

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF WINCHESTER

Winchester, Idaho

Respondent.

DOCKET NO. CWA-10-2021-0119

**CONSENT AGREEMENT**

Proceedings Under Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), the EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$22,320 per day for each day during which the violation continues, up to a maximum



penalty of \$278,995. *See also* 85 Fed. Reg. 1751 (January 13, 2020) (2020 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and the City of Winchester (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

## II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.



### III. ALLEGATIONS

#### Statutory and Regulatory Framework

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from any point source into waters of the United States except, inter alia, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.3. CWA Section 502(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3.4. CWA Section 502(6), 33 U.S.C. § 1362(6), defines a “pollutant” to include, inter alia, industrial, municipal, and agricultural waste discharged into water.

3.5. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel or conduit from which pollutants are or may be discharged.

3.6. CWA Section 502(5), 33 U.S.C. § 1362(5), defines “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State or any interstate body.”

3.7. CWA Section 502(7), 33 U.S.C. § 1362(7), defines navigable waters as “waters of the United States. In turn, “waters of the United States” is defined to include, inter alia, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. § 120.2; 40 C.F.R. § 122.2 (1993).



3.8. CWA Section 402(a), 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant into the waters of the United States upon such specific terms and conditions as the Administrator may prescribe.

### **General Allegations**

3.9. Respondent is a “municipality” with jurisdiction over the disposal of sewage and other wastes and is a “person” under CWA Section 502 (4)-(5), 33 U.S.C. § 1362(4)-(5).

3.10. Respondent owns and/or operates the City of Winchester Wastewater Treatment Plant (the “Facility”) located at 570 North Shore Road in Winchester, Idaho.

3.11. On January 14, 2013, EPA issued NPDES Permit No. ID 0020184, which became effective on March 1, 2013, expired on February 28, 2018, and was administratively extended pursuant to 40 C.F.R. § 122.6 (Permit). The Permit authorizes, subject to its terms and conditions, the discharge of municipal wastewater containing pollutants.

3.12. At all times relevant to this action, Respondent was authorized to discharge municipal wastewater containing pollutants from the Facility pursuant to the Permit.

3.13. On August 5, 2019, an authorized representative of EPA conducted a compliance inspection of the Facility to determine Respondent’s compliance with the Permit and CWA Sections 301 and 402, 33 U.S.C. § and 1342.

3.14. The Facility discharges pollutants from Outfall 001, which discharges into Lapwai Creek. Outfall 001 is a “point source.” 40 C.F.R. 122.2.

3.15. Lapwai Creek flows to Winchester Lake, which flows to the Clearwater River, which flows to the Snake River, which flows to the Columbia River, which flows to the Pacific Ocean. Lapwai Creek is a tributary to an interstate water body that is susceptible to use to interstate commerce. Thus, Lapwai Creek is a “navigable water” as defined under Section



502(7) of the Act, 33 U.S.C. § 1362(7) and is a “water of the United States” within the meaning of 40 C.F.R. § 120.2; 40 C.F.R. § 122.2 (1993).

3.16. Respondent has discharged pollutants from a point source into waters of the United States at the Facility, within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

### **Violations**

3.17. Based on the inspection and EPA’s review of Respondent’s discharge monitoring reports (“DMRs”), EPA alleges that, after obtaining coverage under the Permit, Respondent violated certain terms and conditions of the Permit and therefore violated CWA Section 301, 33 U.S.C. § 1311.

### **Effluent Limit and Monitoring Violations**

3.18. Section I.B.1 and Table 1 of the Permit establish effluent limitations and monitoring requirements for the discharge from Outfall 001 at the Facility. These effluent limitations and monitoring requirements include, but are not limited to, ammonia [as N] (“ammonia”), biochemical oxygen demand (“BOD<sub>5</sub>”), total residual chlorine (“TRC”), total suspended solids (“TSS”), E. coli bacteria (“E. coli”), floating solids, visible foam, and oil and grease.

3.19. Section III.B of the 2013 Permit requires Respondent to submit monitoring results each month in a Discharge Monitoring Report (“DMR”), in either paper form or using NetDMR.

3.20. Each failure to comply with the effluent limitations and monitoring requirements specified in the Permit, issued pursuant to 402 of the CWA, is a violation of the terms and conditions of the Permit and is a violation of Section CWA Section 301(a), 33 U.S.C. § 1311(a), CWA § 402, 33 U.S.C. § 1342.

3.21. EPA’s inspection of the Facility, together with review of Respondent’s DMRs



from February 2016 to May 2020 indicate that the Facility had 417 effluent limit violations, as described below.

3.22. Section I.B.1 of the Permit prohibits the Facility from discharges in which the average monthly concentration limit of ammonia in the effluent exceeds 1.3mg/L. Respondent violated this permit condition two times between April 2020 and May 2020, constituting sixty-one violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
April 2020	Ammonia	1.3	2.76	mg/L
May 2020	Ammonia	1.3	2.3	mg/L

3.23. Section I.B.1 of the Permit prohibits the Facility from discharges in which the average monthly loading limit of ammonia in the effluent exceeds 0.3 lb/d. Respondent violated this permit condition one time in May 2020, constituting thirty-one violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
May 2020	Ammonia	.3	.38	lb/d

3.24. Section I.B.1 of the Permit prohibits the Facility from discharges in which the daily maximum concentration limit of ammonia in the effluent exceeds 3.1 mg/L. Respondent violated this permit condition one time in May 2020, constituting one violation, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
May 2020	Ammonia	3.1	4.25	mg/L



3.25. Section I.B.1 of the Permit prohibits the Facility from discharges in which the average monthly concentration limit of BOD<sub>5</sub> in the effluent exceeds 30 mg/L. Respondent violated this permit condition one time in April 2019, constituting thirty violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
April 2019	BOD <sub>5</sub>	30	73	mg/L

3.26. Section I.B.1 of the Permit prohibits the Facility from discharges in which the monthly average loading limit of BOD<sub>5</sub> in the effluent exceeds 7.5 lb/d. Respondent violated this permit condition one time in April 2019, constituting thirty violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
April 2019	BOD <sub>5</sub>	7.5	30.4	lb/d

3.27. Section I.B.1 of the Permit prohibits the Facility from discharges in which the weekly average concentration limit of BOD<sub>5</sub> in the effluent exceeds 45 mg/L. Respondent violated this permit condition one time in April 2019, constituting seven violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
April 2019	BOD <sub>5</sub>	45	73	mg/L

3.28. Section I.B.1 of the Permit prohibits the Facility from discharges in which the weekly average loading limit of BOD<sub>5</sub> in the effluent exceeds 11.3 lb/d. Respondent violated this permit condition one time in April 2019, constituting seven violations, as follows:



Month of Violation	Pollutant	Permit Limit	Value Reported	Units
April 2019	BOD <sub>5</sub>	11.3	30.4	lb/d

3.29. Section I.B.1 of the Permit prohibits the Facility from discharges in which the monthly average BOD<sub>5</sub> removal is less than 85%. Respondent violated this permit condition one time in April 2019, constituting thirty violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
April 2019	BOD <sub>5</sub>	≥85	83	%

3.30. Section I.B.1 of the Permit prohibits the Facility from discharges in which the monthly average TSS removal is less than 85%. Respondent violated this permit condition twice, in December 2017 and January 2018, constituting sixty-two violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
December 2017	TSS	>85	82	%
January 2018	TSS	≥85	54	%

3.31. Section I.B.1 of the Permit prohibits the Facility from discharges in which the

3.32. monthly average loading limit of TSS in the effluent exceeds 7.5 lbs/d.

Respondent violated this permit condition one time in January 2018, constituting thirty-one violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
January 2018	TSS	7.5	14	lb/d



3.33. Part I.B.1 of the Permit prohibits the Facility from discharges in which the monthly average concentration limit of TSS in the effluent exceeds 30 mg/L. Respondent violated this permit condition one time in January 2018, constituting thirty-one violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
January 2018	TSS	30	54	mg/L

3.34. Section I.B.1 of the Permit prohibits the Facility from discharges in which the weekly average loading limit of TSS in the effluent exceeds 11.3 lb/d. Respondent violated this permit condition one time in January 2018, constituting seven violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
January 2018	TSS	11.3	14	lb/d

3.35. Section I.B.1 of the Permit prohibits the Facility from discharges in which the weekly average concentration of TSS in the effluent exceeds 45 mg/L. Respondent violated this permit condition one time in January 2018, constituting seven violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
January 2018	TSS	45	54	mg/L

3.36. Section I.B.1 of the Permit prohibits the Facility from discharges in which monthly average loading of TRC in the effluent exceeds 0.002 lb/d. Respondent exceeded this



permit condition one time in March 2017, constituting thirty-one violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
March 2017	TRC	0.0002	0.5	lb/d

3.37. Section I.B.1 of the Permit prohibits the Facility from discharges in which the daily maximum loading of TRC in the effluent exceeds 0.004 lb/d. Respondent exceeded this permit condition one time in March 2017, constituting one violation, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
March 2017	TRC	0.004	1.5	lb/d

3.38. Section I.B.1 of the Permit prohibits the Facility from discharges in which the instantaneous maximum limit of E.coli in the effluent exceeds 406/100 ml. Respondent violated this permit condition six times between February 2016 and March 2020, constituting six violations, as follows:

Month of Violation	Pollutant	Permit Limit	Value Reported	Units
February 2016	E. coli	406/100	575/100	ml
January 2017	E. coli	406/100	416/100	ml
February 2017	E. coli	406/100	524/100	ml
May 2017	E. coli	406/100	960/100	ml
February 2020	E. coli	406/100	1011/100	ml
March 2020	E. coli	406/100	501/100	ml

3.39. Section I.B.1 of the 2013 Permit prohibits the Facility from discharges in which the average monthly limit of E.coli in the effluent exceeds 126/100 ml. Respondent violated this



permit condition one time in April 2019, constituting thirty violations, as follows:

<b>Month of Violation</b>	<b>Pollutant</b>	<b>Permit Limit</b>	<b>Value Reported</b>	<b>Units</b>
April 2019	E. coli	126/100	128/100	ml

3.40. Section I.B.4. of the Permit prohibits the Facility from discharging any floating solids, or visible foam in other than trace amounts, or oily wastes that produce a sheen on the surface of the receiving water. Respondent violated this permit condition fourteen times between February 2016 and March 2020, constituting fourteen violations.

#### **Violation for Failure to Meet Quality Assurance Plan Requirements**

3.41. Section II.B. of the Permit states that “The permittee must develop a quality assurance plan (QAP) for all monitoring required by this permit.”

3.42. Part II.B.5 of the Permit states that “Copies of the QAP must be kept on site and made available to EPA and/or the Nez Perce Tribe upon request.”

3.43. At the time of inspection, the Facility was not able to provide a copy of the QAP. After the inspection, a Facility representative informed the EPA inspector that the Facility was able to locate the QAP, however it was unsigned and not in compliance with the Permit.

3.44. EPA alleges that Respondent failed to meet the requirements regarding the QAP in violation of Section II.B of the Permit, constituting one violation of the CWA.

#### **IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.



4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the EPA has taken into account “the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$15,000.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10 Compliance Officer at the following addresses:



Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
R10\_RHC@epa.gov

Maria Lopez  
U.S. Environmental Protection Agency  
Region 10, Idaho Operations Office  
950 W. Bannock Street, Suite 900  
Mail Code: IOO  
Boise, ID 83702  
lopez.maria@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

a. Interest. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.



4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.b., above, each party shall bear its own costs in bringing or defending this action.

4.11. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.12. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

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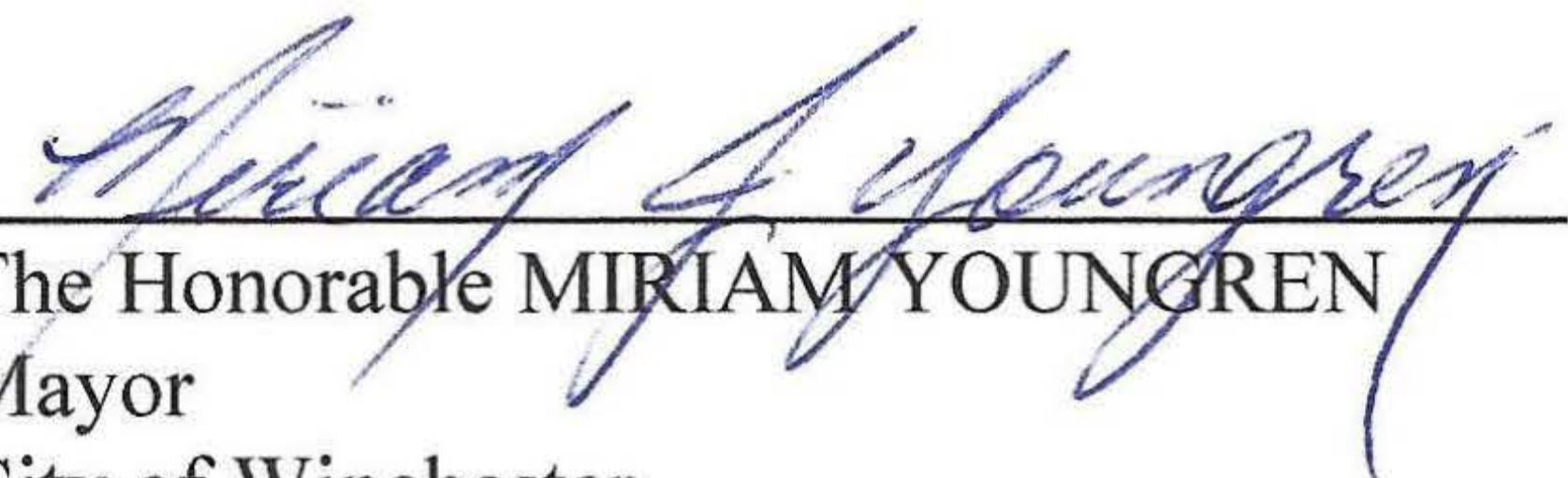


4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

6/18/2021

FOR RESPONDENT:

  
The Honorable MIRIAM YOUNGREN  
Mayor  
City of Winchester

DATED:

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FOR COMPLAINANT:

 Digitally signed by EDWARD KOWALSKI  
Date: 2021.08.06 10:05:39 -07'00'  
EDWARD J. KOWALSKI  
Director  
Enforcement and Compliance Assurance Division  
EPA Region 10



BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF WINCHESTER

Winchester, Idaho

Respondent.

DOCKET NO. CWA-10-2021-0119

**FINAL ORDER**

Proceedings Under Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.
2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.
3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.



4. This Final Order shall become effective upon filing.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**RICHARD  
MEDNICK**

Digitally signed by RICHARD  
MEDNICK  
Date: 2021.08.09 11:42:40  
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RICHARD MEDNICK  
Regional Judicial Officer  
EPA Region 10



**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: the City of Winchester DOCKET NO.: CWA-10-2021-0119** was served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was emailed to:

Danielle Granatt  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 11-C07  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
206-553-2108  
granatt.danielle@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was emailed to:

The Honorable Miriam Youngren, Mayor  
City of Winchester  
P.O. Box 245  
501 Nez Perce Avenue  
Winchester, ID 83555  
youngren@connectwireless.us

Adam Green  
Attorney at Law  
401 W. North Street  
P.O. Box 246  
Grangeville, ID 83530  
adamhowardgreen@yahoo.com

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**TERESA  
YOUNG**

Digitally signed by  
TERESA YOUNG  
Date: 2021.08.10  
10:50:07 -07'00'

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Teresa Young  
Regional Hearing Clerk  
EPA Region 10