

## RESPONSE TO COMMENTS

### Lapwai Regional Wastewater Treatment Plant NPDES Permit ID0028347 September 17, 2019

On June 4, 2019, the U.S. Environmental Protection Agency (EPA) issued a public notice for the reissuance of the Lapwai Regional Wastewater Treatment Plant (Lapwai) National Pollutant Discharge Elimination System (NPDES) Permit No. ID0028347.

This Response to Comments document provides a summary of significant comments received and corresponding EPA responses.

The EPA received comments from:

- Matthew Nykiel, Conservation Associate, Idaho Conservation League

**1. Comment:** Given how outdated the 2011 Fact Sheet is, ICL requests EPA delay final issuance of Lapwai's renewed NPDES permit until an updated Fact Sheet is drafted and noticed for public comment. If EPA declines this request, we further request EPA provide the legal or regulatory authority that permits it to issue this permit without a current Fact Sheet.

**Response:** Thank you for the comment. After considering your comments, they do not rise to the level of requiring an updated Fact Sheet and issuing a second public notice. Information was not submitted during the public comment period that raised substantial new issues about the draft permit that would require changes to the permit. Therefore, the EPA will address your comment in the response to comments and will not reopen the comment period.

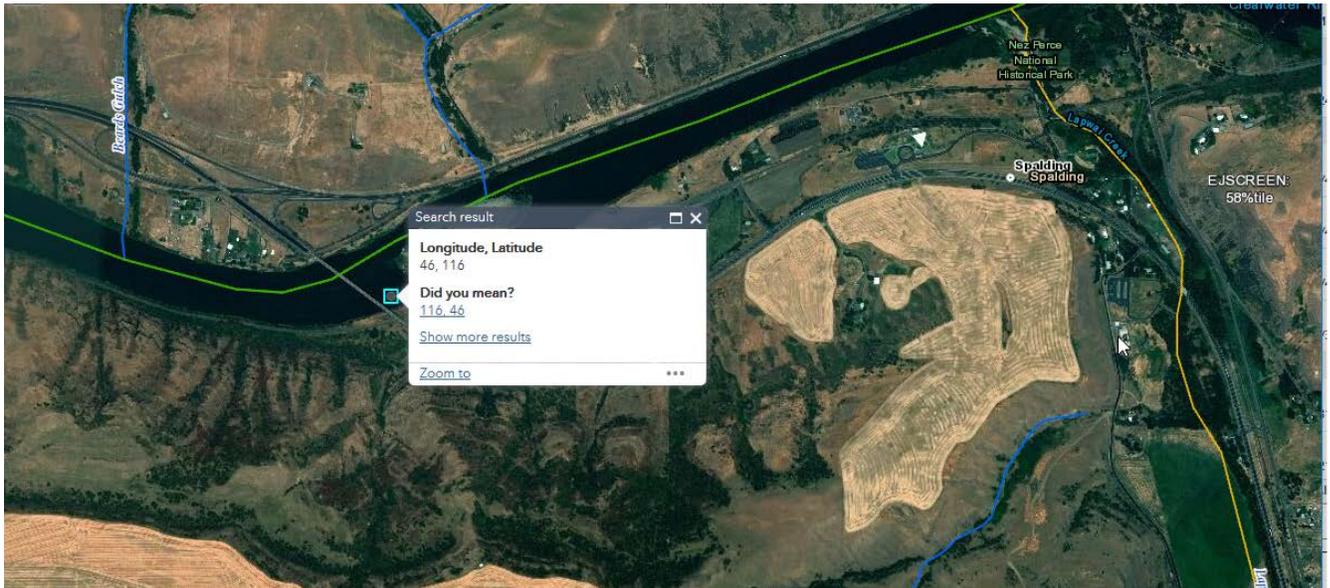
The EPA did provide an updated fact sheet for comment. Since the facility did not make any changes that required different permit conditions and since the regulations for permitting did not change, the EPA determined that the bases and analysis for permit conditions in the 2011 Fact Sheet remain relevant to the current permit. As a result, the EPA used the 2011 Fact Sheet as the basis for the conditions in the current permit.

The permit has not been changed based on the comment.

**2. Comment:** We request providing the analysis on which the Lapwai Regional WWTP ("Lapwai") Draft NPDES was based. For purposes of public noticing the draft NPDES permit, EPA provided the eight-year-old Fact Sheet for Lapwai's 2011 NPDES permit, which includes a number of fundamental errors and discrepancies. For example, at page 18 of the 2011 Fact Sheet, EPA states that the "Lapwai Valley WWTP discharges upstream from the assessment unit ID17060306CL002\_07 (the Clearwater River between the Potlatch River and Lower Granite Dam Pool)." This statement is incorrect—Lapwai, in fact, discharges directly into assessment unit ID17060306CL002\_07.

**Response:** The EPA appreciates the comment. Based on the comment the EPA reassessed the discharge location and the assessment unit of the receiving water. The review found your comment is correct and the EPA erred in stating the discharge is upstream of assessment unit ID17060306CL002\_07. Lapwai does discharge directly to the Clearwater River in assessment unit ID17060306CL002\_07.

To help clarify the location for you a map showing the outfall in the Clearwater River is shown below.



Also addressing your comment the EPA confirmed the latitude and longitude in the draft permit are correct.

Since the issuance of the current permit, the EPA did not receive information that the permit must be changed. The current permit is written to meet applicable technology-based limits, water quality standards, and other legal requirements. Also, because the facility has not discharged under the current permit, there are no new effluent data to develop an entirely new Fact Sheet. The public noticed Fact Sheet did provide the basis of *minor* updated permit conditions. There are no new criteria, total maximum daily loads or allocations that apply to the Lapwai discharge. Therefore, an updated Fact Sheet is unnecessary for the permit reissuance.

Although the Fact Sheet for the 2011 NPDES permit stated the Lapwai Valley WWTP discharges upstream from the assessment unit, in writing the permit conditions for the 2011 Permit the EPA relied on water quality standards that are protective of the downstream assessment unit that is ID17060306CL002\_07 as stated on page 16 of the Fact Sheet.

“The discharge is located roughly 1.5 miles upstream of the reservation boundary, and therefore can affect waters of the State of Idaho, downstream from the discharge. Idaho WQS were used for setting permit limits in order to protect downstream waters of the State of Idaho, in compliance with federal regulations (40 CFR 122.4(d), 122.44(d)(4)). Idaho WQS were used for setting permit limits in order to protect downstream waters of the State of Idaho, in compliance with federal regulations (40 CFR 122.4(d), 122.44(d)(4)).

The segment of the Clearwater River which is downstream from the point of discharge, in waters of the State of Idaho, is designated for the uses of cold water aquatic life, salmonid spawning, primary contact recreation, and drinking water supply.”

And

“The Clearwater River, downstream from the point of discharge, is also designated a special resource water (IDAPA 58.01.02.056, 58.01.02.120.08). Restrictions on point source discharges to special resource waters appear in Section 400.01.b of the WQS.”

The water quality standard designation of Special Resource Water was removed from the IDEQ water quality standards in 2011. The removal of this designation was approved by the EPA on September 26, 2014.

Other than this removal, designated uses are unchanged. Therefore, the water quality standards to protect those designated uses are unchanged and the effluent limits that ensure compliance with those water quality standards are the same as in the 2011 NPDES permit.

The permit has not been changed based on the comment.

- 3. Comment:** There are other errors stemming from rule changes and changes to environmental background conditions as a result of the 8-year period between the EPA's issuance of Lapwai's current permit and the proposed renewal. In the intervening years, Idaho DEQ has assessed the status of several beneficial uses designated for the Clearwater River and found that the Clearwater River is fully supporting cold water aquatic life, primary contact recreation, and salmonid spawning. As such, the Clearwater River deserves the benefit of Tier II antidegradation protection according to IDAPA 58.01.02.051.02. However, EPA's 2011 Fact Sheet fails to provide Tier II analysis for the cold water aquatic life and salmonid spawning beneficial uses despite the fact that an application for a reissued permit triggers antidegradation review. See IDAPA 58.01.02.052.04.

**Response:** The EPA appreciates the comment and agrees segment ID17060306CL002\_07 of the Clearwater River is fully supporting cold water aquatic life, primary contact recreation, and salmonid spawning. The EPA also agrees with your comment that the basis of the antidegradation analysis in the Fact Sheet was the 2008 Integrated Report listing the segment as impaired and therefore only a Tier I antidegradation analysis was performed. With the segment now designated in the 2016 approved Integrated Report as fully supporting, the EPA agrees a Tier 2 antidegradation analysis must be completed. This is shown below in order to incorporate it into the administrative record.

#### Antidegradation Review

The IDEQ WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- Tier I 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 I review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier II 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 III 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).

The EPA is employing a water body by water body approach to implementing an 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 I protection for that use, unless specific circumstances warranting Tier II 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***

Lapwai discharges the following pollutants of concern: 5-day biochemical oxygen demand (BOD<sub>5</sub>), total suspended solids (TSS), *E.coli* bacteria, pH, total ammonia and nitrate + nitrite. Effluent limits have been developed for all of these pollutants.

### ***Receiving Water Body Level of Protection***

Lapwai discharges directly to the Clearwater River in assessment unit (AU) ID17060306CL002\_07. This AU is designated for cold water aquatic life, primary contact recreation and salmonid spawning beneficial uses. In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100). According to the 2016 Integrated Report, approved on June 25, 2019 this AU is fully supporting these uses. As such, the EPA will provide a Tier II antidegradation analysis.

### ***Pollutants with Limits in the Current and Proposed Permit***

For pollutants that are currently limited and will have limits under the reissued permit, the current discharge quality is based on the limits in the current permit or license (IDAPA 58.01.02.052.06.a.i), and the future discharge quality is based on the proposed permit limits (IDAPA 58.01.02.052.06.a.ii). For the Lapwai permit, this means determining the permit's effect on water quality based upon the limits for BOD<sub>5</sub>, TSS, pH, total ammonia and nitrate + nitrite in the current and proposed permits.

The proposed permit limits are the same as the limits in the current permit. Therefore, no adverse change in water quality and no degradation will result from the discharge of these pollutants in the reissued permit and the quality of the receiving water is maintained and protected.

In sum, the EPA concludes that this discharge permit complies with the Tier 2 provisions of Idaho's WQS (IDAPA 58.01.02.051.02 and IDAPA 58.01.02.052.06).

### **Idaho Regulatory Changes**

With regard to the commenter's statement regarding rule changes, the only rule change during the last eight years that could affect the Lapwai permit is the elimination of special resource waters from the water quality standards. IDAPA 58.01.02.400.01.b.

The permit has not been changed based on the comment.