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Submitted Pro Se on behalf of myself and for the Idaho Conservation League

**Before the Environmental Appeals Board
United States Environmental Protection Agency
Washington, D.C.**

In the Matter of)	
Star Sewer and Water)	Amicus Curiae
District – Waste Water)	
Treatment Plant)	
NPDES Permit No. ID0023591)	
)	
)	
NPDES Appeal No. 15-07)	
)	
)	

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Introduction

This amicus curiae is in support of the recently issued NPDES permit for the Star Sewer and Water District – Waste Water Treatment Plant (Star facility).

This amicus curiae is submitted by myself, Justin Hayes, on behalf of myself and the ICL. I am employed as the Program Director for the Idaho Conservation League (ICL) and I am also a member of the ICL. As I am not an attorney, I am submitting this amicus curiae pro se.

ICL, an Idaho-based 501(c)3 non-profit, works to protect water quality and aquatic and human health. ICL is Idaho's oldest and largest state-based conservation organization. We represent over 25,000 supporters across the entire state of Idaho, including many members who live, work and recreate in waters downstream from the point of discharge for the City of Star's WWTP.

ICL submitted timely comments to both the Environmental Protection Agency (EPA) and to the Idaho Department of Environmental Quality (DEQ) during the public comment periods for the draft NPDES permit and the draft 401 certification for the City of Star facility. See Attachment #1.

Amongst the comments that we raised in our comment letter was a statement voicing support for the EPA's conclusion that the receiving water for the discharges from the Star facility was to be protect for aquatic life and recreational uses.

The City of Star has appealed the EPA issued NPDES permit for this facility, claiming that the receiving water need only be protected for 'agricultural uses.' We disagree with Star's claims and wish to make the EPA's Environmental Appeals Board (EAB) aware of our position on this matter and ensure that the EAB is aware facts germane to this matter.

When most people hear discussions about manmade waterways and 'canals' or irrigation 'ditches' they think of concrete lined infrastructure, devoid of life. And, while this may accurately describe many canals, it does not accurately describe the LK Canal, to which the Star facility discharges its effluent.

Immediately downstream from the point where the Star facility discharges, the LK Canal flows prominently through a very high-end residential community. Lined by a paved walking path and inviting grass common areas with easily accessible banks, the LK Canal is clearly a sought after amenity in this community.



Figure 1: Photo of the LK Canal, approximately 100 yards downstream from Star discharge



Figure 2: LK Canal flowing through community, approx. 1/4 mile downstream from Star facility discharge point



Figure 3: LK Canal approx. 1/2 a mile downstream from Star facility discharge point

It is our understanding that the LK Canal was constructed in the late 1880's. During the irrigation season (approx. May through October), this canal diverts water from the Boise River and delivers this water to various parties for irrigation purposes. Water not consumed by these irrigation interests is returned to the Boise River.

As the canal winds its way through the valley, it intercepts and entrains surface runoff and also groundwater. As a result, there is water in the LK Canal system year round – not just during the irrigation season. This year-round flow is significant, not only because it is required to receive and dilute the year-round wastewater discharge from the Star facility, but also because it provides year-round habitat for aquatic life and for recreational and contact opportunities.

Aquatic Life Is An Existing Use In The LK Canal

The Boise River contains healthy populations of trout and other sought after game fish and is a well-known and much utilized fishery. Neither the point of diversion for the LK canal (i.e. the point where the LK Canal diverts water from the Boise River into the canal) nor the point where the LK Canal returns to the Boise River are screened to prohibit fish from entering and living in the LK Canal System.

Fish being entrained in irrigation canals is a significant problem in our area because virtually no irrigation canals screen fish out of the canals. In many canals, the end of irrigation season means that water is no longer diverted into the canals and the canals dry up. Obviously, any fish living in such a canal would perish without water. In an effort to limit the waste caused by fishing dying in drying canals, the Idaho Department of Fish and Game annually issues an order allowing local residents to salvage fish from canals. See Attachment #2.

We raise this issue to the EAB's attention so the Board is aware that because irrigation infrastructure in our area is not screened for fish, fish are present in canals and ditches.

Because the LK Canal has water in it year round, fish in the canal are not extirpated after the cessation of the irrigation season.

Also, because the LK Canal has water in it year round, the waterbody is also home to numerous other organisms. On a recent trip to the portion of the canal immediately downstream from the Star facility's discharge, I personally observed several species of ducks, a muskrat and numerous species of aquatic insects living within the LK Canal.



Figure 4: The LK Canal, immediately downstream from the Star discharge, is home to aquatic waterfowl, including these ducks photographed (see arrows above) in, and taking flight from, the LK Canal.



Figure 5: The LK Canal, immediately downstream from the Star discharge is home to aquatic dependent life, including this muskrat - which was photographed (see arrow above) in the LK Canal.

These, and other water dependent species reside in the LK Canal; where they depend on the water to be of sufficient quality to support them and their food sources.

Section 101(a)(2) of the Clean Water Act lays out the goals of the Clean Water Act stating: “it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983”

Section 303(c)(2)(A) speaks repeatedly of the need for water quality standards to be sufficient to protect fish, shellfish and wildlife.

The EPA's Water Quality Standards Handbook - Chapter 2: Designation of Uses (40 CFR 131.10) provides further guidance that "Wildlife protection should include waterfowl, shore birds, and other water-oriented wildlife."

The banks and bed of the LK Canal, in the area downstream from the Star facility discharge, are composed primarily of rocks, cobbles, gravel, sand and other earthen substrates and various forms of aquatic vegetation can be found in the canal. The LK Canal may have been primarily made by man in the 1880's, but its form and physical attributes today make this waterway a attractive refuge for aquatic life and water dependent wildlife now.

From my direct observations, I can attest to the EAB that there is currently aquatic life uses present in the LK Canal. In other words, 'aquatic life' is an existing use in the LK Canal.¹ As such, it is appropriate, indeed it is mandatory, that the EPA concluded that the LK Canal should be protected for Aquatic Life uses and that the Star facility's NPDES should contain effluent limits sufficient to protect the receiving water for these uses.

Recreation / Human Contact Are Existing Uses

Idaho is currently undergoing significant urban and suburban growth. This is especially true in the community of Star, Idaho. Located just a short distance from the City of Boise (Idaho's Capital and the state's largest city), Star is rapidly growing and whole subdivisions are springing up in areas that was just a short time ago were entirely devoted to agriculture.

The subdivisions that are located on the banks of the LK Canal, immediately downstream from the Star facility's discharge, did not exist when the Star facility was issued its most recent prior NPDES permit in 1999. The majority of the homes in these subdivisions are relatively new, indeed new homes were being constructed along the LK canal within the last six months. Prior decisions regarding the "use" of the LK Canal may have been justified in some bygone time, but new housing developments are placing people into areas and situations that necessitate reconsidering water quality, designated uses, existing uses and wastewater management.

As large numbers of homes are being build on lands formerly devoted to agriculture, many subdivisions are utilizing the water that was formally used only to irrigate agricultural fields to now irrigate landscaping in yards and in common areas. This is the case in the subdivisions immediately downstream from the Star facility's point of discharge.

These subdivisions pump water from the LK Canal and deliver it via a pressurized irrigation system to homes and common areas. The water from the canal is not treated prior to being used to irrigate the grass of residences and common areas. As such, it is safe to assume that there is currently significant human interaction and contact, involving

¹ 40 CFR 131.3(e) - Definitions. "*Existing uses* are those uses actually attained in the water body on or after November 28, 1975, whether or not they are included in the water quality standards."

a significant risk of ingestion of water by children, with water from the LK Canal, immediately downstream from the Star facility's discharge point. On a 100-degree day, what child can resist the thrill of running through sprinklers – mouth wide up shrieking with joy?

Beyond the fact that water from the canal is literally sprinkled on every yard in the entire subdivision, the LK Canal's inviting waters and gentle banks make the waterway an inviting place for children to play. The banks along the canal show signs that humans and pets walk down to the water. The presence of children in the community is apparent and it is likely that children have direct contact with the water in the canal.



Figure 6: Residences in the downstream community have easy access to the LK canal. Toys in the yard of this home located on the banks of the LK Canal signal that children recreate in the area.

Conclusion

The Clean Water Act provides that existing uses must be protected and that NPDES permit limits must include effluent limits sufficient to maintain and protect existing uses.²

² 40 CFR 131.12 Antidegradation policy.

(a) The State shall develop and adopt a statewide antidegradation policy and identify the methods for implementing such policy pursuant to this subpart. The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

The LK Canal currently has both aquatic life and recreation and primary contact uses occurring in the waterway and with water from the waterway. Since these are existing uses, it is mandatory that the EPA ensure that these uses are protected. Pursuant to this, the EPA, as the agency tasked with issuing NPDES permits in Idaho, must ensure that the Star facility's NPDES permit contain effluent limits sufficient to protect these existing uses. For this reason, ICL supports the EPA's determination that the LK Canal should be protected for aquatic life and recreation and human contact uses and we support the effluent limits contained in the Star facility's NPDES permit.

Thank you for your consideration of our concerns and observations regarding the existing uses found in the LK Canal. We hope that our amicus curiae has been of use to the EAB as it considers the appeal that has been filed by the Star facility. We urge the EAB to affirm the EPA's decisions regarding 'uses' of the LK Canal and the effluent limits that the EPA included in the NPDES permit for the Star WWTP.

Dated: June 16, 2015

Submitted by,



Justin Hayes
Program Director
Idaho Conservation League

*Submitted Pro Se on behalf of myself and the
Idaho Conservation League*

(1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

Certificate of Service

I hereby Certify that copies of the forgoing Amicus Curiae in the matter of the Star Sewer and Water District – Waste Water Treatment Plant, Appeal No. 15-07, were served by the United States First Class Mail on the following persons, this day of June 16th, 2015.

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