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RE: Comments of Idaho Rivers United on draft NPDES permit for City of Boise West Boise Wastewater Treatment Facility

Dear Ms. Collins and Mr. Wagner,

Idaho Rivers United appreciates the opportunity to comment on the Environmental Protection Agency's draft NPDES permit for the City of Boise West Boise Wastewater Treatment Facility and the Idaho draft 401 Certification.

Idaho Rivers United is a non-profit river conservation organization dedicated to protecting and restoring the rivers of Idaho. Based in Boise, Idaho Rivers United has 3,500 members. Protecting the Boise River watershed is one of our organization's primary goals. Many of our members use and enjoy the Boise River, and we represent their interest in seeing the Clean Water Act fully applied in order that the Boise River is fishable and swimmable.

Please accept the following comments.

**Term of permit**

The CWA and supporting federal regulations authorize EPA to issue an NPDES permit for a term of five years. The *NATIONAL WATER PROGRAM STRATEGY: RESPONSE TO CLIMATE CHANGE KEY ACTION UPDATE FOR 2010-2011* reinforces the importance of reviewing NPDES permits on a five-year cycle, "The five-year permitting cycle provides permit writers with a significant amount of flexibility to adapt to changing conditions." The five year term is more important than ever as climate change has the potential to impact water quality-based effluent limitations and other permit conditions.

Idaho Rivers United supports the five year permit term because it allows new information to be considered in a timely manner. This results in better protection for waters of the United States. Idaho Rivers United is concerned that this draft permit contains actions to be carried out after the term of this permit expires. **IRU requests that this permit be limited to actions to be taken during the term of this permit.**

Possible correction: Fact Sheet, pg. 7 – Is the facility operating under the 1994 permit or the 1999 permit, as modified?

### **Low flow conditions**

EPA does not sufficiently explain why the gaging station flow data from March 12, 1982 through Dec. 31, 2009 “more accurately reflects the flows that have occurred since the completion of several dams, diversions and reservoirs.” Lucky Peak dam was completed, as noted, in 1955, 27 years before 1982. Streamflow maintenance flows were claimed by the Bureau of Reclamation in 1984 and affirmed by the court in 2008, but those dates and that issue is not discussed in the draft permit.

Low flow conditions are used to determine if “an effluent discharge has the reasonable potential to cause or contribute to an exceedance of a water quality standard,” and are therefore highly significant to the permit and the condition of the Boise River. The low flows that will occur during the term of the permit are important to ensuring that the waters of the Boise River are fishable and swimmable, and past flow information is only used to help EPA make a reasoned prediction.

### **EPA needs to further explain their use of that time period to establish low flow conditions for the term of the permit.**

EPA seemingly failed to account for the impact that climate change will have on flows in the Boise River, particularly low flows. It is imperative that CWA permit writers use climate change science to inform their decisions. Information available from the USBOR indicates that flows in the Boise River may not repeat the historical patterns captured in the EPA’s calculations. **EPA must address the impacts that climate change is having and will have on low flow conditions in the Boise River in order to establish appropriate effluent discharge limits.**

It’s notable that the West Boise Facility discharges into the south channel of the Boise River – a reach where flows are especially unpredictable. Natural hydrologic forces and manmade alterations at the head of Eagle Island can drastically shift flows between the channels. Climate change impacts on Boise River snowpack, snowmelt and rainfall can impact channel geomorphology at the head of Eagle Island that influences flow in the south channel. The U.S. Army Corps of Engineers and local partners will be doing environmental restoration work in the stream channel and along the shore of the Boise River at the head of Eagle Island during the term of the permit. **These issues need to be addressed and explained so reviewers can evaluate effluent discharge limits.**

It would be helpful if information in Table 3 and 4, pg. 9 and 10, was converted to cfs.

### **Proposed Effluent Limits**

Idaho Rivers United supports the Total Phosphorus average monthly limit of .07mg/L. We are concerned that those limits only apply from May 1 – September 30 and question the rationale for setting those limits. The situation is complicated because phosphorus pollution

problems commonly manifest at a temporal and geographic distance from the discharge. The argument that “phosphorus is most likely to adversely impact the receiving water” during this time period is weak and **needs to be explained in more detail.**

EPA fails to account for the fact that a TMDL for phosphorus for the Boise River is long overdue and is scheduled to be developed during the term of this permit. The TMDL will have great bearing on the WLA for the West Boise Facility and other dischargers. **EPA needs to explain how they will incorporate the Boise River phosphorus TMDL into this permit.**

Climate change was not addressed in establishing any of the effluent limits. According to the *NATIONAL WATER PROGRAM STRATEGY: RESPONSE TO CLIMATE CHANGE KEY ACTION UPDATE FOR 2010-2011*, NPDES permit writers need to consider changes to water quality standards, effluent guidelines and standards, and TMDLs resulting from climate change. **The discussion should be presented via the Fact Sheet and the conclusions should be reflected in the permit.**

### **Compliance Schedules and Interim Effluent Limits**

Idaho Rivers United agrees that a compliance period is allowed for effluent limits that are permitted for the first time. Accordingly, the permit that is expected to be issued in 2012 may include compliance schedules for a number of effluents. However, the compliance schedule must not exceed the five-year term of the permit. Effluent limits can only be permitted for the first time once. **This draft permit must be revised to mandate full compliance with the permitted limits by the end of the five-year permit term.**

Under the terms of this draft permit, the West Boise Facility is allowed to discharge eighty two times the amount of Total Phosphorus EPA determined is necessary to meet water quality standards in the Boise River. Over the four years this discharge is allowed, an excess of 701,920 lbs of Total Phosphorus will enter the Boise River. This is in addition to the eight years worth of phosphorus that has entered the Boise River since the current permit expired in 2004.

Nancy Stoner, Acting Assistant Administrator of the EPA issued a memo on March 16, 2011 that states, in part, “States, EPA and stakeholders, working in partnership, must make greater progress in accelerating the reduction of nitrogen and phosphorus loadings to our nation’s waters.” Ms. Stoner referenced the 2009 Urgent Call to Action of the EPA Nutrient Innovations Task Group that said, “nutrients now pose significant water quality and public health concerns across the United States.” The compliance schedule in this draft permit does not reflect the urgency with which this serious pollution problem must be eliminated.

The proposed limit for phosphorus is not harsh or severe and should not be described as stringent. While the limit is much smaller than the current effluent load, a limit of .07mg/L is not uncommon and is being met by POTWs across the nation. More importantly, the proposed limit is what EPA has determined is needed to return the Boise River and other downstream waters to fishable and swimmable conditions. This more restrictive limit was

anticipated by the City of Boise for years and it's technologically achievable. The City has had years to explore cost effective alternatives to reduce the pollution of the Boise River.

Portions of the Boise River and the Snake River downstream of the West Boise Facility are seriously polluted. The high levels of phosphorus make it impossible for members of Idaho Rivers United and the public to enjoy the beneficial uses of these incredible river reaches. The draft permit should be revised to require all effluent limits be met in five years.

Sincerely

A handwritten signature in cursive script that reads "Liz Paul". The signature is written in black ink and is positioned below the word "Sincerely".

Liz Paul  
Boise River Campaign Coordinator