



**STATE OF IDAHO**  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

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(208) 799-4370

Brad Little, Governor  
Jess Byrne, Director

June 21, 2021

Mathew Martinson, Branch Chief  
Permitting, Drinking Water, and Infrastructure Branch  
U.S. EPA Region 10  
1200 6th Avenue, Suite 155  
Mail Code WD-19-C04  
Seattle WA 98101-3188

Subject: FINAL §401 Water Quality Certification for the City of Lewiston and Lewis-Clark State  
College Municipal Separate Sewer System (MS4), NPDES Permit #IDS028061

Dear Mr. Martinson:

On May 21, 2021, the Lewiston Regional Office of the Idaho Department of Environmental Quality (DEQ) received the proposed final draft of the above-referenced permit for the City of Lewiston and Lewis-Clark State College Municipal Separate Sewer System (MS4). Section 401 of the Clean Water Act requires that states issue certifications for activities which are authorized by a federal permit and which may result in the discharge to surface waters. In Idaho, the DEQ is responsible for reviewing these activities and evaluating whether the activity will comply with Idaho's Water Quality Standards, including any applicable water quality management plans (e.g., total maximum daily loads). A federal discharge permit cannot be issued until DEQ has provided certification or waived certification either expressly, or by taking no action. This letter is to inform you that DEQ is issuing the attached §401 Water Quality Certification subject to the terms and conditions contained therein.

Please contact me directly at (208) 799-4370 to discuss any questions or concerns regarding the content of this certification.

Sincerely,

A handwritten signature in blue ink that reads "John Cardwell".

John Cardwell  
Regional Administrator  
Lewiston Regional Office

c: Misha Vakoc, EPA Region 10  
Susan Poulosom, EPA Region 10  
Beth Spelsberg, DEQ State Office





## Idaho Department of Environmental Quality Final §401 Water Quality Certification

June 21, 2021

**NPDES Permit Number(s):** City of Lewiston and Lewis-Clark State College, IDS02861 (2021 Modification)

**Receiving Water Body:** Clearwater River (Lower Granite Dam Pool), Lewiston Levee Ponds, Lindsay Creek, Tammany Creek, and the Snake River

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On April 30, 2021, EPA requested that DEQ provide Clean Water Act Section 401 certification for modification of this NPDES permit. The modified permit includes additional conditions to benefit salmonids listed under the Endangered Species Act. On May 17, 2021 EPA requested that DEQ grant or deny certification under 40 CFR 124.55 or waive its right to certify by June 29, 2021.

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.

For discharge into the Clearwater River (Lower Granite Dam Pool), Lindsay Creek, Tammany Creek, and the Snake River, DEQ certifies, based upon its review of the above-referenced permit and associated fact sheet, that if the permittees comply with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then it is reasonable for DEQ to conclude that the discharge will comply with the applicable water quality 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. For discharge into the Lewiston Levee Ponds, DEQ waives certification.

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 Lewiston and Lewis-Clark State College discharge the following pollutants of concern: sediment, nutrients (nitrogen and phosphorous), heat, chlorides, metals, petroleum hydrocarbons, microbial pollution (*Escherichia coli*) and organic chemicals (pesticides and industrial chemicals). Conditions of the permit and this certification require permittees to reduce pollutant loading to the maximum extent practicable.

### ***Receiving Water Body Level of Protection***

The City of Lewiston and Lewis-Clark State College discharge to the Clearwater River- Lower Granite Dam Pool, Lindsay Creek, the Snake River, and Tammany Creek within the Clearwater and Lower Snake Asotin Subbasin assessment units (AU) ID17060306CL001\_07 (Lower Granite Dam Pool), ID17060306CL003\_02 (Lindsay Creek – source to mouth), ID17060306CL003\_03 (Lindsay Creek – source to mouth), ID17060103SL001\_08 (Snake River), ID17060103SL016\_02 (Tammany Creek – source to Unnamed Tributary (T34N, R04W, Sec19)), ID17060103SL014\_02 (Tammany Creek – WBID 015 to unnamed tributary), ID17060103SL014\_03 (Tammany Creek – Unnamed Tributary to mouth).

The AUs defined above, are each designated for cold water aquatic life beneficial uses. In addition, ID17060306CL001\_07 (Lower Granite Dam Pool) and ID17060103SL001\_08 (Snake River) are designated for primary contact recreation and domestic water supply beneficial uses. The remaining assessment units —ID17060306CL003\_02 (Lindsay Creek – source to mouth), ID17060306CL003\_03 (Lindsay Creek – source to mouth), ID17060103SL016\_02 (Tammany Creek – source to Unnamed Tributary (T34N, R04W, Sec19)), ID17060103SL014\_02 (Tammany Creek – WBID 015 to unnamed tributary), ID17060103SL014\_03 (Tammany Creek – Unnamed Tributary to mouth)—are designated for secondary contact recreation beneficial uses. 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).

According to DEQ's 2018/2020 Integrated Report, the Lindsay Creek and Tammany Creek AUs are not fully supporting their aquatic life or contact recreation beneficial uses. Causes of

impairment include nutrients, sediment/siltation, and *Escherichia coli* (*E. coli*). The Snake River AU is not fully supporting its aquatic life use. The cause of impairment is temperature. The contact recreation beneficial use for the Snake River is fully supported. The aquatic life and recreation beneficial uses for the Clearwater River are fully supported. As such, DEQ will provide Tier I protection (IDAPA 58.01.02.051.01) for the aquatic life and recreation beneficial uses in the Lindsay Creek and Tammany Creek AUs and Tier I protection for the aquatic life use in the Snake River AU. Tier II protection (IDAPA 58.01.02.051.02) in addition to Tier I will be provided for the contact recreation use in the Snake River and Clearwater River AUs (IDAPA 58.01.02.052.05.c) as well as the aquatic life use in the Clearwater River AU.

In addition to the water bodies discussed above, the NPDES permit identifies the Lewiston Levee ponds as distinct receiving waters and receives discharge from the City of Lewiston and Lewis-Clark State College.

There is insufficient information in the record for DEQ to conduct antidegradation analysis and act on EPA's request to certify the discharge to the Lewiston Levee Ponds. The Lewiston Levee Ponds are unassessed. The record contains little information regarding existing uses of the ponds. The record also lacks information regarding the ponds' current water quality or the effect, if any, of the MS4 discharge into the ponds. Without such information, DEQ cannot complete a Tier I review (IDAPA 58.01.02.052.07), nor determine whether Tier II protection is appropriate (IDAPA 58.01.02.052.05). Further, because EPA has provided no assurance that it will provide more time for the certification process, DEQ risks waiving certification entirely if it attempts to obtain such information. Therefore, DEQ is exercising its discretion to waive certification under section 401, 33 U.S.C. § 1341, with respect to only those portions of the MS4 that discharge to the Lewiston Levee Ponds.

### ***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 Lewiston and Lewis-Clark State College permit and this 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.

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 Snake River is in Idaho's 2018/2020 Integrated Report in Category 5 as impaired by temperature but does not have a current TMDL. The EPA-approved *Lindsay Creek Watershed*

*Assessment and Total Maximum Daily Loads* (June 2007), *Tammany Creek Sediment TMDL* (February 2002), and *Tammany Creek Watershed (HUC 17060103): TMDL Addendum* (December 2010) establish wasteload allocations for *E. coli* bacteria, nutrients, and sediment. These wasteload allocations are designed to ensure that Lindsay Creek and Tammany Creek will achieve the water quality necessary to support existing and designated aquatic life and contact recreation beneficial uses and comply with the applicable numeric and narrative criteria. The terms and conditions contained in the City of Lewiston and Lewis-Clark State College permit and the conditions of this certification are consistent with the applicable waste load allocations in the TMDLs.

Specific terms and conditions of the permit aimed at providing a Tier I level of protection and compliance with the Lindsay Creek and Tammany Creek TMDLs include (Permit part 2 & 3):

- 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 Lewiston and Lewis-Clark State College to implement pollutant reduction activities and quantitative monitoring and assessment for discharges to Lindsay Creek and Tammany Creek;
- Requirements for the City of Lewiston and Lewis-Clark State College to monitor and assess temperature in discharges to the Snake River; and
- The stipulation that if either EPA or DEQ determine that an MS4 causes or contributes to an excursion above the water quality standards, the permittees must take a series of actions to remedy the situation.

In summary, the terms and conditions contained in the City of Lewiston and Lewis-Clark State College permit will reduce the discharge of pollutants to the maximum extent practicable and combined with the conditions of this certification, are consistent with the wasteload allocations established in the *Lindsay Creek Watershed Assessment and Total Maximum Daily Loads*, *Tammany Creek Sediment TMDL*, and *Tammany Creek Watershed (HUC 17060103): TMDL Addendum*. Therefore, DEQ has determined the permit will protect and maintain existing and designated beneficial uses in Lindsay Creek and Tammany Creek in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

## ***High-Quality Waters (Tier II Protection)***

The Clearwater River – Lower Granite Dam Pool is considered high quality for cold water aquatic life and primary contact recreation. The Snake River is also considered high quality for primary contact recreation. As such, the water quality relevant to cold water aquatic life and primary contact recreation uses of the Clearwater River – Lower Granite Dam Pool and the Snake River must be maintained and protected, unless a lowering of water quality is deemed necessary to accommodate important social or economic development.

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for each pollutant that is relevant to cold water aquatic life and primary contact recreation uses of the Clearwater River – Lower Granite Dam Pool and the Snake River (IDAPA 58.01.02.052.05). These include *E. coli*, sediment, heat, nutrients, metals, chlorides, petroleum hydrocarbons, and organic chemicals (pesticides and industrial chemicals).

For a new permit or license, the effect on water quality is determined by reviewing the difference between the existing receiving water quality and the water quality that would result from the activity or discharge as proposed in the new permit or license (IDAPA 58.01.02.052.06.a). NPDES permits for regulated small municipal separate storm sewer systems (MS4s) must include terms and conditions to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements under the Clean Water Act. “Maximum extent practicable” is the statutory standard that describes the level of pollutant reduction that MS4 operators must achieve. The proposed MS4 permit relies on practices to identify and reduce discharge of pollutants to the maximum extent practicable (Permit part 2 & 3). Further, the permittees’ implementation of these practices must be documented in annual reports to EPA and DEQ and is subject to review and on-site inspections. To ensure discharged stormwater will not degrade receiving waters, the permittees are required to manage the effectiveness of these stormwater management practices, monitor discharge and receiving water quality and, if necessary, adapt its management practices. The City of Lewiston and Lewis-Clark State College must map their MS4 and all associated outfalls (Permit part 3.2.2).

Pollutant reductions should be realized as each element of the stormwater management plan is developed and implemented during the permit cycle. Stormwater control measures, when designed, constructed, and maintained correctly have demonstrated the ability to reduce runoff, erosive flows, and pollutant loadings<sup>1</sup>. Due to the nature of MS4 permits, implementation requires investigating and resolving complaints; continual discovery of pollutant sources; use, monitoring, and refinement of BMPs; and additional knowledge through training opportunities. Water quality is expected to improve in Lindsay Creek and Tammany Creek, and the downstream receiving waters of the Clearwater River and Snake River, as a result of conducting these pollutant reduction activities (Permit part 4.3).

Under the revised NPDES permit in section 4.4, the City of Lewiston and Lewis-Clark State College will incorporate sediment removal actions to reduce toxic impact to salmonids in the Lower Granite Dam Pool and the Snake River. These changes will further improve water quality by prioritizing areas where sediment is a concern and incorporating sediment removal actions from catch basins, inlets, outfalls and other MS4 features within the permit area.

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<sup>1</sup> Urban Stormwater Management in the United States, National Research Council, 2008

This level of scrutiny and effort combined with requirements to address pollution sources should lead to improved water quality the longer the permit is in effect and should result in minimal to no adverse change in existing water quality significant to recreational and aquatic life uses. Therefore, DEQ has reasonable assurance that at a minimum, no degradation will result from the discharge of pollutants from the City of Lewiston and Lewis-Clark State College MS4s.

In summary, DEQ concludes that this discharge permit complies with the Tier II provisions of Idaho's WQS (IDAPA 58.01.02.051.02 and IDAPA 58.01.02.052.06).

## **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.

This condition is necessary to ensure that best management practices implemented under this permit maintain and protect existing uses of the receiving waters in accordance with Idaho water quality requirements including, without limitation, IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.252.

When selecting best management practices the permittees must consider and, if practicable, utilize practices identified in the DEQ's Idaho Catalog of Storm Water Best Management practices found at <https://www.deq.idaho.gov/water-quality/wastewater/storm-water/>.

### ***Pollutant Reduction Activities in Tammany Creek and Lindsay Creek***

In carrying out the requirements of Part 4.3 of the permit, the permittees must define and implement at least one (1) pollutant reduction activity designed to reduce *E. coli*, nitrogen, phosphorus, and sediment loadings from the MS4 into Tammany Creek.

In carrying out the requirements of Part 4.3 of the permit, the permittees must define and implement at least one (1) pollutant reduction activity designed to reduce *E. coli*, nutrients, and sediment loadings from the MS4 into Lindsay Creek.

These conditions are necessary to ensure discharges of causative pollutants from the MS4 into Tammany Creek and Lindsay Creek are consistent with the allocations in the *Lindsay Creek Watershed Assessment and Total Maximum Daily Loads* (June 2007), *Tammany Creek Sediment TMDL* (February 2002), and *Tammany Creek Watershed (HUC 17060103): TMDL Addendum* (December 2010). IDAPA 58.01.02.055.05

### ***Temperature Monitoring - Discharges to the Snake River***

The permittees must monitor temperature in stormwater discharges from the MS4 to the Snake River to quantify stormwater impacts to the waterbody.



This condition is necessary to develop the information necessary to assess compliance with IDAPA 58.01.02.401.01 and applicable temperature criteria in IDAPA 58.01.02.250.

### ***Reporting of Discharges Containing Hazardous Materials or Deleterious Material***

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 Lewiston Regional Office at 208-799-4370 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

This condition is necessary to ensure compliance with the notification requirement in IDAPA 58.01.02.850.03.

### **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. Such modifications may not be implemented until DEQ has determined whether additional certification is necessary.

Because DEQ is certifying only the activity described in the certification request, this condition is necessary to ensure that discharges under circumstances that differ from those described in the certification request will comply with 33 U.S.C. § 1341, 40 CFR Part 121, and other applicable water quality requirements, including without limitation 33 U.S.C. § 1311(a), Idaho Code § 39-108, IDAPA 58.01.02.051, IDAPA 58.01.02.052, IDAPA 58.01.02.080, IDAPA 58.01.02.200, IDAPA 58.01.02.210, IDAPA 58.01.02.250, IDAPA 58.01.02.251, IDAPA 58.01.02.252, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

### **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 Sujata Connell, Lewiston Regional Office at 208-799-4370 or via email at [Sujata.Connell@deq.idaho.gov](mailto:Sujata.Connell@deq.idaho.gov).



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John Cardwell  
Regional Administrator  
Lewiston Regional Office