

Response to Comments on
National Pollutant Discharge Elimination System (NPDES) Permit
For Discharges from the
City of Caldwell
Municipal Separate Storm Sewer System
NPDES Permit No. IDS028118

October 2020

U.S. Environmental Protection Agency, Region 10

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Introduction

On July 31, 2020, the U.S. Environmental Protection Agency Region 10 (EPA) proposed a draft National Pollutant Discharge Elimination System (NPDES) permit for discharges from the municipal separate storm sewer system (MS4) owned and/or operated by the City of Caldwell (City) in Canyon County, Idaho. The permit document #IDS028118 will be referred to in this document as “the Permit.” The public comment period ended on September 14, 2020.

This document provides EPA responses to comments received on the proposed Permit. Comments are broadly organized by topic in the order the issue appears in the Permit. In general, EPA summarizes each comment, and where appropriate for clarity EPA groups similar comments into one statement. In some cases, EPA includes the comment verbatim. Where indicated, EPA has made changes to the final Permit. The Administrative Record contains copies of each comment letter, as well as information considered by EPA during the permit development process.

State Certification under Clean Water Act §401

On September 11, 2020, the Idaho Department of Environmental Quality (IDEQ) provided EPA with a final Clean Water Act (CWA) Section 401 certification that includes conditions that must be included in the Permit pursuant to CWA Section 401(d), 33 U.S.C. § 1341(d). A copy of the final certification is provided in Appendix A of this document. Final certification conditions are included in the Permit. See Table 1.

Edits to the Final Permit

Several comments and/or responses refer to discussion from EPA’s Fact Sheet (FS) supporting the draft Permit. It is EPA Region 10 policy not to revise the FS discussion based on public comment; instead, upon Permit issuance EPA considers this Response to Comments document as an appendix to the FS which clarifies issues as necessary.

EPA has made minor editorial changes throughout the Permit text for clarity and/or grammatical correction. Major changes have been made to the following Permit Parts in response to comments and IDEQ certification, as identified in Table 1 below:

Table 1. Edits to Final Permit

Edits Based on Public Comments Received:	
Permit Table 4.3	See Response #6
Edits Based on IDEQ Actions:	
Parts 2.5.7, 3.2.7.1, 4.2 and 4.3; Appendix A.2	Conditions of IDEQ’s <i>Final §401 Water Quality Certification for the City of Caldwell Municipal Separate Storm Sewer System; NPDES Permit #IDS028118</i> , dated September 11, 2020. See Appendix A of this document.

Response to Comments

Comments were received from the Association of Idaho Cities (AIC) and the City of Caldwell (City).

General

1. **(AIC):** AIC members appreciate EPA R10 staff efforts to ensure the requirements contained in the proposed Permit reflect the plain language of the Clean Water Act (CWA) and Code of Federal Regulations (CFRs) for MS4 permits. Specifically, requirements to reduce the discharge of pollutants to receiving water bodies to the maximum extent practicable (MEP).

AIC has discussed the proposed Permit with the City of Caldwell and has been engaged in a general Idaho MS4 Permittees' review of the proposed Permit and the City's comments. Please accept this letter as a statement of concurrence and support for the comments that have been submitted.

Response: Comment noted. No change has been made to the Permit.

Comments on FS for Permit #IDS028118

2. **(City): FS Section 1.7 page 10:** We propose revision of the IDAPA Citation to 58.01.02.140.12 to align with the Lower Boise River Water Quality Standards. In addition, is the citation for 58.01.02.110.12 necessary, since all of the waters mentioned in the table have been assigned designated beneficial uses?

Response: It is EPA Region 10 policy not to revise the FS based on public comment. EPA erred in FS Table 1. *Designated Beneficial Uses for Waters Receiving Regulated MS4 Discharges*, in two ways. First, EPA incorrectly referenced IDAPA 58.01.02.110.12 (Upper Spokane Subbasin). Second, EPA failed to include cold water aquatic life as a beneficial use for Mason Creek. See IDEQ's Final Certification, Table 1, in Appendix A of this document, and Email from IDEQ to EPA dated 9/24/2020. The proper citations for FS Table 1 are IDAPA 58.01.02.140.12 (*Lower Boise Subbasin*) and IDAPA 58.01.02.101.01 (*Undesignated Surface Waters.*) No change has been made to the Permit.

3. **(City): FS Section 2.4.1, page 19:** With regard to "public involvement," the City also wishes EPA to be informed that we participate in and financially contribute to an additional organization known as the Lower Boise Watershed Council. This non-profit accepts donations from all parties in pursuit of increasing water quality in the Lower Boise River; the LBWC also applies for State and Federal 319 grant funding to allocate to on-farm BMP and watershed scale water quality improvement projects in the Lower Boise River Basin. For more information, see www.lowerboisewatershedcouncil.org.

Response: Comment noted. EPA encourages the City to continue fostering such partnerships. No change has been made to the Permit.

4. **(City): FS Section 2.7.2, page 32:** We believe there could be a verbiage typo in the first sentence of the second paragraph of this section: "The Permittee to submit a monitoring/assessment plan..."

Response: It is EPA Region 10 policy not to revise the FS based on public comment. The sentence should read "The Permittee must submit a monitoring/assessment plan...." No change has been made to the Permit.

Post-Construction Stormwater Management for New Development and Redevelopment (Permit Part 3.4)

5. **(City) Permit Part 3.4.5 on page 27:** The verbiage used in this section could be misunderstood to describe different types of inspections (BMP installation inspection during construction or BMP maintenance annually after construction). It was initially unclear to us. We recommend changing the

tense of some of the phrasing to make it more clear that the section refers to cyclical post-construction inspection of permanent BMP's. For example:

The Permittee must inspect high priority permanent stormwater controls at new development and redevelopment sites that resulted in land disturbance of greater than one equal to one (1) acre (including ~~construction project~~ sites less than one acre that are part of a larger common plan of development or sale ~~that would disturb one acre or more~~) and that discharge into the MS4.

Response: EPA has not revised the text as suggested. EPA clarifies that Permit Part 3.4.5. directs the City to identify and inspect “high priority” permanent stormwater controls, and Permit Part 3.4.5.1. specifically states that such inspections are meant to ensure “as built” condition and to ensure long term operation and maintenance. High priority locations, once identified, must be inspected at least once annually.

To identify site locations that the City must focus upon to identify high priority permanent stormwater controls, EPA has used phrasing that is consistent with the corresponding federal regulation at 40 CFR 122.34(b)(5) to define the site size threshold for these post-construction control inspections.

No change has been made to the Permit.

Special Conditions for Discharges to Impaired Waters (Permit Part 4)

6. **(City): Permit Part 4.3 on page 33:** Table 4.3 includes multiple assessment units (AU) for the City of Caldwell MS4. We think that the Boise River AU should be "Boise River - Middleton to Indian Creek," instead of "Boise River- Indian Creek to Mouth."

Response: EPA has revised Table 4.3 to correctly identify the AU number and name to:
ID17050114SW001_06b – Boise R.- Middleton to Indian Creek.

Annual Report Submittal Date (Permit Part 6.4.2)

7. **(City): Section 6.4.2 on page 41:** Table 6.4.2 includes dates for the Annual Report Deadlines. We noted that the Year 5 Annual Report must cover Activities from 10/1/2024 to 9/30/2025, but it is also due on 9/30/2025. We request a minimum of 30 days from the activity period to compile data and documentation in order to compose the report.

Response: Comment noted. EPA has not revised the text as suggested; no change has been made to the Permit. EPA cannot establish submittal dates that extend beyond the permit expiration date. Because EPA is working to provide consistent MS4 permit implementation and reporting deadlines in all Idaho MS4 permits in anticipation of the NPDES primacy transfer to IDEQ in 2021, EPA chooses not to extend the deadline for submittal of the Year 5 Annual Report as requested. EPA is confident that, because the City’s permit renewal application pursuant to Permit Part 8.2 is due on April 3, 2025, the City will have assembled sufficient data and documentation to subsequently report on its general SWMP status using the fillable Annual Report format included as Appendix B-2 of the Final Permit.

Appendix A: Idaho Department of Environmental Quality's Final Certification under Clean Water Act §401



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1445 North Orchard Street • Boise, ID 83706 • (208) 373-0550
www.deq.idaho.gov

Brad Little, Governor
Jess Byrne, Director

September 11, 2020

Susan Poulson
NPDES Permits Section Manager
1200 Sixth Avenue, Suite 155
Seattle, WA 98101

Subject: Reference No. IDS028118 – City of Caldwell Municipal Separate Storm Sewer System

Dear Ms. Poulson:

The Department of Environmental Quality (DEQ) has considered water quality certification for the City of Caldwell's MS4 Permit. DEQ is issuing the attached Final 401 Water Quality Certification subject to the terms and conditions contained therein.

If you have any questions or further information to present please contact Kati Carberry at (208) 373-0434, or via email at kati.carberry@deq.idaho.gov.

Sincerely,

A handwritten signature in black ink that reads "Aaron Scheff". The signature is written in a cursive style.

Aaron Scheff
Regional Administrator
Boise Regional Office

KLC:am

Enclosure (1)

ec: Misha Vakoc, EPA - Seattle
Jason Pappani, DEQ - State Office
Lori Flook, DEQ - State Office
EDMS#: 2020AKF90



Idaho Department of Environmental Quality Final §401 Water Quality Certification

September 11, 2020

NPDES Permit Number(s): IDS028118-City of Caldwell MS4 Permit

Receiving Water Body: Indian Creek, Mason Creek, and Boise River

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has authority to review National Pollutant Discharge Elimination System (NPDES) permits and issue water quality certification decisions.

Based upon its review of the above-referenced permit and associated fact sheet, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the discharge will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02), and other appropriate water quality requirements of state law.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits.

Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- Tier I Protection. The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier I review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier II Protection. The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless deemed necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).
- Tier III Protection. The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ is employing a water body by water body approach to implementing Idaho’s antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05.a). Any water body not fully supporting its beneficial uses will be provided Tier I protection for that use, unless specific circumstances warranting Tier II protection are met (IDAPA 58.01.02.052.05.c). The most recent federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

Pollutants of Concern

The City of Caldwell discharges the following pollutants of concern: sediment, nutrients (nitrogen and phosphorus), heat, chlorides, metals, petroleum and hydrocarbons, microbial pollution (*Escherichia coli*), and organic chemicals (pesticides and industrial chemicals).

Receiving Water Body Level of Protection

The City of Caldwell discharges to Indian Creek, Mason Creek, and the Boise River within the Lower Boise River Subbasin. The designated beneficial uses for each assessment unit (AU) receiving the discharge are listed in Table 1. DEQ presumes undesignated waters in the state will support cold water aquatic life and primary or secondary contact recreation beneficial uses; therefore, undesignated waters are protected for these uses (IDAPA 58.01.02.101.01.a). In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

In addition to the waterbodies listed above, the City of Caldwell discharges to several conveyances including Parker Gulch, Elijah Drain, Solomon Drain, Laurel Drain, Isiah Drain, Dixie Drain, West End Drain, and Noble Drain that are not within the AU database maintained by DEQ, nor are they part of the National Hydrography Dataset. These conveyances are not specifically designated in Idaho’s water quality standards, and are considered man-made waterways (IDAPA 58.01.02.010.58). DEQ protects these waterways for the use for which they were developed, namely agricultural water supply (IDAPA 58.01.02.101.02). As such, DEQ will provide Tier I protection only for these conveyances.

For each affected AU, Table 1 lists impairments and the antidegradation tier assigned to it according to DEQ’s 2016 Integrated Report. DEQ assigns a Tier I or a Tier II for aquatic life use and recreational use individually.

If a receiving water body’s AU is fully supporting an assessed use (IDAPA 58.01.02.052.05.a) DEQ will provide Tier II protection in addition to Tier I for that use. If a receiving water body’s AU is not fully supporting its assessed use (IDAPA 58.01.02.051.01) DEQ will provide Tier I protection for that use.

If a beneficial use (aquatic life use or recreational use) is unassessed, DEQ must provide an appropriate level of protection on a case-by-case basis using information available at this time (IDAPA 58.01.02.052.05.b).

Table 1. Receiving Water Bodies

AU	Name	Designated Uses	Beneficial Use Impairments	Aquatic Life Uses	Recreational Uses
	Indian Creek-	COLD, SCR	COLD: Cause Unknown-Nutrients		

Idaho Department of Environmental Quality

§401 Water Quality Certification

1750114SW002_04	Sugar Avenue to Boise River		Suspected, Temperature, Sedimentation/Siltation SCR: <i>Escherichia Coli</i>	Tier I	Tier I
17050114SW006_02	Mason Creek-entire watershed	SCR, COLD (presumed)	COLD: Cause Unknown-Nutrients Suspected, Chlorpyrifos, Malathion, Temperature, Sedimentation/Siltation SCR: <i>Escherichia Coli</i>	Tier I	Tier I
17050114SW005_06b	Boise River-Middleton to Indian Creek	SS, COLD, PCR	SS and COLD: Temperature COLD: Total Phosphorus, Sedimentation/Siltation, PCR: Fecal Coliform	Tier I	Tier I

SS=salmonid spawning; COLD=cold water aquatic life; PCR=primary contact recreation; SCR = secondary contact recreation

Protection and Maintenance of Existing Uses (Tier I Protection)

A Tier I review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing and designated uses and the level of water quality necessary to protect existing and designated uses shall be maintained and protected. In order to protect and maintain existing and designated beneficial uses, a permitted MS4 discharge must reduce the discharge of pollutants to the maximum extent practicable. The terms and conditions contained in the City of Caldwell’s permit and certification require the permittees to reduce the discharge of pollutants to the maximum extent practicable.

Water bodies not supporting existing or designated beneficial uses must be identified as water quality limited, and a total maximum daily load (TMDL) must be prepared for those pollutants causing impairment. A central purpose of TMDLs is to establish wasteload allocations for point source discharges, which are set at levels designed to help restore the water body to a condition that supports existing and designated beneficial uses. Discharge permits must contain limitations that are consistent with wasteload allocations in the approved TMDL (IDAPA 58.01.02.055.05).

Prior to the development of the TMDL, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04).

The EPA-approved TMDLs listed in Table 2 establish wasteload allocations for sediment, bacteria, and total phosphorus. These wasteload allocations are designed to ensure the impaired waterbodies will achieve the water quality necessary to support their existing and designated aquatic life and contact recreation beneficial uses and comply with the applicable numeric and narrative criteria. The effluent limitations and associated requirements contained in the City of Caldwell permit are set at levels that are consistent with these wasteload allocations.

Table 2. EPA-Approved TMDLs

AU	Name	Beneficial Use Impairments	Approved TMDL
1750114SW002_04	Indian Creek-Sugar Avenue to Boise River	COLD: TP, Temperature, Sedimentation/Siltation SCR: <i>Escherichia Coli</i>	<i>Lower Boise River TMDL-2015 Sediment and Bacteria Addendum</i>
17050114SW006_02	Mason Creek-entire watershed	COLD: TP, Chlorpyrifos, Malathion, Temperature, Sedimentation/Siltation SCR: <i>Escherichia Coli</i>	<i>Lower Boise River TMDL-2015 Sediment and Bacteria Addendum</i>
17050114SW005_06b	Boise River-Middleton to Indian Creek	SS and COLD: Temperature COLD: TP, Sedimentation/Siltation, PCR: Fecal Coliform	<i>Lower Boise River TMDL Subbasin Assessment for Fecal Coliform and Sediment (1999)</i> <i>Lower Boise River TMDL-2015 Total Phosphorus Addendum</i>

SS=salmonid spawning; COLD=cold water aquatic life; PCR=primary contact recreation

Permit parts 2, 3, and 4 provide specific terms and conditions aimed at providing a Tier I level of protection and consistency with the wasteload allocations Lower Boise River watershed TMDLs, including :

- A prohibition on snow disposal directly to surface waters;
- Specific prohibitions for non-stormwater discharges;
- Requirements to develop a stormwater management plan with the following control measures:
 - Public education and outreach,
 - Illicit discharge detection and elimination,
 - Construction site stormwater runoff controls,
 - Post-construction stormwater management for new and redevelopment,
 - Pollution prevention/good housekeeping for MS4 operations;
- Quantitative monitoring/assessment to determine BMP removal of pollutants of concern in all impaired AUs;
- Requirements for the City of Caldwell to implement pollutant reduction activities and quantitative monitoring and assessment for discharges into waterbodies listed in Table 1;
- Requirements for the City of Caldwell to monitor and assess temperature in discharges; and
- The stipulation that if either EPA or DEQ determine that a MS4 causes or contributes to an excursion above the water quality standards, the permittee must take a series of actions to remedy the situation.

In summary, the terms and conditions contained in the City of Caldwell's permit will reduce the discharge of pollutants to the maximum extent practicable and are consistent with the wasteload allocations established in the TMDLs listed in Table 2. Therefore, DEQ has determined the permit will protect and maintain existing and designated beneficial uses in the Tier I waterbodies listed in Table 1 in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law

Best Management Practices

Best management practices must be designed, implemented, monitored, and maintained by the permittee to fully protect and maintain the beneficial uses of waters of the United States and to improve water quality at least to the maximum extent practicable.

When selecting best management practices the permittees must consider and, if practicable, utilize practices identified in the Idaho Department of Environmental Quality Catalog of Stormwater Best Management Practices for Idaho Cities and Counties (<http://www.deq.idaho.gov/water-quality/wastewater/stormwater/>).

Pollutant Reduction Activities in Impaired Waterbodies

In carrying out the requirements of Part 4.3 of the permit, the permittee must define and implement at least two activities that are designed to reduce impairment pollutants from the MS4 to Indian Creek, Mason Creek, and the Boise River.

Temperature Monitoring

The permittee must monitor temperature in stormwater discharges from the MS4 into Indian Creek, Mason Creek, and the Boise River to quantify stormwater impacts to these waterbodies.

Reporting of Discharges Containing Hazardous Materials or Deleterious Material

Pursuant to IDAPA 58.01.02.850, all spills of hazardous material, deleterious material or petroleum products which may impact waters (ground and surface) of the state shall be immediately reported. Call 911 if immediate assistance is required to control, contain or clean up the spill. If no assistance is needed in cleaning up the spill, contact the Boise Regional Office at 208-373-0550 during normal working hours or Idaho State Communications Center after normal working hours. If the spilled volume is above federal reportable quantities, contact the National Response Center.

For immediate assistance: Call 911

National Response Center: (800) 424-8802

Idaho State Communications Center: (800) 632-8000

Other Conditions

This certification is conditioned upon the requirement that any material modification of the permit or the permitted activities—including without limitation, any modifications of the permit to reflect new or modified TMDLs, wasteload allocations, site-specific criteria, variances, or other new information—shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401.

Right to Appeal Final Certification

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the “Rules of Administrative Procedure before the Board of Environmental Quality” (IDAPA 58.01.23), within 35 days of the date of the final certification.

Questions or comments regarding the actions taken in this certification should be directed to Kati Carberry, Boise Regional Office at (208) 373-0434 or via email at kati.carberry@deq.idaho.gov.



Aaron Scheff
Regional Administrator
Boise Regional Office

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Questions or comments regarding the actions taken in this certification should be directed to Chantilly Higbee, Coeur d’Alene Regional Office at 208-769-1422 or via email at Chantilly.Higbee@deq.idaho.gov.



Daniel Redline
Regional Administrator
Coeur d’Alene Regional Office