

SPECIAL COUNCIL
July 24, 2018

Mayor Kling called the meeting to order at 5:30 p.m.

Clerk called roll with the following Councilmember in attendance Rodriguez, Bruner, Hogaboam, Levi, Haverfield, Skaug.

Mayor Kling presented a request for **approval** of the **submittal** of **City comments** on **Idaho Department of Environmental Quality** Draft 2016 Integrated report.

Michael Fuss explained that the following items would be discussed in the meeting. Matt will be talking about some of the technical process and how it works and then I am going to come back and talk about some of the history of Nampa. A little bit of Nampa previous city comments and what some considerations are on how we go forward and then comment options so that we know how to properly respond, the deadline is the August 6, 2016.

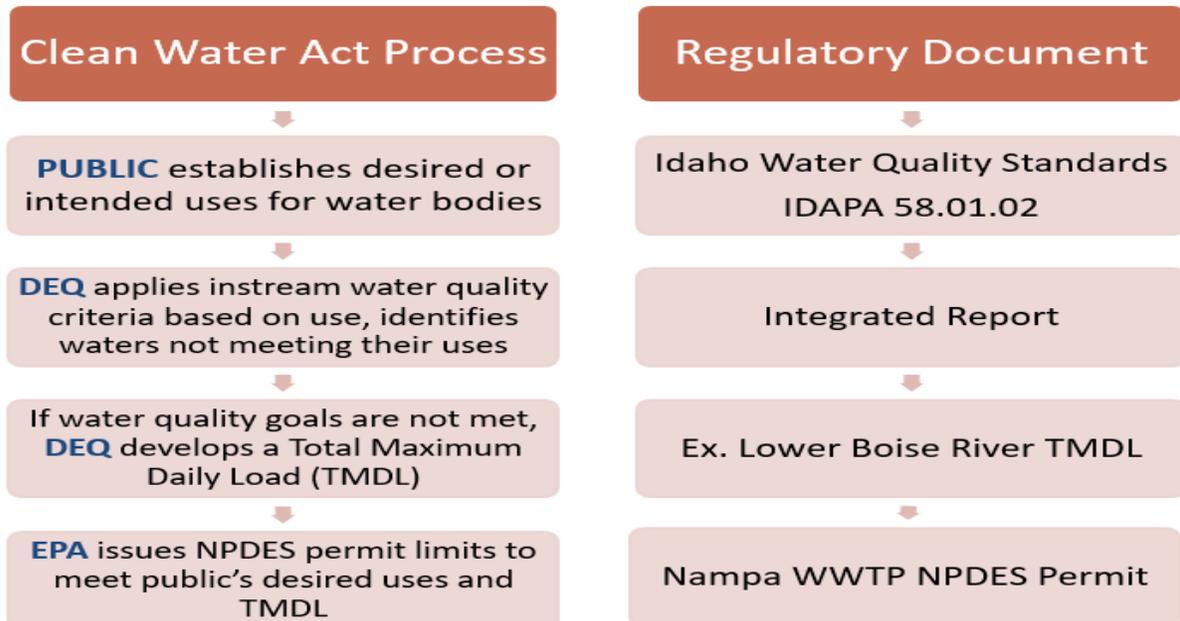
Agenda

- Integrated Report Background
- Previous City Comments
- TMDL Considerations
- Comment Options

Matt Gregg with Brown and Caldwell presented the following staff report:

Intergrated report background

- Regulatory Process



IDEQ’s Integrated Report

What is the Integrated Report?

- Informs Public on health of Idaho lakes & streams
- Required by the Clean Water Act (CWA)
 - Conducted every two years
- Lists Idaho’s water bodies
 - Condition, CWA Sec. 305(d)
 - Impaired and need Total Maximum Daily Load (TMDL), CWA Sec. 303(d)

Draft 2016 Integrated Report Summary

Assessment Unit	Impairment	Category
Sugar Avenue to Boise River ^a	Cause Unknown – Nutrients Suspected	Category 5: Impaired waters need a TMDL <i>Proposed to be moved to Category 4b based on LBR TP TMDL</i>
	Temperature	Category 5: Impaired waters need a TMDL
	Sediment	Category 4a: Impaired Waters with EPA Approved TMDLs
	Bacteria	Category 4a: Impaired Waters with EPA Approved TMDLs
New York Canal to Sugar Avenue	Cause Unknown – Nutrients Suspected	Category 5: Impaired waters need a TMDL <i>Proposed to be moved to Category 4b based on LBR TP TMDL</i>
	Temperature	Category 5: Impaired waters need a TMDL

^a The Nampa WWTP discharges to this segment of Indian Creek

1. Pristine forest area, roadless area so they assume it is okay so they don’t go sample it
2. It is meeting is beneficial use
3. Not enough data
4. There are plans in place that are helping improve it
5. Impaired

Councilmembers asked questions of Matt Gregg.

Michael Fuss presented the followint staff report:

Previous City Comments

2008 Integrated Report Comments

City Comment	DEQ Response
<p>Indian Creek is listed for temperature in Section 5 of the Draft. The Nampa WWTP has sampled and tested Indian Creek upstream of the treatment plant on a regular basis for over twenty years. Parameters tested for include: flow, temperature, dissolved oxygen, BOD, TSS, pH, NH3-N, TKN, fecal coliforms, and total phosphorus. These analytical results are available upon request.</p>	<p>It is DEQ's opinion that the majority of thermal loading in Indian Creek is from atmospheric conditions. With that in mind, DEQ may be developing a temperature TMDL in the future. We are also not currently aware of effluent limits for temperature in municipal NPDES permits</p>
<p>Indian Creek has been sampled and tested for fecal coliforms both upstream and downstream of the treatment plant regularly for over twenty years. The net result of the testing is a consistent reduction in the fecal coliform counts in the downstream sample when compared with the upstream sample. The implication is there are sources of fecal coliforms upstream of the treatment plant. There appears to be a dilution effect when Nampa's effluent is mixed with Indian Creek</p>	<p>Thank you for the comment. However, be advised that Idaho WQS for bacteria are currently based on E. coli rather than fecal coliform</p>
<p>Indian Creek (all orders): Sedimentation and siltation in Indian Creek is likely due to various point and nonpoint sources. Indian Creek flows through agricultural lands which contribute sediment and silts during irrigation periods and storm events. Urban storm water runoffs impact Indian Creek as it flows though Nampa. DEQ's subbasin assessment published in December 2001 indicates Indian Creek is not impaired for its designated beneficial uses and should be delisted for nutrients and oil and grease. Nampa urges DEQ to delist Indian Creek for nutrients and oil and grease</p>	<p>Based on data available prior to 2001, it was DEQ's opinion that Indian Creek should be delisted for nutrients and oil & grease. Also, this opinion was based on the uses proposed in a use attainability analysis (UAA) prepared by an independent contractor. The EPA did not approve these changes and recommended that the agency or the Watershed Advisory Group (WAG) split Indian Creek into assessment units (AU) with additional information provided to support delisting by AU</p>

2010 Integrated Report Comments – EPA

EPA Comment	DEQ Response
<p>Simply establishing that the stream is intermittent is not good cause to de-list for sediment, fecal coliform and nutrient/eutrophication biological indicators. Until DEQ develops an appropriate assessment tool for intermittent waters, this AU shall remain in Category 5 for sediment, temperature and nutrient/eutrophication biological indicators.</p>	<p>DEQ returned this assessment unit to Category 5 for sediment, fecal coliform, and nutrient/eutrophication biological indicators, pending late-spring 2011 monitoring</p>
<p>Simply establishing that the stream is intermittent is not good cause to de-list for sediment, temperature and nutrient/eutrophication biological indicators. Until DEQ develops an appropriate assessment tool for intermittent waters, this AU shall remain in Category 5 for sediment, temperature and nutrient/eutrophication biological indicators</p>	<p>DEQ returned this assessment unit to Category 5 for sediment, temperature, and nutrient/eutrophication biological indicators, pending late-spring 2011 monitoring</p>

Note: These comments were submitted by EPA regarding the upper reaches of Indian Creek (above New York Canal).

2012 Integrated Report Comments

City Comment	DEQ Response
<p>If the segment (WQLS 2731) was delisted erroneously, could the DEQ provide clarification on the reason for the original delisting. Was the delisting a clerical error or removed because of data that suggested the segment should be delisted? Please provide clarification.</p>	<p>The erroneous delisting was a clerical error.</p>
<p>If the DEQ does not have any new data to support the relisting then it appears that DEQ is still relying on pre-2008 data. The 2008 data includes water quality data taken when the XL Four Star Beef, Inc. packing plant was still operating and discharging into Indian Creek. The plant contributed total phosphorus to Indian Creek and with the subsequent closure, the instream total phosphorus concentration has likely dropped. The City suggests this should be considered in the relisting</p>	<p>The relisting of nutrients (reflected in the Assessment Database as "cause unknown") is not based on new data; rather, it is simply correcting the erroneous delisting that resulted from a clerical error</p>
<p>The DEQ lists three options for how Indian Creek could be delisted. However, another potential rationale for delisting is the lack of correlation between nuisance algae and nutrient concentrations in Indian Creek. The City suggests the DEQ add this fourth scenario for delisting in the Integrated Report.</p>	<p>Identifying a lack of correlation between nuisance algae and nutrient concentrations as a potential rationale for delisting is addressed more broadly in the cause comment: "...1) water quality data demonstrates that beneficial uses are no longer impaired by nutrients...."</p>
<p>The City supports the delisting of Indian Creek for temperature and specifically the use of additional data and consideration of natural background conditions for the delisting. The City agrees that Indian Creek would naturally be a small desert stream with limited shade and suggests this should be considered in all future impairment determinations.</p>	<p>Thank you for your comment. After further analysis of the existing data, DEQ has determined that additional time is warranted to explore other methods that can be used to demonstrate natural conditions in highly altered waterways. Therefore, DEQ has returned these assessment units to Category 5 for temperature pending further evaluation</p>

2014 Integrated Report Comments

City Comment	DEQ Response
<p>The City appreciates the Idaho Department of Environmental Quality's efforts over the last several years to complete the Sediment and Bacteria TMDL for the Lower Boise River Tributaries. This document establishes a scientific and defensible approach to improving water quality in Indian Creek and the Lower Boise River watershed. With the completion and adoption of this report, the City supports moving Indian Creek (ID17050114SW002_04) to Category 4A for sedimentation/siltation and Escherichia coli</p>	<p>Thank you for your comment in support of moving Indian Creek to Category 4a for sedimentation/siltation and Escherichia coli. No changes have been made in the final 2014 Integrated Report based on this comment</p>
<p>The City does not support the Category 5 listing of Indian Creek for temperature. No rationale is provided for this listing in the draft Integrate Report. It is the City's belief that there is insufficient reliable scientific data to support a finding that the relevant segments are impaired by temperature. These segments are more appropriate for Category 3, which includes segments for which there is insufficient data to determine if the beneficial uses are being met.</p>	<p>Thank you for your comment regarding the temperature listing of Indian Creek. Temperature criteria for cold water aquatic life outlined in Idaho water quality standards (58.01.02.250.02b) apply to assessment unit ID17050114SW002_04 (Indian Creek, Sugar Avenue to Boise River). The standard requires, "Water temperatures of twenty-two (22) degrees C or less with a maximum daily average of no greater than nineteen (19) degrees C." Based on temperature logger data collected by DEQ above Riverside Canal between May 8, 2011, and February 7, 2012, the maximum daily average temperature exceeded the allowed standard of 19 °C 17 times and exceeded 22 °C 2 times, which warrants listing Indian Creek in Category 5 for temperature. Assessment unit ID17050114SW003a_04 (Indian Creek, New York Canal to Sugar Avenue) has site-specific criteria for water temperature per IDAPA 58.01.02.278.03 that states, "A maximum weekly maximum temperature of thirteen degrees C (13°C) to protect brown trout and rainbow trout spawning and incubation applies from October 15 through June 30."</p> <p>Based on temperature logger data collected by DEQ between October 15, 2011, and February 5, 2012, the maximum weekly maximum temperature exceeded the allowed standard of 13 °C, which warrants listing Indian Creek in Category 5 for temperature. Therefore, the 4th-order reach of Indian Creek will remain listed in Category 5.</p>

TMDL Considerations

Lower Boise River Phosphorus TMDL

- LBR TP TMDL provides certainty in TP limits for Nampa WWTP
 - Summer: 15 lbs/day
 - Winter: 52.5 lbs/day
 - Does not consider instream water quality for Indian Creek

Indian Creek Water Quality

- Indian Creek TMDL would address instream water quality
- TMDLs are a scientific study based on available data and water quality models
- Results of TMDL could result in higher (i.e. less stringent) or lower (i.e. more stringent) limits for the Nampa WWTP
- The Nampa WWTP is a higher porportion of Indian Creek than it is of Boise River



Comment Options

Staff Recommends Comment #1 – Sentiment and Bacteria

- Comment:

“The City appreciates the Idaho Department of Environmental Quality’s efforts over the last several years to complete the Sediment and Bacteria TMDL for the Lower Boise River Tributaries. This document establishes a scientific and defensible approach to improving water quality in Indian Creek and the Lower Boise River watershed. Given that the City is already achieving the requirements for sediment and bacteria described in the TMDL, the City supports its listing as Category 4A – Impaired Waters with EPA Approved TMDLs for sediment and Escherichia coli.”

- Rationale:
 - Sediment and *E. coli* limits are readily achieved today

Comment #2 (option #1) – Nutrients

- Comment:

“Indian Creek is a highly modified system, the discharge from which is diverted during significant portions of the year to irrigation systems. Given this unique nature of Indian Creek, it may be necessary to further consider the impacts of the Nampa WWTP’s discharge and other discharges on the impairment of beneficial uses for both Indian Creek and the Lower Boise river, specifically for the ‘Cause Unknown’ listing in Category 5.”

- Rationale:
 - Acknowledges uniqueness of Indian Creek
 - Provides opportunity for future discussions with DEQ on Indian Creeks’ designation and beneficial uses

Comment #2 (Option #2) - Nutrients

- Comment:

*“Indian Creek is a highly modified system, the discharge from which is diverted during significant portions of the year to irrigation systems. Given this unique nature of Indian Creek, it **is may be** necessary to further consider the impacts of the Nampa WWTP’s discharge and other discharges on the impairment of beneficial uses for both Indian Creek and the Lower Boise river, specifically for the ‘Cause Unknown’ listing in Category 5.”*

- Rationale:
 - Acknowledges uniqueness of Indian Creek
 - Provides opportunity for future discussions with DEQ on Indian Creeks’ designation and beneficial uses

Councilmembers asked to go over the comments for temperature first.

Comment #3 (Option #1) - Temperature

- Comment:

“The City does not support the Category 5 listing of Indian Creek for temperature. It is the City’s belief that there is insufficient reliable scientific data to support a finding that the relevant segments are impaired by temperature. These segments are more appropriate for Category 3, which includes segments for which there is insufficient data to determine if the beneficial uses are being attained or impaired. The delisting of Indian Creek for temperature is supported by the City, in addition to the use of additional data and consideration of natural background conditions for the delisting. The City agrees that Indian Creek would naturally be a small desert stream with limited shade and suggests this should be considered in all future impairment determinations.”

- Rationale:

- Consistent with previous City comments regarding insufficient reliable scientific data
- Implores DEQ to follow steps outlined in Contested Case

Comment #3 (Option #2) - Temperature

- Comment:

*“The City does not support the Category 5 listing of Indian Creek for temperature. It is the City’s belief that there is insufficient reliable scientific data to support a finding that the relevant segments are impaired by temperature. These segments are more appropriate for Category 3, which includes segments for which there is insufficient data to determine if the beneficial uses are being attained or impaired. The delisting of Indian Creek for temperature is supported by the City, in addition to the use of additional data and consideration of natural background conditions for the delisting. The City **believes agrees** that Indian Creek would naturally be a small **intermittent** desert stream **or dry creek bed** with limited shade and suggests this should be considered in all future impairment determinations.”*

- Rationale:

- Consistent with previous City comments regarding insufficient reliable scientific data
- Implores DEQ to follow steps outlined in Contested Case

Councilmembers asked staff questions concerning temperature effecting the sediment or the nutrients. Can we make any difference to the water down stream as far as the temperature?

Michael Fuss explained that the permits that the city has and the limits that the City has are real. If they are not met by the time included, fines and penalties are also real if we willfully don’t meet don’t meet those limits that are in the permit. There is potential jail time for someone. I don’t know . . . regardless of whether it solves the creek, from a person of the administrator to determine

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how do I meet the permit. That is the focus, whether the creek is satisfactorily ends up with that result from my position not from the philosophical position, from the position of having to meet that permit I don't know how to change it. The only way that we can affect the permit is to change the temperature limit on the permit, whether the creek gets cold or hot or a million degrees the permit says what the permit says, and we have to meet that, and major fines and penalties happen. I can't emphasize that enough. There are cities that are facing fines. There are people in jail because they choose not to meet those conditions. From an administrative perspective those are the directions that I think you have asked me to provide. Beyond that what is good or not good for the creek I don't know.

We are going to follow the parallel path and that is why the comments are so important. How open do you want them, how narrow, if it is open, some easy answer might be, keep it as open as we can so all options are available. One of the things that we have heard in a lot of the conversations is what you will get is a response from DEQ. They are required to respond to comments.

Councilmembers asked what is the time frame for the response from DEQ? (30 to 60 days)

Councilmembers were in favor of Comment #3 option 2, Comment 2 option 1 with a change in the wording from it ~~may be~~ too seems and also comment #1 that were presented.

Councilmembers and Mayor continued with asking questions and making comments.

Michael Fuss explained that he would like council direction on all three comments.

MOVED by Skaug and **SECONDED** by Haverfield to approve **Comment #1** - "The City appreciates the Idaho Department of Environmental Quality's efforts over the last several years to complete the Sediment and Bacteria TMDL for the Lower Boise River Tributaries. This document establishes a scientific and defensible approach to improving water quality in Indian Creek and the Lower Boise River watershed. Given that the City is already achieving the requirements for sediment and bacteria described in the TMDL, the City supports its listing as Category 4A – Impaired Waters with EPA Approved TMDLs for sediment and Escherichia coli." and **Comment – Option 1 (with one change)** "Indian Creek is a highly modified system, the discharge from which is diverted during significant portions of the year to irrigation systems. Given this unique nature of Indian Creek, it ~~may be~~ seems necessary to further consider the impacts of the Nampa WWTP's discharge and other discharges on the impairment of beneficial uses for both Indian Creek and the Lower Boise river, specifically for the 'Cause Unknown' listing in Category 5." and **Comment 3 Option 2** - "The City does not support the Category 5 listing of Indian Creek for temperature. It is the City's belief that there is insufficient reliable scientific data to support a finding that the relevant segments are impaired by temperature. These segments are more appropriate for Category 3, which includes segments for which there is insufficient data to determine if the beneficial uses are being attained or impaired. The delisting of Indian Creek for

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temperature is supported by the City, in addition to the use of additional data and consideration of natural background conditions for the delisting. The City **believes agrees** that Indian Creek would naturally be a small **intermittent** desert stream **or dry creek bed** with limited shade and suggests this should be considered in all future impairment determinations.” Mayor Kling asked for a roll call vote with all Councilmembers present voting **YES**. The Mayor declared the

MOTION CARRIED

MOVED by Hogaboam and **SECONDED** by Rodriguez to **adjourn** the **meeting** at 6:26 p.m. The Mayor declared the

MOTION CARRIED

Passed this 6th day of August 2018.

MAYOR

ATTEST:

CITY CLERK