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**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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IN THE MATTER OF )  
)  
)

STAR SEWER AND WATER )  
DISTRICT – WASTE WATER )  
TREATMENT PLANT )  
)

NPDES Permit No. ID0023591 )  
)  
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PETITION FOR REVIEW

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## I. INTRODUCTION

Star Sewer and Water District (“Star”) operates a wastewater treatment plant (“WWTP”) located in Ada County, Idaho, which serves the population of the City of Star, a municipality with a population of approximately 7,400 people. Pursuant to 40 C.F.R. § 124.19(a), Star petitions the Environmental Appeals Board (“EAB”) for review of the designated uses established by the Environmental Protection Agency (“EPA”), Region X (the “Region”) when it reissued the Final National Pollutant Discharge Elimination System (“NPDES”) Permit No. ID0023591 (“Star Permit” or “Permit”). A copy of the Star Permit is attached hereto as **Attachment A**.

The Star Permit regulates the discharge of treated wastewater from the Star WWTP into the Lawrence Kennedy Canal (“LK Canal”), a man-made waterway. The Star Permit was issued pursuant to EPA’s authority under the Federal Water Pollution Control Act, also known as the Clean Water Act (“CWA” or the “Act”).<sup>1</sup> See 33 U.S.C. §§ 1311, 1342. As the holder of the Star Permit, Star is directly affected by the Permit and is an interested party entitled to file an appeal under 40 C.F.R. § 124.19(a). Star, by and through its representative, Justin Walker, timely submitted written comments on the draft Star Permit on June 16, 2014, attached hereto as **Attachment B**. Star submits this Petition for Review, appealing the Permit on the grounds that the aquatic life and primary contact designated uses applied to the LK Canal by the Region were based on clearly erroneous findings of fact and conclusions of law that warrant review by the EAB.

Star urges the EAB to specifically review the following:

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<sup>1</sup> The state of Idaho has not received authorization to implement its own NPDES permit program; therefore, the Region issues NPDES permits in Idaho.

A. EPA's unlawful disregard of the Idaho Department of Environmental Quality's ("IDEQ") reasonable interpretation of Idaho's water quality standards ("WQS") that the waters of the LK Canal were only protected for agricultural uses and not for the more stringent aquatic life and primary contact recreation uses established by the Region.

B. EPA's erroneous designation of the waters of the LK Canal for aquatic life and primary contact recreation uses absent any finding that such uses were existing uses.

C. EPA's failure to follow the procedures mandated under the CWA for establishing new designated uses for the LK Canal.

Star respectfully requests that the EAB grant review of the Star Permit and set aside, modify, and/or remand the unlawful conditions in the Permit.

## II. BACKGROUND ON ESTABLISHING WQS

Under the CWA, each state is required to establish WQS designed to protect the public health or welfare, enhance water quality, and advance the Act's purposes. CWA § 303(c)(2)(A), 33 U.S.C. § 1313(c)(2)(A). WQS "serve as the goals for the water body and the legal basis for the water quality-based NPDES permit requirements under the CWA." Combined Sewer Overflow Control Policy, 59 Fed. Reg. 18,688, 18,694 (Apr. 19, 1994).

Under 33 U.S.C. § 1313(c), states are responsible to develop, adopt, and maintain intrastate and interstate WQS. *Scott v. City of Hammond*, 741 F.2d 992 (7th Cir. 1984). Congress clearly designated states, not the EPA or the Region, to make use designations for each body of water and determine the level of water quality necessary to support each use designation. 33 U.S.C. § 1313(c)(2)(A).

EPA's role in relation to a state's WQS is simply to "review[] a water quality standard promulgated by a State to ensure that it 'protect[s] the public health or welfare, enhance[s] the

quality of water and serve[s] the purposes of [the Clean Water Act].” *Scott*, 741 F.2d at 994-95 (first brackets added) (quoting 33 U.S.C. § 1313(c)(2)(A)).

The CWA envisions two separate and distinct mechanisms for EPA to review and approve (or disapprove) a state’s WQS. First EPA is obligated to review new and revised WQS. 33 U.S.C. § 1313(c)(2)(A). If EPA determines that a new or revised promulgated WQS is unacceptable, EPA must notify the state within 90 days that the new or revised standards do not meet CWA requirements and provide the state with an opportunity to correct the standard. *Id.* § 1313(c)(3). If the state does not correct the deficiencies within 90 days of notification, EPA must take action to disapprove the WQS and prepare and publish its own proposed WQS. *Id.* § 1313(c)(4)(A). EPA must then promulgate a new or revised WQS within 90 days of publishing it, “unless prior to such promulgation, [the] State has adopted a revised or new water quality standard which [EPA] determines to be in accordance with [the CWA].” *Id.* § 1313(c)(4). Pursuant to federal rules, the Region has been delegated the responsibility to review new and revised WQS. *See* 40 C.F.R. § 131.21.

The second mechanism available to EPA to promulgate a federal WQS is if the “Administrator determines that a new or revised standard is necessary to meet the requirements” of the CWA. 33 U.S.C. § 1313(c)(4)(B). This second mechanism is presumably available at any time and allows EPA to implicitly disapprove a previously approved WQS and adopt a federal replacement standard. *Id.* The disapproval of a previously approved WQS and promulgation of a federal replacement standard is a decision that is made by the Administrator of EPA, as EPA regulations have not delegated such a decision to the Region.

As set forth below, EPA followed neither of these disapproval procedures authorized under the CWA in establishing new aquatic life and primary contact recreation uses for the LK

Canal in the Star Permit. Rather, the Region unlawfully established new designated uses for the LK Canal based simply on a “reinterpretation” of Idaho’s WQS. The Region’s reinterpretation of Idaho’s WQS was contrary to IDEQ’s reasonable interpretation of its WQS and was contrary to the Region’s previous determination that the LK Canal was only protected for agricultural water uses.

### III. FACTUAL BACKGROUND

Star provides drinking water, sewer collections, and wastewater treatment services within its district’s boundaries encompassing 22 square miles in and around the City of Star, which is a rural community in Ada County, Idaho. Included in Star’s boundaries are parts of Ada and Canyon Counties. Star owns, operates, and maintains the WWTP, which discharges certain pollutants at the permitted Outfall 001 to the LK Canal within the Lower Boise River Basin Subbasin. The LK Canal is a man-made waterway that was constructed in 1880 for agricultural water uses and to drain agricultural lands. The new effluent limits contained in the Star Permit by reason of EPA’s new designated uses for the LK Canal will require that Star install costly water pollution control equipment.

Since at least 1980, pursuant to 33 U.S.C. § 1313(c)(2)(A), IDEQ adopted state-wide WQS, presently codified at IDAPA 58.01.02, *et seq.* Idaho’s WQS specifically provided that man-made waterways, for which uses had not been specifically designated in the WQS, would be protected for the uses for which the waters were developed. *See* IDAPA 58.01.02.101.02. The man-made waterway use provides:

02. Man-Made Waterways. Unless designated in Sections 110 through 160, man-made waterways are to be protected for the use for which they were developed.



*Id.*

The man-made waterway use and other standards were reviewed by the Region in 1980 and subsequently approved and adopted pursuant to 33 U.S.C. § 1313(c)(2)(A). *See Attachment C*, letter from EPA to IDEQ (July 15, 1980).<sup>2</sup> Since that time, EPA has not taken any action to disapprove the use established for man-made waterways.

Idaho's manmade waterway provision is currently codified in section 101 of the Idaho WQS entitled "Nondesignated Surface Waters." The section provides:

101. NONDESIGNATED SURFACE WATERS.

01. Undesignated Surface Waters. Surface waters not designated in Sections 110 through 160 shall be designated according to Section 39-3604, Idaho Code, taking into consideration the use of the surface water and such physical, geological, chemical, and biological measures as may affect the surface water. Prior to designation, undesignated waters shall be protected for beneficial uses, which includes all recreational use in and on the water and the protection and propagation of fish, shellfish, and wildlife, wherever attainable. (3-23-98)

a. Because the Department presumes most waters in the state will support cold water aquatic life and primary or secondary contact recreation beneficial uses, the Department will apply cold water aquatic life and primary or secondary contact recreation criteria to undesignated waters unless Sections 101.01.b and 101.01.c. are followed. (4-5-00)

b. During the review of any new or existing activity on an undesignated water, the Department may examine all relevant data or may require the gathering of relevant data on beneficial uses; pending determination in Section 101.01.c. existing activities will be allowed to continue. (3-23-98)

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<sup>2</sup> IDEQ compiled a history of documents relevant to Idaho's man-made waterway provision, which was incorporated in its February 20, 2015 final water quality certification of the Star Permit. *See Attachment D*, IDEQ 401 Certification of the Star Permit and Response to Comments. Portions of that history are attachments to this Petition.

c. If, after review and public notice of relevant data, it is determined that beneficial uses in addition to or other than cold water aquatic life and primary or secondary contact recreation are appropriate, then the Department will: (4-5-00)

i. Complete the review and compliance determination of the activity in context with the new information on beneficial uses, and (3-23-98)

ii. Initiate rulemaking necessary to designate the undesignated water, including providing all necessary data and information to support the proposed designation. (3-23-98)

02. Man-Made Waterways. Unless designated in Sections 110 through 160, man-made waterways are to be protected for the use for which they were developed. (7-1-93)

03. Private Waters. Unless designated in Sections 110 through 160, lakes, ponds, pools, streams and springs outside public lands but located wholly and entirely upon a person's land are not protected specifically or generally for any beneficial use. (7-1-93)

In 1997 EPA proposed to adopt federal replacement standards for Idaho's unclassified water section (now "undesignated surface water" at section 101.01) and the "private waters" section at section 101.03. However, because IDEQ promulgated the current version of IDAPA 58.01.02.101.01 in 1997, EPA determined it was not necessary to adopt a federal replacement standard. *See* 62 Fed. Reg. 41,162, 41,164 (July 31, 1997).

As noted, in 1997, EPA took affirmative action to disapprove certain standards contained in Idaho's WQS, but the man-made waterway provision was left intact. In disapproving those certain standards, EPA noted that man-made waterways are addressed by section 58.01.02.101.02 (formerly 16.01.02.101.02) of the Idaho WQS, and that the section "protects manmade waterways for the uses for which they are developed unless specifically designated in Idaho Sections 110 through 160 for other or additional uses." 62 Fed. Reg. at 41,176. In 62 Fed. Reg. 41,162, EPA promulgated a federal rule to supersede IDEQ's "excluded waters provision,"

which proposed that private waters of the United States that were unclassified (terminology later changed to “undesigned”) should be excluded from WQS. 62 Fed. Reg. at 41,176. The federal rule proposed a modification that any private waters of the United States that are undesigned in the WQS would be covered by the standards applicable to undesigned waters. *Id.* EPA addressed comments made about the definition of “waters of the United States” and concluded that even if a man-made waterway is a “private water” it would not be covered by the proposed rule because IDAPA 58.01.02.101.02 already protects these waters. EPA went on to state that “man-made waterways **are not** affected by EPA’s proposal [modifying the rule to state any undesigned private waters are covered by the “undesigned waters” provision], whether or not waters of United States, because they were not part of the private waters exclusion from standards.” *Id.* at 41,176-77 (emphasis added). Similarly, the general default standard for undesigned waters is inapplicable to man-made waterways because it is superseded by the more specific language applicable to man-made waterways in IDAPA 58.01.02.101.02.

Since 1997, the LK Canal has not been designated for additional uses. Moreover, in 2006 and 2007, IDEQ conducted rulemaking meetings to modify language in the WQS to further clarify the definition of “man-made waterways.” During this time, the Region attended the rulemaking meetings and approved the modification, and again implicitly confirmed that man-made waterways were protected for uses for which they were developed. *See Attachment D*, IDEQ Response to Comments for § 401 Certification, p. 3; *Attachment E*, letter from the Region to IDEQ (May 22, 2008) approving the definition change to man-made waterways.

On September 30, 1999, Star was reissued a NPDES Permit (the “1999 Permit”) and pursuant to state law, the Region determined that the LK Canal was a “man-made waterway” for which beneficial uses of the water had not been designated in the WQS, and would therefore be

protected for the uses for which the waterway was developed. *See* IDAPA 58.01.02.101.02 and **Attachment F**, Fact Sheet for Star Water and Sewer District (EPA, 1999). The Region formally concluded that the purpose of the LK Canal is to deliver water to irrigate agricultural land to the west of the City of Star, and on that basis, it applied the agricultural water designated use in Star's 1999 NPDES Permit. *Id.* Permit limits in the 1999 Permit were therefore based on meeting the agricultural water designated use. A copy of the 1999 Fact Sheet is attached hereto as **Attachment F**. A copy of the 1999 Star NPDES Permit is attached hereto as **Attachment G**.

The 1999 Permit expired on September 30, 2004 and Star applied for reissuance of it from the Region. An updated application was provided to the agencies by Star on July 19, 2013.

On May 19, 2014, the Region issued its 2014 Fact Sheet for the NPDES Permit ("2014 Fact Sheet," *see* **Attachment H**), and contrary to IDEQ's interpretation of its WQS and contrary to the Region's prior permitting action, the Region decided that the LK Canal was now protected for aquatic life and primary contact recreation uses.

The overall objective of CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. Section 101(a)(2) of the CWA states that water quality should provide for the protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water, wherever attainable. This provision is sometimes referred to as the "fishable/swimmable" goal of the CWA .... [A]t Outfall 001, the LK Canal has not been designated for any specific uses in the State of Idaho WQS ... [and] all such "undesignated waterways" are to be protected for the beneficial uses of cold water aquatic life and primary contact recreation ... in accordance with the goals of the CWA.

[B]ecause IDEQ is required to designate all waters of the U.S. within the State with fishable/swimmable uses unless a [Use Attainability Analyses] [is] completed and approved by EPA, the EPA is establishing limits in this Permit that are more protective than required by the draft 401 certification. Therefore, the Permit

conditions protect the LK canal for cold water aquatic life and primary contact recreation.

**Attachment H**, pp. 10-11.

On February 20, 2015, the State of Idaho issued a 401 certification of the Star Permit and informed the Region that the appropriate use for the LK Canal under Idaho WQS was only for agricultural water use. A copy of the Final 401 Water Quality Certification and Response to Comments is attached hereto as **Attachment D**. Specifically, IDEQ noted:

[The LK] Canal is a man-made waterway, not designated in sections 110 through 160 of the WQS which delivers water from the Boise River to irrigate agricultural land to the west of the city of Star and collects shallow groundwater and tailwater from agricultural field irrigation. Man-made waterways, for which uses are not designated in IDAPA 58.01.02, sections 110-160, are to be protected for the uses for which they are developed; in this case, agricultural water supply (IDAPA 58.01.02.101.02)... Because no aquatic life or recreational uses are designated for the LK Canal, [IDEQ] will provide Tier 1 protection only for the LK Canal (IDAPA 58.01.02.051.01).

**Attachment D**, p. 2.

IDEQ did not reflexively apply the man-made waterway provision to the LK Canal without further evaluation. As required by state and federal anti-degradation requirements and other requirements under state law, IDEQ evaluated whether aquatic life uses or recreational uses were existing uses in the LK Canal before issuing the final 401 certification. IDEQ determined that such uses were not existing uses in the LK Canal and therefore determined that agricultural water use was the only use to be protected under state WQS. *Id.*

The Region did not disagree with IDEQ's factual and technical determinations that aquatic life and recreational uses were not existing uses in the LK Canal. Rather, the Region disagreed with IDEQ's interpretation of its WQS. Now, for the first time, the Region concluded

that man-made waterways were included in Idaho's undesignated surface water provision at IDAPA 58.01.02. 101.01. See **Attachment I**, Region's Response to Comment on NPDES Permit No. ID0023591 (Mar. 26, 2015).

Despite IDEQ's objections and comments filed against the Region's designation, the Region established new designated uses for the LK Canal and issued the final Star Permit on March 26, 2015. Star hereby timely submits its Petition for Review of the uses designated by the Region in the Star Permit for the LK Canal.

#### IV. STANDARD OF REVIEW

Under 40 C.F.R. § 124.19(a), the EAB should grant review of a permitting decision when it is based on clearly erroneous findings of fact or conclusions of law or involves an exercise of discretion or an important policy matter that warrants EAB review. See *In re City of Malborough, Mass. Easterly Wastewater Treatment Facility*, NPDES Appeal No. 04-13, slip op. at 7 (E.A.B. Aug. 11, 2005). The Board's "power of review (under 40 C.F.R. § 124.19) should only be sparingly exercised and most permit conditions should be finally determined at the Regional level." *Id.* (citing 45 Fed. Reg. 33,290, 33,412 (May 19, 1980)). To preserve an issue for appeal, the regulations require "any petitioner who believes that a permit condition is inappropriate to have first raised 'all reasonably ascertainable issues and ... all reasonably available arguments supporting [that petitioner's] position' during the public comment period on the draft permit." *In re Westborough & Westborough Treatment Plan Bd.*, 10 E.A.D. 297, 304 (E.A.B. 2002) (quoting 40 C.F.R. § 124.13). The burden of demonstrating that review is warranted rests with the petitioner, "who must state any objections to the permit and explain why the permit issuer's previous response to the objection is clearly erroneous, an abuse of discretion,

or otherwise warrants review.” 40 C.F.R. § 124.19(a); see *In re City of Marlborough*, NPDES Appeal No. 04-13, slip op. at 7.

## V. ARGUMENT

### A. EPA Erroneously Disregarded IDEQ’s Interpretation of the Applicable Designated Use for the LK Canal.

In responding to Star’s comments about the appropriate designated use for the LK Canal, EPA noted that the LK Canal has not been designated in the state’s WQS. See **Attachment I**, Region’s Response to Comments, p. 4. Accordingly, EPA applied the general default language contained in IDAPA 58.01.02.101.01, a different provision in the state’s WQS that provides that undesignated waters are presumed to be protected for aquatic life and recreational uses. See IDAPA 58.01.02.101.01. This is the crux of EPA’s argument in applying the new uses. However, by applying these new use designations, EPA violates the CWA and state law by disregarding IDEQ’s reasonable interpretation of its WQS and the Region’s own prior interpretation of the same WQS applicable to the LK Canal.

EPA’s disregard of the state’s reasonable interpretation of its WQS violates policies deferring to state interpretations of its WQS. As a matter of law, EPA cannot reject a state’s reasonable recommendation concerning compliance with state WQS. A state’s reasonable interpretation of its WQS in connection with section 401 certification should be honored by EPA in issuing NPDES permits. See *In re Ina Rd. Water Pollution Control Agency*, 2 E.A.D. 99 (E.A.B. 1985) (Arizona’s section 401 certification was based upon a reasonable interpretation of Arizona’s WQS and, therefore, Arizona’s interpretation prevailed over EPA’s conflicting interpretation). Moreover, if EPA attempts to override a state’s reasonable interpretation of its WQS, it must provide compelling justification. See *In re Am. Cyanamid Co.*, 4 E.A.D. 790, 801

n.12 (E.A.B. 1993) (EAB upholds Whole Efficient Toxicity (“WET”) limits in NPDES permits based on EPA interpretation of Florida WQS; EAB rejects permittee’s argument that Florida’s law on WET limits should be interpreted differently because Florida waived water quality certification, but noted that the result may have been different had Florida advanced the position of permittee in the section 401 certification).

IDEQ has provided sufficient justification for its interpretation of the WQS, specifically that based on the plain structure and language of the WQS, IDAPA 58.01.02.101.02 requires that undesignated man-made waterways are to be protected for the use for which they were developed. *See Attachment D*, IDEQ Response to Comments, p. 3. While the general default provision that protects waters for cold water aquatic life and recreational uses could be applied to other undesignated waters, in this instance, it does not apply to waterways because there is a more specific provision that addresses man-made waterways in the same section of the standards. IDEQ has provided technical evidence demonstrating that the waters of the LK Canal are used and applied to agricultural land, and there is no evidence to support that aquatic life or primary contact recreational uses are existing uses in the LK Canal. *See Attachment D*, IDEQ response to Comment, p. 2.

Conversely, the Region’s justification for utilizing the fishable/swimmable standard has no merit. The 2014 Fact Sheet for the Star Permit states, “the LK Canal has not been designated for any specific uses in the WQS” and instead speculates that

58.01.02.101.02 is an additive provision that implies that there may be other designated uses applicable to man-made waterways, such as agricultural water supply. Nowhere, at 58.01.02.101.02, does the provision state that manmade waterways are only to be protected for the use in which they were developed. The final 401 certification from IDEQ is not sufficient to remove or modify protections for undesignated waters provided by Section 101.01



because of the need to comply with the CWA and IDAPA procedures (58.01.02.101.01, b and c).

**Attachment I**, EPA Response to Comments, at p. 4.

There is nothing in the WQS that supports an interpretation that IDAPA 58.01.02.101.02 is simply an “additive provision,” and moreover, IDEQ, the agency with discretion to interpret its standards, has never interpreted the section in this manner. Indeed, it makes little sense to have the man-made water provision in section 101.02 if it is already covered in section 101.01. In fact, the Region fails to provide any justification that each designation in the WQS must specifically state that it is the *only* protected use identified in the WQS, or any reasoning that the specific provision addressing man-made waterways should simply be ignored. The Region advances an interpretation without any justification and erroneously disregards IDEQ’s discretion to interpret its WQS and the Region’s prior interpretation of this same regulation.

It is telling that EPA has consistently approved and applied the “agricultural” use designation to the previous NPDES permit approved by the Region for the Star WWTP. *See Attachments F and G*. EPA fails to rationally explain why its new interpretation of Idaho’s WQS is appropriate for the LK Canal. In addition, the Region has consistently applied the man-made waterway standard under IDAPA 58.01.02.101.02 to other NPDES permits issued by the Region, deferring to IDEQ’s interpretation that man-made waterways are only protected for agricultural use (unless IDEQ determines other existing uses should be protected). *See Attachment D*, IDEQ Response to Comments at p. 2.

The application of the appropriate WQS to man-made waterways is a significant issue in southern Idaho, which is an arid area dependent upon irrigated agriculture to support its substantial agricultural industry. There are literally hundreds of man-made waterways in southern Idaho that convey water to irrigated agricultural lands and collect runoff and drainage

from agricultural lands. According to IDEQ, the issue related to the Star Permit is not an isolated incident. *See Attachment D*, IDEQ Response to Comments at p. 3. IDEQ has consistently applied the man-made waterway provisions to various man-made waterways in southern Idaho. EPA has consistently agreed with Idaho's interpretation and only recently has the Region begun reinterpreting Idaho's standards to now designate aquatic life and recreational uses to man-made waterways. *Id.*

Finally, the Region's reinterpretation of Idaho's man-made waterway provision is contrary to the Administrator's decision on Idaho WQS in 1997. As noted, the Administrator of EPA acknowledged IDEQ's interpretation of the man-made waterway provision was appropriate and did not take any action on that standard in 1997. *See* 62 Fed. Reg. at 41,176-177. Therefore, the Region's current interpretation of Idaho's WQS is erroneous and the EAB should review and modify and/or remand the Region's erroneous interpretation of WQS applicable to the LK Canal.

**B. EPA Acted Arbitrarily by Merely Reinterpreting the WQS and Failing to Follow the CWA to Disapprove IDEQ's Man-Made Waterway Provision.**

Notwithstanding IDEQ's authority to protect the LK Canal only for agricultural uses, if EPA were to find that aquatic life and recreation uses apply to the LK Canal, EPA must follow the procedures provided in the CWA to disapprove the state's WQS and promulgate a replacement standard. The Region's determination that new designated uses now apply to the LK Canal is a de facto promulgation of a state WQS. They are new designated uses established by the Region for an Idaho waterbody. The Region cannot avoid the procedures required by the CWA for promulgating federal WQS by simply "reinterpreting" Idaho's WQS in connection with a NPDES permitting action.

The man-made waterway provision use is not a new or revised WQS subject to review and disapproval by the Region. Pursuant to 33 U.S.C. § 1313(c)(4)(B), if the EPA Administrator finds a state-promulgated WQS is inconsistent with certain standards under the CWA, it must take affirmative action to disapprove the state's WQS and provide the state an opportunity to correct the standard. If the state fails to take the necessary action to correct the disapproved WQS, EPA must prepare and publish its own proposed WQS. 33 U.S.C. § 1313(c)(4)(A). Here, while the Region alleges the uses in Idaho's WQS for the LK Canal are improper, it has failed to take the required measures under the CWA to disapprove the specific use for man-made waterways contained in IDAPA 58.01.02.101.02. The Region has arbitrarily and unlawfully engaged in a simple reinterpretation of the WQS to establish new designated uses for the LK Canal. This is unlawful under the CWA, and the Region's actions are arbitrary, capricious, and an abuse of discretion. The EAB should remand the Star Permit to the Region to apply the appropriate use to the LK Canal.


## VI. CONCLUSION

For the reasons stated herein, the EAB should grant review of Star's petition for review of the Star Permit and set aside, modify, and/or remand the unlawful designated uses established by the Region in the Permit.

DATED: April 27, 2015.

Respectfully submitted,

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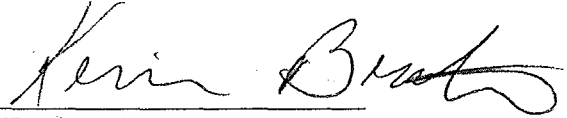
Attorneys for Star Sewer and Water District

## LIST OF ATTACHMENTS

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| <b>Attachment A</b> | NPDES Permit No. ID0023591   |
| <b>Attachment B</b> | Comments from Star to EPA Region 10 re Draft NPDES Permits and Facts Sheets, dated June 16, 2014 |
| <b>Attachment C</b> | Letter from EPA to IDEQ dated July 15, 1980  |
| <b>Attachment D</b> | IDEQ Response to Comments for § 401 Certification  |
| <b>Attachment E</b> | Letter from the Region to IDEQ dated May 22, 2008  |
| <b>Attachment F</b> | Fact Sheet for Star Water and Sewer District (EPA, 1999)   |
| <b>Attachment G</b> | 1999 NPDES Permit  |
| <b>Attachment H</b> | 2014 Fact Sheet for the NPDES Permit   |
| <b>Attachment I</b> | Region's Response to Comment on NPDES Permit No. ID0023591 (Mar. 26, 2015)                       |

## CERTIFICATE OF COMPLIANCE

Pursuant to 40 C.F.R. § 124.19(d), I hereby certify that this brief contains 5,102 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.



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Kevin J. Beaton  
Attorneys for Star Sewer and Water District

CERTIFICATE OF SERVICE

I hereby certify that the PETITION FOR REVIEW was served on this 27<sup>th</sup> day of April,

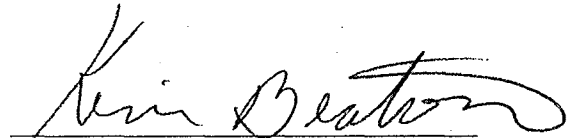
2015 as follows:

By overnight delivery to:

United States Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board  
Colorado Building  
1341 G Street, N.W., Suite 600  
Washington, DC 20005

By regular mail to:

Director, Office of Water  
United States Environmental Protection Agency  
Region X  
1200 Sixth Avenue  
Seattle, WA 98101



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