the Permit is February 1, 2013; therefore, Permit EPA specifies the Annual Report due dates as January 30 of each year, beginning in 2014, This date provides 90+ days for document preparation after the corresponding reporting period. (Permittees may submit their Annual Reports prior to the stated deadline, if they choose.)

Second, the proposed Permit expressed implementation deadlines and Annual Report due dates in terms of "*X years from the permit effective date.*" To align these SWMP implementation dates with an October 1 –September 30 state/local fiscal year, EPA now specifies the reporting period for each Annual Report. The 1st Year Annual Report will reflect the period February 1, 2013–September 30, 2013. Reporting periods for the 2nd, 3rd and 4th Annual Reports are specified as October 1 – September 30 of the corresponding years (See table below). For the 5th Year Annual Report, EPA elects to specify a longer reporting period, from October 1, 2016- December 31, 2017, such that the remaining months of the permit term are sufficiently addressed in the final Annual Report document prior to the Permit expiration date.

Finally, the manner in which EPA expressed the compliance dates for SWMP implementation in the proposed Permit (e.g., "*Within three years of the Permit*

[1] See 40 CFR§ 122.42(c): "…*The operator of a …medium municipal separate storm sewer system.…must submit an annual report by the anniversary of the date of the issuance of the permit for such system.*"

effective date, the Permittees must update…") is incompatible with an October 1 - September 30 planning/reporting period, potentially resulting in final SWMP actions not being reported to EPA until the following calendar year. (For example, assuming a February 1, 2013 effective date and reporting period dates in Table IV.C below, a SWMP action due "*3 years from the effective date of the Permit*" (February 1, 2016) would not be reported in an Annual Report until one year later.) To provide clear, explicit SWMP activity deadlines that better align with the preferred October 1st – September 30th reporting cycle, EPA revised Permit Parts II and IV, and Table III.A, to include specific dates which coincide with the newly revised reporting periods. The 1st-4th Year Annual Reports are due by January 30th of the year following the reporting period. The 5th Year reporting period includes the remaining months of the 2017 calendar year to fully encompass all SWMP requirements of the Permit. In the event that EPA administratively extends the Permit beyond its expiration date, Annual Reports will be due on January 30 of each subsequent year.

In summary, Permit Part IV.C.3.a has been revised, and Table IV.C added, to read as follows:

a) *No later than January 30th of each year beginning in 2014, and annually thereafter, each Permittee must submit an Annual Report to EPA and IDEQ. The reporting period for the 1st Year Annual Report will be from February 1, 2013, through September 30, 2013. Reporting periods for subsequent Annual Reports are specified in Table IV.C. Copies of all Annual Reports, including each Permittee's SWMP documentation, must be available to the public, through a Permittee-maintained website, and/or through other easily accessible means.*

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Table IV.C - Annual Report Deadlines		
Annual Report	***Reporting Period***	***Due Date***
1st Year Annual Report	*February 1, 2013–September 30, 2013*	*January 30 , 2014*
2nd Year Annual Report	*October 1, 2013-September 30, 2014*	*January 30 , 2015*
3rd Year Annual Report	*October 1, 2014-September 30, 2015*	*January 30, 2016*
4th Year Annual Report	*October 1, 2015-September 30, 2016*	*January 30, 2017*
5th Year Annual Report	*October 1, 2016-December 31, 2017*	*January 30, 2018*

Compliance Responsibilities (Part V)

46. **In the proposed Permit, EPA inadvertently omitted three standard NPDES permit provisions**. EPA has corrected the error by including these provisions into the final Permit. Specifically, provisions pertaining to *24-hour notice of non-compliance*, *bypass*, and *upset* are mandatory requirements which must be included in all NPDES permits pursuant to 40 CFR §122.41(l)(6), (m), and (n), respectively. Each provision was previously included in the prior Permit as issued on October 30, 2000. Therefore, the final Permit has been revised to include each missing provision in Permit Parts V.I, V.J, and V.K.

Definitions and Acronyms (Part VII)

47. **(Permittees):** Regarding the definition of the terms "Construction" and "Construction Activity," commenters suggest changes to the proposed Permit and seek to add a discrete definition for "construction activity" in both Parts VII and II.B.1. The suggested definitions describe the Permittees' existing construction site runoff control program(s) more accurately than the language proposed by EPA. Commenters suggest both a revision and addition to the definitions contained in Part VII, indicated by ~~strikeout~~/***bold italics*** below:

> "*Construction ~~activity~~" includes, but is not limited to, clearing, grading, excavation, and other site preparation work related to construction of residential buildings and non-residential buildings, and heavy construction (e.g., highways, streets, bridges, tunnels, pipelines, transmission lines and industrial non-building structures).*
>
> ***"Construction Activity" for this Permit includes, at a minimum:***
> - ***construction involving a total land disturbance of 3,000 square feet or more at a single construction site or as part of a plan of common development; or***
> - ***construction in environmentally sensitive areas, as determined by the Permittees within their jurisdictions; or***
> - ***construction within the municipal separate storm sewer system (MS4) involving a total land disturbance of 600 square feet or 50 linear feet or more at a single construction site.***

Response: See Response to Comment #18. EPA chooses to retain a broad definition of 'construction activity' as originally proposed in Part VII, (ie, *construction activity includes…clearing, grading, excavation,….* etc.) because it provides context and basis for references to other NPDES regulated construction activity in Permit Parts II.B.1c.ii and II.B.1.e.iv, respectively.

48. **(Permittees):** Regarding the site size thresholds in the definitions "Redevelopment" and "Repair of Public Streets, Roads, and Parking Lots" in Part VII, the commenters recommend the site size thresholds between these two definitions be consistent with the size threshold cited in Permit Part II.B.2 (i.e., both definitions in Part VII should be changed from site size of 3,000 sq feet to indicate site size of 5,000 sq feet). The

commenters recommend adding to the definition of redevelopment, by including the phrase "*excluding individual one or two family dwelling development or redevelopment,*" in order to match the current definitions of sites required to comply with the Permittees existing SWMP for new development and redevelopment.

Response: EPA agrees to revise the definitions as suggested by the commenters**.**

49. **(Permittees**): Commenters state that the term "sewershed" is misleading and reinforces the misconception that stormwater flows to the "sewer" and is treated at a wastewater treatment plant. Commenters suggest using the proposed definition to instead define the term "Drainageshed."

Response: EPA disagrees that the term "sewershed" is misleading in the context of this Permit; as indicated in Response to Comment #12, EPA has modified the term itself in Permit Part VII to read "storm sewershed."

Appendix A: Water Quality and TMDLs Applicable to the Lower Boise River

*As referenced in response to comments #5-8 and the final IDEQ certification dated November 1, 2012, the following ~~strike through~~/**bold italics** correct EPA's fact sheet discussion of the water quality standards and impairment of the Boise River, relative to the issuance of the Boise-Garden City Area MS4 Permit. This Appendix also cites the collective corrections to Table II.C of the final Permit.*

5. Receiving Waters

5A. General Information

Through the permit, EPA proposes to authorize storm water discharges from the MS4s owned or operated by the permittees to the Boise River and other waters of the United States within the greater Boise/Garden City area as described in Section 2 of this document.

In addition to the permit conditions proposed by EPA, all discharges to state waters must also comply with any limitations imposed by the State of Idaho as part of its water quality certification of NPDES permits under CWA Section 401, 33 U.S.C. § 1341. EPA has provided the proposed permit to IDEQ for their consideration. After the close of the public comment period, if EPA has not yet received a final CWA 401 certification of the permit, including an anti-degradation analysis, EPA will revise the permit based on public comment, and at that time will formally request that IDEQ certify the final draft permit. See Appendix B of this document for more information.

IDEQ classifies the portions of the Lower Boise River receiving discharges from the permittees' MS4s as fresh water with designated uses as described in Table 1 below. See IDAPA 58.01.02.140.12 and 58.01.02.100.03.c.

5B. Water Quality & Total Maximum Daily Loads (TMDLs)

Any water body that does not, and/or is not expected to meet applicable water quality standards is described as "impaired" or as a "water quality-limited segment." Section 305 of the Clean Water Act, 33 U.S.C. § 1315, requires the State to include that waterbody on its list of impaired waters submitted biannually to EPA for approval. Section 303(d) of the CWA, 33 U.S.C. § 1313(d), requires a State to develop water quality management plans, in the form of Total Maximum Daily Loads (TMDLs), for water bodies determined by the State to be impaired. TMDLs define both waste load allocations (WLAs) and load allocations (LAs) that specify how much of a particular pollutant can be discharged from both regulated and unregulated sources, respectively, such that the waterbody will again meet State water quality standards. In a water body where EPA has approved a TMDL, any NPDES permit conditions must be consistent with the assumptions and requirements of available WLAs. See 40 C.F.R. § 122.44(d)(1)(vii)(B).

IDEQ's ~~*2008*~~ ***2010*** *Integrated Section 303(d)/Section 305(b) Report* (~~2008~~ 2010 Integrated Report) contains the list of impaired water bodies as required by CWA Section

303(d). The ~~2008~~ 2010 Integrated Report was ~~partially~~ approved by EPA in ~~February 2009~~ ***September 2011***. Table 1 reflects the water body assessment units in the greater Boise/Garden City Area considered by IDEQ to be water quality-impaired (*i.e.*, meaning the water body does not meet water quality standards), as well as the status of associated TMDLs for those water bodies. **[Editorial Note: Fact Sheet Table 1 (below) is corrected in its entirety as follows, per IDEQ's final certification dated November 1, 2012 – See Appendix E]**

Receiving Waterbody Assessment Unit/ Description	Designated Beneficial Uses	Pollutant(s) of Concern Causing Impairment	TMDLs
ID17050114SW011a_06 Boise River – Diversion Dam to River Mile 50	***Cold water aquatic life, primary contact recreation, salmonid spawning***	***Temperature***	Sediment and bacteria TMDL**s were** approved by EPA in 2000 and amended/approved in 2008-09. TMDLs for phosphorus ***and temperature*** **are** ~~is~~ pending.
ID17050114SW005_06 Boise River – River Mile 50 to Star Bridge	***Cold water aquatic life, primary contact recreation, salmonid spawning***	***Temperature Sediment E.coli***	
ID17050114SW005_06a Boise River – Star to Middleton	***Cold water aquatic life, primary contact recreation, salmonid spawning***	***Temperature Sediment E.coli***	
ID17050114SW005_06b Boise River- Middleton to Indian Creek	***Cold water aquatic life, primary contact recreation, salmonid spawning***	***Temperature Total Phosphorus Sediment E. coli***	
ID17050114SW001_06 Boise River- Indian Creek to the mouth	***Cold water aquatic life, primary contact recreation***	***Temperature Total Phosphorus Sediment E. coli***	
ID17050114SW008_03 Tenmile Creek - 3rd order below Blacks Creek Reservoir	***Cold water aquatic life, secondary contact recreation***	***Sediment, E. coli***	
ID17050114SW010_02 Fivemile Creek - 1st & 2nd order tributaries	***Cold water aquatic life, secondary contact recreation***	***E. coli***	
ID17050114SW010_03 Fivemile Creek - 3rd order-tributaries	***Cold water aquatic life, secondary contact recreation***	***Sediment, E. coli***	

Note: According to the IDEQ website, "…Load allocations for temperature are not recommended for the lower Boise River segments listed for temperature since it has been found that atmospheric conditions preclude compliance with cold water biota temperature criteria during June, July, and August."
Sources: IDEQ website: ***http://www.deq.idaho.gov/water-quality/surface-water/tmdls/table-of-sbas-tmdls/boise-river-lower-subbasin.aspx*****;** IDEQ ~~2008~~ ***2010*** Integrated Report.- ***http://www.deq.idaho.gov/water-quality/surface-water/monitoring-assessment/integrated-report.aspx#2010-IR***

Table 1. Idaho's *Waterbody Assessment Units, Beneficial Uses, Impairment Pollutants of Concern and TMDL Status*.

5.C Pollutant Allocations in the Lower Boise River TMDLs

TMDLs must define waste load allocations (WLAs) for point source discharges, and load allocations (LAs) for nonpoint source discharges. In a guidance memo issued in 2002, EPA set forth options for addressing NPDES regulated storm water discharges in TMDLs. See "*Establishing Total Maximum Daily Load Wasteload Allocations for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs"* (2002 TMDL Guidance Memo). The 2002 TMDL Guidance memo also explained how to establish effluent limits for NPDES regulated storm water discharges from applicable WLAs.

EPA approved the TMDL for both sediment and bacteria (in the form of fecal coliform) in the Lower Boise River in 2000. See IDEQ's *Lower Boise River TMDL Subbasin Assessment, Total Maximum Daily Loads*, dated September 1999 (Lower Boise River TMDL) **and *Sediment and Bacteria Allocations Addendum to the Lower Boise River TMDL, April 2008.*** . The approval of the Lower Boise River TMDL pre-dated the 2002 TMDL Guidance Memo. As was commonly done at the time, IDEQ assigned load allocations to nonpoint sources contributing to the Lower Boise River, including urban runoff. After reviewing the TMDL, due to statements in the TMDL, EPA is interpreting urban runoff to be the same as municipal storm water discharges, particularly where the area overlaps with NPDES regulated MS4 areas.

The TMDL defines three segments of the Boise River listed for sediment, and three monitoring locations are identified as compliance points for the sediment TMDL. Of these three compliance points, the Middleton monitoring location is immediately downstream of, and therefore represents, the permit area described for the Boise/Garden City NPDES MS4 permit. The TMDL assigns sediment load allocations to twelve tributaries of the lower Boise River as well as the riparian corridor. The TMDL's sediment load targets were developed using a mass balance analysis for the river. Two tributaries located upstream of the Middleton monitoring location, Eagle Drain and Thurman Drain, together were assigned sediment load allocations equal 4.40 tons per day total suspended sediment. The TMDL estimates that all loads of suspended sediment ~~upstream of~~ ***in the twelve drains below*** Middleton must be reduced by 37% in order to meet the nonpoint source loading target criteria~~, representing IDEQ's narrative sediment standard, of 50 mg/l.~~ ***The sediment TMDL allocations for the Boise/Garden City Area MS4 reach of the river (e.g. Diversion Dam to Glenwood and Glenwood to Middleton) is equal to the 1995 baseline conditions (e.g. 0% reduction or no net increase) See Table 14, pg 60, of the Lower Boise River TMDL Subbasin Assessment (1999).*** ~~This target must be met during all flow events and at all monitoring points along the Boise River.~~ The TMDL considers urban and suburban land uses upstream of the Middleton monitoring location as contributing nonpoint sediment sources to the mainstem Boise River. The TMDL states that the SWMP, as implemented through a NPDES permit, is sufficient to meet ~~the 37% reduction goal of~~ the sediment TMDL. See *Lower Boise River TMDL* (1999), pages 58-61; ***http://www.deq.idaho.gov/media/451243_water_data_reports_surface_water_tmdls_boise_river_lower_boise_river_lower_entire.pdf. Since the approval and implementation of the 1999 sediment TMDL, the upper reach of the lower Boise River has reduced sediment loads. This reduction is reflected in the delisting of sediment in the 2010 Integrated Report***

for the Boise River Assessment Unit 17050114011_06, Diversion Dam to River Mile 50 (Veteran's Bridge) .

IDEQ's TMDL does not mention storm water, or urban runoff, as a source of bacteria to the river. Using the same monitoring compliance points as the sediment TMDL, the bacteria TMDL references the Middleton monitoring location, which as mentioned previously reflects the permit area of the Boise/Garden City MS4 permit. The TMDL assigns estimated bacteria load allocations to various tributaries based on meeting a WQS target of 50 CFU/100 ml of fecal coliform; IDEQ estimates that more than 70% of the nonpoint source bacteria load must be reduced from the area upstream of the Middleton compliance point. ***See Lower Boise River TMDL Subbasin Assessment, Total Maximum Daily Loads, Revised: September 29, 1999; pages 70-72; http://www.deq.idaho.gov/media/451243-_water_data_reports_surface_water_tmdls_boise_river_lower_boise_river_lower_entire.pdf***

In 2007, IDEQ revised its WQS indicator for bacteria from fecal coliform to *E.coli*. *E. coli* is now reflected in the Idaho WQS as 126 cfu/100 ml, based on the geometric mean of 5 samples taken 3-7 days apart over a 30 day period. Since there is no longer a water quality standard for fecal coliform, there was some confusion about ***how*** ~~as to how to treat fecal~~ WLAs ***for fecal coliform should be acknowledged in NPDES permits*** in TMDLs. Recently, IDEQ and EPA reached agreement that EPA would apply *E.coli* limits at the end of the pipe where an outdated fecal TMDL WLA applied fecal limits at the end of the pipe. ***See Letter from IDEQ to EPA, dated August 4, 2011.*** . Here, the TMDL assigned a fecal LA to the tributaries ***and the Boise River riparian corridor of*** the Lower Boise River and a target reduction at the Middleton compliance point. In establishing activities in the SWMP, EPA has required implementation of actions designed to reduce bacteria contribution from urban and suburban land uses upstream of the Middleton compliance point.

The Lower Boise River, ***reflected by Assessment Units ID17050114SW001_06 and ID17050114SW005_06b from Middleton to Indian Creek and Indian Creek to the mouth***, is also ~~considered~~ impaired for nutrients ***according to the 2010 Integrated Report.*** Nutrient loads originating in discharges from the Lower Boise River watershed are contributing to the impairment of beneficial uses downstream within the Snake River. In the Snake River-Hells Canyon TMDL approved by EPA in 2004, IDEQ establishes a load allocation for total and dissolved phosphorus from both nonpoint sources and from tributaries to the Snake River including the Boise River. A final TMDL determining specific LAs and WLAs for sources of total phosphorus within the Lower Boise River watershed is pending. IDEQ identifies urban runoff (such as from densely populated residential areas and golf courses) as a source of phosphorus loading in both the Lower Boise River TMDL and in the subsequent TMDL implementation plan. ***See Lower Boise River TMDL Subbasin Assessment, Total Maximum Daily Loads, Revised: September 29, 1999 pages 51, and 61; Implementation Plan for the Lower Boise Total Maximum Daily Load, Appendix B, December 2003; http://www.deq.idaho.gov/media/451449-_water_data_reports_surface_water_tmdls_boise_river_lower_boise_river_lower_plan_entire.pdf*** .EPA interprets IDEQ's references to urban runoff, and to phosphorus, within the TMDL documents as specifying the actions necessary to reduce nutrient loading in the form of phosphorus from NPDES regulated municipal storm water. IDEQ's preliminary analysis of the Lower Boise River phosphorus allocations for the Snake ***River***~~Canyon~~ Hells Canyon TMDL states that a 50% reduction of total phosphorus should be

implemented through best management practices that target phosphorus reduction in urban runoff; and that such reductions can be achieved through local requirements to limit runoff from new development, and through increased inspection and maintenance of onsite best management practices. ***See Lower Boise River Implementation Plan Total Phosphorus (December 2008), available through the IDEQ website at*** ***http://www.deq.idaho.gov/media/451497-_water_data_reports_surface_water_tmdls_boise_river_lower_lbr_total_phosphorus_plan_final.pdf***

The 2003 *Implementation Plan for the Lower Boise Watershed* (Lower Boise Implementation Plan) addresses both urban and suburban storm water sources, and provides guidance to municipal entities required to reduce pollutants in their storm water discharges. The Lower Boise Implementation Plan describes a menu of activities for regulated MS4 operators to implement which, when fully and effectively conducted, are expected to reduce the pollutants of concern (i.e., sediment, bacteria, and nutrients) in discharges to the LowerBoise River and its tributaries. See: *Implementation Plan for the Lower Boise TMDL*, December 2003, ***http://www.deq.idaho.gov/media/451449-water_data_reports_surface_water_tmdls_boise_river_lower_boise_river_lower_plan_entire.pdf*** The plan references the federal NPDES storm water requirements, and includes activities such as targeted public education, construction site runoff control, and on-site management of post-construction runoff from new development and redevelopment. As discussed in more detail below, EPA is proposing to include activities in the SWMP that implements the actions set forth in the Implementation Plan.

IDEQ's *Lower Boise River TMDL Five Year Review* documents that necessary pollutant reduction targets for sediment and bacteria are not yet met within various segments of the Lower Boise River. See: Lower Boise River TMDL Five Year Review, Final, February 2009,***http://www.deq.idaho.gov/media/451665-_water_data_reports_surface_water_tmdls_boise_river_lower_boise_river_lower_five_year_review_final_0209.pdf***. Urbanization, and associated storm water runoff, continues to be identified by IDEQ as a contributing source of pollutant loading to the Boise River system. As a result of the TMDLs and the Lower Boise Implementation Plan, EPA has included explicit SWMP actions and activities in the permit intended to target ~~the elimination of~~ pollutants of concern (sediment, bacteria and phosphorus and temperature) from reaching the Lower Boise River. See Section 6.B. below for a discussion of MS4 permit requirements intended to meet the Lower Boise River sediment, bacteria and total phosphorus load allocations specified by IDEQ and/or assumed by EPA to be attributed to urban runoff upstream of the Middleton monitoring location.

EPA requests comment on the appropriate NPDES storm water management program elements to be included as permit requirements which reflect the applicable pollutant reduction goals of the Lower Boise River TMDL.

Appendix B: Final Revisions to Permit Parts II.A.1.b and II.A.2

Revised text is indicated by ***bold italic***/~~strikethrough~~:

b) **SWMP Documentation.** Each ***P***ermittee must prepare written documentation of the SWMP as implemented within their jurisdiction. The SWMP documentation must be organized according to the program components in Parts II and IV of this ***P***ermit ***and must provide a current narrative description of the Permittee's MS4, illustrative maps or graphics, and all related ordinances, policies and activities as implemented within their jurisdiction. Each Permittee's*** SWMP documentation ***must be submitted to EPA with the 1st Year Annual Report.***

(i) Each Permittee must provide an opportunity for public review and comment on their SWMP documentation, consistent with applicable state or local requirements and Part II.B.6 of this Permit.

Each Permittee's SWMP documentation must be updated at least annually ***and*** submitted ~~the~~ ***as part of each subsequent*** ~~permittees~~' Annual Report. ***(***The ***document format used for*** ~~most recent~~ Annual Report(s) submitted to EPA by the Permittees' ***prior to the effective date of this permit*** may be modified to meet this requirement.***)***

…….

2. **Shared Implementation with outside entities.** Implementation of one or more of the SWMP minimum control measures may be shared with or delegated to another entity other than the Permittee(s). A Permittee may rely on another entity only if:

a) The other entity, in fact, implements the minimum control measure;

b) The action, or component thereof , is at least as stringent as the corresponding Permit requirement; and

c) The other entity agrees to implement the minimum control measure on the Permittee's behalf. A binding written acceptance of this obligation is required. ~~The permittees'~~ ***Each Permittee*** must maintain ***and record*** this obligation as part of the SWMP ***documentation***. If the other entity agrees to report on the minimum control measure, the ***P***ermittees must supply the other entity with the reporting requirements in Part IV.C of this ***P***ermit. The ***P***ermittees remain responsible for compliance with the ***P***ermit obligation if the other entity fails to implement the required minimum control measure.

Appendix C: Final Revisions to Permit Part II.A.4

*Revised text is indicated by **bold italic**/~~strikethrough~~:*

Sub~~W~~watershed Planning.** ***No later than September 30, 2016, the ~~The~~ Permittees must jointly complete at least two individual ***sub***watershed plans for ***areas served by the MS4s within the Permit area***. ***For the purposes of this Permit, the terms "subwatershed" and "storm sewershed" are defined in Part VII***. ***For each plan document, the subwatershed planning area must drain to at least one of the*** ~~specific~~ water bodies ***listed in Table II.C. Selected subwatersheds must be identified in the 1st Year Annual Report***~~. no later than five years from the effective date of this Permit.~~ ***Two completed subwatershed plan documents must be submitted to EPA as part of the 4th Year Annual Report.***

a) The ***Permittees*** ~~planning process~~ must ***actively engage stakeholders in the development of each plan, and must*** provide ~~an~~ opportunit~~y~~***ies*** for public input ***consistent with Part II.B.6.***

b) The Permittees may modify and update any existing watershed planning document(s) to address the requirements of this Part.

c) Each ***subwatershed*** plan must ***describe the extent and nature of the existing storm sewershed, and*** identify priority ***aquatic*** resources ***and beneficial uses to be protected or restored within the subwatershed planning area***~~within the watershed, and~~ ***Each plan must contain a prioritized list of potential locations or opportunities for protecting or restoring such resources or beneficial uses through*** ~~potential opportunities for~~ storm water infiltration, evapotranspiration or rainfall harvesting/reuse, or other site-based low impact development (LID) practices. See Part***s*** II.B.2.a. ***and II.B.2.c.*** ~~Each watershed plan should include consideration and discussion of the following principles~~

d) Each subwatershed plan must include consideration and discussion of how the Permittees will provide incentives, or enforce requirements, through their respective Stormwater Management Programs to address the following principles:

i. Minimize the amount of impervious surfaces (roads, parking lots, roofs) within each watershed, by minimizing the creation, extension and widening of roads and associated development.

ii. Preserve, protect, create and restore ecologically sensitive areas that provide water quality benefits and serve critical watershed functions. These areas may include, but are not limited to; riparian corridors, headwaters, floodplains and wetlands.

iii. Prevent or reduce thermal impacts to water bodies, including requiring vegetated buffers along waterways, and disconnecting discharges to surface waters from impervious surfaces such as parking lots.

iv. Seek to avoid or prevent hydromodification of streams and other water bodies caused by development, including roads, highways, and bridges.

v. Preserve and protect trees, and other vegetation with important evapotranspirative qualities and

vi. Preserve and protect native soils, prevent topsoil stripping, and prevent compaction of soils.

Appendix D: Final Revisions to Permit Part II.B.6

*Revised text is indicated by **bold italic**/~~strikethrough~~:*

6. ~~Public~~ Education, Outreach and Public Involvement

a) Comply with Applicable Requirements. The Permittees must comply with applicable State and local public notice requirements when implementing their SWMP public involvement activities.

b) Implement Ongoing Public Education and Involvement Program. The ***P***ermittees must conduct, or contract with other entities to conduct, an ongoing joint education, ***outreach*** and public involvement program aimed at residents, businesses, industries, elected officials, policy makers and ***Permittee*** planning staff /other employees ~~of the Permittees~~. The goal of the education ***and outreach*** program is to reduce or eliminate behaviors and practices that cause or contribute to adverse storm water impacts. ***The goal of the public involvement program is to engage interested stakeholders in the development and implementation of the Permittees' SWMP activities to the extent allowable pursuant to the respective authority granted individual Permittees under Idaho law.*** The ***Permittees' joint education and public involvement*** program must be designed ***to improve each target audience's understanding of the selected storm water issues, engage stakeholders, and help target audiences understand what they can do to positively impact water quality by preventing pollutants from entering the MS4.*** ~~and conducted to motivate pollution prevention, and to effectively measure and assess changes in public knowledge and understanding.~~

(i) ~~Within two years of the permit effective date~~, ***No later than September 30, 2014,*** the ***P***ermittees must implement or participate in an education, ~~and~~ outreach, ***and public involvement*** program that uses a variety of methods to target ***each of*** the audiences and ***at least one or more of the*** topics listed below. ~~The education and outreach program must be designed to improve each target audience's understanding of the storm water issues, and *what they can do to positively impact water quality.*~~

1) General Public

- Watershed characteristics ***and subwatershed planning efforts as required in Part II.A.4***;
- General impacts of storm water flows into surface water
- Impacts from impervious surfaces
- Source control best management practices and environmental stewardship, actions and opportunities for pet waste control/disposal, vehicle maintenance, landscaping and vegetative buffers
- ***Water wise landscaping, water conservation, water efficiency***

2) General public and businesses, including home based and mobile businesses

- Best management practices for use and storage of automotive chemicals, hazardous cleaning supplies, vehicle wash soaps and other hazardous materials
- Proper use and application of pesticides, herbicides and fertilizers.
- Impacts of illicit discharges and how to report them
- ***Water wise landscaping, water conservation, water efficiency***

3) Homeowners, homeowner's associations, landscapers, and property managers

- Yard care techniques protective of water quality, such as composting
- Best management practices for use and storage of pesticides, herbicides, and fertilizers
- Litter and trash control and recycling programs
- Best management practices for power washing, carpet cleaning and auto repair and maintenance
- Low Impact Development techniques, including site design, pervious paving, retention of mature trees and other vegetation
- Storm water treatment and flow/volume control practices
- ***Water wise landscaping, water conservation, water efficiency***

4) Engineers, contractors, developers, review staff, and land use planners

- Technical standards for storm water site plans
- Low Impact Development techniques, including site design, pervious paving, retention of mature trees and other vegetation
- Storm water treatment and flow/volume control practices
- ***Water wise landscaping, water conservation, water efficiency***

5) Urban farmers and managers of public and private community gardens

- ***Water wise landscaping, water conservation, and water efficiency***

(ii) The ***P***ermittees must assess, or participate in an effort to assess understanding and adoption of behaviors by the target audiences. The resulting assessments must be used to direct storm water education and outreach resources most effectively.

(iii) The ***P***ermittees must track and maintain records of public education ***outreach, and public involvement*** activities.

c) **Targeted Education and Training.** For the specific topics identified in the ***P***ermit sections listed below, the ***P***ermittees must develop and implement, or contract with other entities to implement, targeted training programs to educate appropriate ***P***ermittee staff or other audiences within their jurisdiction. Where joint, cooperative education efforts to address these topics are not feasible, the individual ***P***ermitttee must ensure that the necessary education and training occurs for the following topics:

(i) II.B.1.f - Construction Storm Water Management Training for construction site operators and ***P***ermittee staff;

(ii) II.B.2.g – Permanent Storm Water Control Training for project operators and ***P***ermittee staff;

(iii) II.B.4.i– Storm Water Infrastructure and Street Management/ Maintenance training for the ***P***ermittee staff; and

(iv) II.B.5.h – Illicit Discharge Management Training for ***P***ermittee staff.

d) **Storm Water Website.** The ***P***ermittees must maintain and promote at least one publicly-accessible website that identifies ~~the~~ ***each Permittee's*** SWMP activities and ***seeks*** ~~works~~ to

educate the ~~public~~ ***audiences listed in Part II.B.6.b.i***. The website(s) must describe and provide relevant information regarding the activities of all ***P***ermittees. The website must be updated ~~within one year from the effective date of this permit~~ ***no later than February 1, 2014*** and ***updated*** at least quarterly thereafter as new material is available. The website must incorporate the following features:

(i) All reports***, plans***, or documents generated ***by each Permittee*** in compliance with this ***P***ermit must be posted ***on the website***, in draft form when input ***from the public*** is being solicited, and in final form when the document is completed.

(ii) Information and/or links to key sites that provide education, training, licensing, and permitting related to construction and post-construction storm water management controls and requirements ***for each jurisdiction. The website must include links to all applicable ordinances, policies and/or guidance documents related to the permittees' construction and post-construction stormwater management control programs.***

(iii) ***Information and/or links to*** appropriate controls for industrial and commercial activities,

(iv) ***Information and/or links to assist the public to*** ~~or~~ report~~ing~~ illicit connections and illegal dumping activity;

(v) ***Appropriate Permittee*** contact information, including phone numbers for relevant staff and telephone hotline, mailing addresses, and electronic mail addresses.

Appendix E: Final State Certification under Clean Water Act §401

STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1445 North Orchard • Boise, Idaho 83706 • (208) 373-0550

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

November 1, 2012

Mr. Michael J. Lidgard
NPDES Permits Unit Manager
EPA Region 10
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

Subject: Final 401 Certification for the Ada County Highway District, Boise State University, City of Boise, City of Garden City, Ada County Drainage District #3, and Idaho Transportation Department District #3 Municipal Separate Storm Sewer systems (MS4s); NPDES Permit No. ID-027561

Dear Mr. Lidgard:

On June 8, 2012, EPA provided DEQ with a proposed final draft of the above-referenced permit and requested DEQ provide a final certification of the permits pursuant to section 401 of the Clean Water Act. Upon review of the proposed final permit DEQ prepared a draft §401 certification for this permit and provided 30 days for public comment.

The draft certification was revised due to public comments received. DEQ is requesting that the permit be modified to include discharge monitoring requirements for mercury in Section IV.A.7 of the permit. DEQ now submits the enclosed §401 certification for the final permit.

If you have questions or need further information please contact Lauri Monnot at (208) 373-0461 or by email at Lauri.Monnot@deq.idaho.gov.

Sincerely,

Pete Wagner
Regional Administrator
Boise Regional Office

Enclosure: DEQ Final 401 Certification for NPDES Permit No. ID-0027561

C: Barry Burnell, DEQ Water Quality Administrator
Miranda Adams, DEQ 401 Program Coordinator
Lance Holloway, DEQ Boise Regional Water Quality Manager

Idaho Department of Environmental Quality

Final §401 Water Quality Certification

November 1, 2012

NPDES Permit Number/Permittees: IDS-027561; Ada County Highway District, Boise State University, City of Boise, City of Garden City, Drainage District #3, and the Idaho Transportation Department District #3

Receiving Water Body: Boise River and associated tributaries

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 Permittees comply 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 discharges 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 individual permit holders 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 MS4 permit addresses the following pollutants of concern, which are associated with Stormwater discharges: Temperature, Total Phosphorus, Sediment, and *Escherichia coli (E. coli)*.

Receiving Water Body Level of Protection

The MS4 permit authorizes Stormwater discharges to the Boise River, Fivemile Creek, and Tenmile Creek as listed in Table 1. Designated beneficial uses for the associated assessment units (AUs) are identified in Table 1. Beneficial uses include: cold water aquatic life, primary and secondary contact recreation, salmonid spawning, agricultural water supply, industrial water supply, wildlife habitat, and aesthetics. There is no available information indicating the presence of any existing beneficial uses aside from those that are already designated.

The cold water aquatic life use in the Boise River, Fivemile Creek, and Tenmile Creek is not fully supported due to excess sedimentation, temperature, habitat alterations and/or flow alterations (2010 Integrated Report). As such, DEQ will provide Tier 1 protection only for the aquatic life use in all AUs. Please see Table 1 for pollutants causing impairment to each AU. Pollutants of concern apply to all AUs that the Permittees discharge to since addition of a pollutant upstream may impact cold water aquatic life beneficial use attainment downstream. The primary contact recreation beneficial use in the Boise River from Diversion Dam to River mile 50 is fully supported. However, it is not fully supported in the Boise River downstream from River Mile 50, Fivemile Creek and Tenmile Creek due to *E. coli* bacteria. As such, DEQ will provide Tier 1 protection only for the recreation beneficial use in these AUs, and Tier 2 protection, in addition to Tier 1, for the recreational use for the Boise River from Diversion Dam to River Mile 50 (IDAPA 58.01.02.051.02; 58.01.02.051.01).

Table 1.

Receiving Waterbody Assessment Unit/ Description	Designated Beneficial Uses	Pollutant(s) Causing Impairment
ID17050114SW011a_06 Boise River - Diversion Dam to River Mile 50	CWAL SS PCR	Temperature
ID17050114SW005_06 Boise River -River Mile 50 to Star Bridge ID17050114SW005_06a Boise River – Star to Middleton	CWAL SS PCR	Temperature Sediment *E. coli*
ID17050114SW005_06b Boise River - Middleton to Indian Creek	CWAL SS PCR	Temperature Total phosphorus Sediment *E. coli*
ID17050114SW001_06 Boise River Indian Creek to the mouth	CWAL PCR	Temperature Total phosphorus Sediment *E. coli*
ID17050114SW008_03 Tenmile Creek - 3rd order below Blacks Creek Reservoir	CWAL SCR	Sediment *E. coli*
ID17050114SW010_02 and 03 Fivemile Creek - 1st and 2nd order tributaries	CWAL SCR	*E. coli*
ID17050114SW010_03 Fivemile Creek 3rd order	CWAL SCR	Sediment *E. coli*

CWAL – cold water aquatic life
SS – salmonid spawning
PCR – primary contact recreation
SCR – secondary contact recreation

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 discharge limitations and associated requirements contained in the MS4 permit are set at levels that ensure compliance with the narrative and numeric criteria in the WQS.

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 load allocations for nonpoint sources and 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 allocations in the approved TMDL.

In the absence of a TMDL and depending upon the priority status for development of a TMDL, the WQS stipulate that either there be no further impairment of the designated or existing beneficial uses or that the total load of the impairing pollutant remains constant or decreases (IDAPA 58.01.02.055.04 and 58.01.02.055.05). Currently, there is no TMDL for temperature or total phosphorus in this watershed. Discharge permits must comply with these provisions of Idaho WQS.

The EPA-approved *Lower Boise River TMDL* (DEQ 1999) establishes load allocations and wasteload allocations for TSS and bacteria. These allocations are designed to ensure the Boise River, Fivemile Creek, and Tenmile Creek 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 discharge limitations and associated requirements contained in the MS4 permit are set at levels that comply with these allocations.

There is no phosphorus TMDL for the impaired Boise River AUs. There is, however, a *Lower Boise River Implementation Plan Total Phosphorus* (DEQ 2008), which outlines actions necessary to meet the nutrient targets set for the Boise River in the Snake River-Hells Canyon TMDL. As noted in the implementation plan, it is anticipated that the implementation of storm water permits, including the MS4, will result in a reduction in the total phosphorus loading to the Boise River. Therefore, the MS4 is consistent with the requirements of IDAPA 58.01.02.055.04.

There is no temperature TMDL for the impaired Boise River AUs. The MS4 requires the SWMPs to include provisions to reduce the discharge of pollutants, including temperature, to the maximum extent practicable. For example, the SWMPs must include industrial and commercial storm water discharge management provisions that will reduce the discharge of pollutants of concern, including temperature. DEQ believes these provisions will result in the reduction of temperature loading to the impaired AU. Therefore, the MS4 is consistent with the requirements of IDAPA 58.01.02.055.04.

In sum, the best management practices and other requirements contained in the MS4 permit are set at levels that ensure compliance with the narrative and numeric criteria in the WQS and the allocations established in the *Lower Boise River TMDL*. Therefore, DEQ has determined the permit will protect and maintain existing and designated beneficial uses in the Boise River, Fivemile Creek, and Tenmile Creek in compliance with IDAPA 58.01.02.051.01.

High-Quality Waters (Tier 2 Protection)

The Boise River from the Diversion dam to River Mile 50 is considered high quality for primary contact recreation. As such, the water quality relevant to primary contact recreation must be maintained and protected, unless a lowering of water quality is deemed necessary to accommodate important social or economic development.

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for each pollutant that is relevant to primary contact recreation of the Boise River (IDAPA 58.01.02.052.05). These pollutants include the following: *E. coli.*

For a reissued permit or license, the effect on water quality is determined by looking at the difference in water quality that would result from the activity or discharge as authorized in the current permit and the water quality that would result from the activity or discharge as proposed in the reissued permit or license (IDAPA 58.01.02.052.06.a). For a new permit or license, the effect on water quality is determined by reviewing the difference between the existing receiving water quality and the water quality that would result from the activity or discharge as proposed in the new permit or license (IDAPA 58.01.02.052.06.a).

Escherichia coli is a pollutant of concern which is relevant to Tier 2 protection of recreation. The permit contains requirements that will result in a reduction of bacteria. The permit requires that the SWMPs contain provisions to reduce to the maximum extent practicable the discharge of pollutants of concern, including bacteria. The provisions in the proposed MS4 are more stringent than the existing permit. DEQ believes that there will be no increase in bacteria as a result of the MS4, and therefore, no degradation. As such, the proposed permit should maintain the existing high water quality in the Boise River.

Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law

Mercury Limits

Monitoring requirements for mercury were removed from the proposed final permit. Monitoring data collected to characterize effluent during the previous permit cycle does not conclusively show that mercury is not a pollutant of concern for the receiving water bodies. The permit should contain monitoring requirements for total mercury to ensure compliance with Idaho WQS.

DEQ believes a cooperative monitoring effort that pools resources and redistributes them strategically is most prudent for several reasons:

1. Mercury is ubiquitously deposited from the atmosphere and thus all dischargers may be discharging some mercury,
2. Low concentrations of elemental mercury in the water can lead to unhealthful concentrations of methylmercury in consumable fish through a process of bioaccumulation, and
3. The conditions that favor mercury accumulation in fish may occur quite distant from a source of mercury.

A Methylmercury Fish Tissue Monitoring program was initiated by the City of Boise to collect reliable 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. DEQ encourages other entities which have NPDES permitted discharges to water bodies in the lower Boise River watershed to engage in this as a cooperative effort, even if they do not have monitoring requirements or effluent limits for mercury in their permit.

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 Lauri Monnot, DEQ Boise Regional Office, (208)373-0461, Lauri.Monnot@deq.idaho.gov.

Pete Wagner
Regional Administrator
Boise Regional Office