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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
ENVIRONMENTAL APPEALS BOARD

In re:

CITY OF SANDPOINT,  
Wastewater Treatment Plant

NPDES Permit No. ID-0020842

NPDES Appeal No. 18-01

**IDAHO DEPARTMENT OF ENVIRONMENTAL  
QUALITY'S UNOPPOSED MOTION FOR  
EXTENSION OF TIME TO FILE RESPONSE  
BRIEF**

The Idaho Department of Environmental Quality ("IDEQ") respectfully requests an extension of time in which to file its response brief in Appeal No. NPDES 18-01. The petitioner, Idaho Conservation League ("ICL"), does not oppose an extension. IDEQ's request would move the date by which IDEQ must respond to the petition for review ("Petition") from August 10, 2018 to September 24, 2018. The grounds for this motion are as follows:

1. On June 13, 2018, the Environmental Protection Agency, Region 10 ("EPA"), issued NPDES Permit No. ID-0020842 ("Permit") to the City of Sandpoint Wastewater Treatment Plant ("Facility") under § 402 of the Clean Water Act ("CWA").
2. On July 11, 2018, ICL filed a petition for review of the Permit with the Environmental Appeals Board ("Board") and served copies of the Petition to the City of Sandpoint and EPA.

3. Pursuant to 40 C.F.R. § 124.19(b)(4), where the State in which the permitted facility is located is not the permit issuer and that State wishes to participate in the appeal, the State must file a notice of appearance and a response by the deadline in 40 C.F.R. § 124.19(b)(2) (i.e. within thirty (30) days after service of a petition for review).

4. Under 40 C.F.R. § 124.20(a), any time period scheduled to begin on the occurrence of an act or event begins on the day after the act or event. Therefore, without an extension, IDEQ's deadline to file a notice of appearance and response to the Petition is Friday, August 10, 2018.

5. The Petition's central argument involves the permissible interpretation of Idaho state law, regulation, and policy regarding mixing zones and its application to permitting actions under § 402 of the CWA.

6. This argument necessarily raises critical issues regarding the interrelation between state administrative rules and federal permitting actions. A proper response brief requires extensive research into a long rulemaking history and voluminous state agency record, wherein IDEQ has interpreted the factors to consider in approving a permissible mixing zone that is adequately protective of beneficial uses. This time-intensive research demands broad coordination across multiple persons and workgroups within IDEQ and the Idaho Office of the Attorney General. Further complicating the task of compiling documents, reviewing the record, and preparing a substantive brief on these issues in a mere twenty work days is the prevalence of vacation and other diminished availability amongst key personnel during this particular season.

7. Based on an explanation of these circumstances necessitating additional time for the development of IDEQ's response brief, in a phone conversation the morning of July 24, 2018 with the Idaho Office of the Attorney General, ICL agreed that the requested extension would not result in prejudice to any party and indicated they would not oppose this motion or the newly

proposed response brief due date of September 24, 2018.

8. Based on communications with EPA and ICL, it is IDEQ's understanding that EPA will also be submitting a motion to the Board for extension of the deadline to file a response brief, and has similarly secured ICL's agreement not to oppose the motion. EPA's requested deadline will also be September 24, 2018—it is consistent with federal rules to extend both IDEQ's and EPA's deadlines to correspond with each other, and importantly is likely more efficient for the Board to have the parties' respective briefing schedules as closely aligned as possible.

9. Accordingly, IDEQ requests that the Board grant an extension of the time to file a response brief to September 24, 2018.

DATED: July 27, 2018.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I certify that on July 27, 2018, copies of the foregoing IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY'S UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE RESPONSE BRIEF were sent to the following persons in the manner described below:

Clerk of the Board  
U.S. Environmental Protection Agency  
Environmental Appeals Board  
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Washington, DC 20004

[Via Electronic Filing]

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