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Office of the Attorney General
DEQ-IDHW

BEFORE THE BOARD OF HEALTH AND WELFARE
STATE OF IDAHO

SPOKANE RIVER ASSOCIATION,)
)
 Petitioner,)
)
 vs.)
)
 IDAHO DEPARTMENT OF HEALTH)
 AND WELFARE,)
)
 Respondent.)
)
 and)
)
 CITY OF HAYDEN,)
)
 Permittee.)
 _____)

Docket No. 0112-92-26

O R D E R

The Board, having reviewed the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Decision filed January 13, 1993 and;

Exceptions having been filed by the Petitioner, Spokane River Association, and all parties have been afforded an opportunity to file Briefs and present Oral Argument to the Board on March 8, 1993, pursuant to IDAPA 16.05.03102, the Findings of Fact, Conclusions of Law and Recommended Decision of the Hearing Officer shall be adopted in full as the FINAL DECISION AND ORDER of the Board of Health and Welfare.

IT IS FURTHER ORDERED that Petitioner's Request for a Stay Order is denied.

DATED this 8th day of March, 1993.

Wylla D. Barsness
WYLLA D. BARSNESS, Ph.D., Chair

Robert C. Stanton
ROBERT C. STANTON, Vice Chair

Maureen A. Finnerty
MAUREEN A. FINNERTY, Secretary

John Bermensolo
JOHN BERMENSOLO
Member

Marguerite G. Burge
MARGUERITE G. BURGE
Member

G. Bert Henriksen
G. BERT HENRIKSEN
Member

Donna L. Parsons
DONNA L. PARSONS
Member

CERTIFICATE OF MAILING

I hereby certify that on this 8th day of March, 1993, I mailed a true and correct copy of the foregoing **ORDER** to the following named individuals by First Class Mail:

Charles Sheroke
Attorney for Petitioner
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Debbie A. Barr

Debbie A. Barr
Administrative Hearings Coordinator
Department of Health and Welfare

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Idaho Dept. of Health & Welfare
Administrative Procedure Section
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DOCKET NO. _____

BEFORE THE BOARD OF HEALTH AND WELFARE

STATE OF IDAHO

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SPOKANE RIVER ASSOCIATION,)
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 IDAHO DEPARTMENT OF HEALTH)
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 Permittee.)

Docket No. 0112-92-26

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND RECOMMENDED DECISION

INTRODUCTION

On December 2, 1992, at the office of the State of Idaho, Department of Health and Welfare, Division of Environmental Quality, 1410 North Hilton, Boise, Idaho, the hearing was held pursuant to a Supplemental Joint Stipulation and Motion Regarding Briefing and Supplemental Joint Stipulation Regarding Oral Argument.

The hearing was scheduled at the request of the Petitioner and notice was given pursuant to I.C. §67-5209 by the Administrative

Hearings Coordinator for the Department of Health and Welfare and sent to all interested parties on June 3, 1992.

The issues as framed in the Notice of Hearing are:

1. Whether the decision of the Respondent, Idaho Department of Health and Welfare, Division of Environmental Quality (DEQ), finding of no significant impact (FONSI) and the decision not to prepare a comprehensive environmental impact statement (EIS) for the Phase II Waste Water Collection Expansion Project for the City of Hayden, Project No. 1892-04 (Project), violated the National Environmental Policy Act (NEPA) and due process of law; and,

2. Whether the Respondent was required to and failed to give personal notice to Petitioner pursuant to NEPA in 40 CFR § 1506.6 of the preparation of the environmental assessment.

Prior to the hearing, the Petitioner, Spokane River Association (SRA), by and through Charles Sheroke, Esq.; the Respondent, Idaho Department of Health and Welfare (IDHW), through Deputy Attorney General Lore Benschel, Esq.; and, the Permittee, City of Hayden (Hayden), by and through its counsel, Scott W. Reed, Esq. entered into a Joint Stipulation and Motion (hearing stipulation) regarding all aspects of the hearing, including the manner in which evidence would be presented, which was signed by all parties and filed with the Administrative Hearings Coordinator for IDHW.

The hearing stipulation is a nine page document which sets forth the parties stipulations and understanding regarding the

conduct of the hearing. All parties desired and stipulated that the hearing would proceed without the necessity of witnesses appearing live at the hearing, and that affidavits were presented to the hearing officer in lieu of live testimony. The parties requested that the evidentiary hearing initially scheduled for October 1 and 2, 1992, be postponed until December 2, 1992, and that the case be presented through briefing and submission of documents and affidavits, the parties expressly waived their rights to appeal the final decision in this proceeding on the grounds that the stipulated procedures utilized to present the case to the Hearing Officer and the Board of Health and Welfare were prejudicial or otherwise in error. At the hearing the parties affirmed all of the terms and conditions of the hearing stipulation. In addition, the parties expressly acknowledged and their knowledge of the rights that each party would be entitled to in contested case hearings for the calling of witnesses and the presentation of evidence and expressly waived any rights or alternatives they had for the presentation of evidence at the contested case hearing as the same were restricted or modified by the hearing stipulation.

The parties stipulated to the introduction of the following evidence, and no evidence was ruled inadmissible:

Petitioner's Exhibits 1 through 17.

Respondent's Exhibits 1 through 23.

Permittee's Exhibits B through L.

FINDINGS OF FACT

The SRA has appealed from a grant of the Division of Environmental Quality for a loan from the Department's Division of Environmental Quality to fund Hayden's Phase II Waste Water Collection Expansion Program which contemplates the construction of new sewer collection lines which will carry raw sewage to the waste water treatment plant (WWTP) which is located in the vicinity of the Coeur d'Alene airport. The WWTP discharges treated effluent into the Spokane River. SRA alleges that IDHW should have required a comprehensive Environmental Impact Statement (EIS) as required by NEPA and due process of law.

The Idaho Board of Health and Welfare (hereinafter "Board") administers the Waste Water Treatment Facility Loan Program (WWTFLP) in Idaho through the Idaho Department of Health and Welfare pursuant to I.C. §§ 39-3601, et seq. (WPAA) and Idaho Department of Health and Welfare Rules and Regulations, Title 1, Chapter 12, "Rules and Regulations For Administration of Waste Water Treatment Facility Loans" (Waste Water Loan Regulations).

Upon request and approval by a municipality to obtain a loan from IDHW, facilities may be constructed for the collecting and treating of sewage or industrial wastes by disposal plants and the outflow and pumping stations supporting such plants or sewer systems. The program is funded through the State of Idaho, Waste Water Facility Loan Account which is funded in part through federal

funds and statutorily mandated State matching funds. The funds in the Idaho Waste Water Facility Loan Account are made available by capitalization grants from the Environmental Protection Agency (EPA).

The City of Hayden overlies the Rathdrum Prairie Aquifer (Aquifer). The aquifer supplies drinking water to approximately 400,000 people in north Idaho and eastern Washington and has been designated by the EPA in 1978 as a sole source aquifer, meaning that if it is contaminated, a significant public health hazard would result. Presently, the aquifer is not contaminated and drinking water taken from the same does not require treatment.

The applicable State rules and regulations regarding drinking water require any water taken from surface water sources to be treated prior to delivery to consumers.

The Greens Ferry Water District supplies drinking water to the residences that utilize the river water for their drinking water source and is expected to convert to using ground water as its source of drinking water.

In 1977, the Panhandle Health District determined that septic tanks located over the Rathdrum Prairie Aquifer were causing a severe degradation of the water quality in the aquifer due to the facts the untreated sewage would have in eventually reaching portions of the aquifer.

In December 1978 Hayden and the Panhandle Health District entered into an agreement to develop a sewage collection and

treatment system.

In 1982, the City of Hayden published a document entitled, "City of Hayden's Step One 201 Facilities Plan (1982 Hayden Facilities Plan)".

The EPA prepared the Environmental Analysis Report: Waste Water Treatment Facilities Plans for the City of Hayden and Hayden Lake Recreational Water and Sewer District, Idaho, October 1982 (1982 EPA EAR).

Centralized waste water collection and treatment will have positive impacts for water pollution control over the aquifer and for Hayden Lake.

Discharge of treated waste water into the Spokane River is part of the preferred alternative to septic tanks overlying the aquifer, and the alternative of central waste water collection and treatment is a positive step towards the reduction of water pollution.

In 1983 an interim community drain field was installed near the Coeur d'Alene airport which was approved by the Panhandle Health District on an interim basis conditioned upon the same being abandoned with other effluent disposal methods instituted as soon as funds were available.

In 1985 Phase I of Hayden's collector lines within the City and Hayden Lake Recreational Water and Sewer District (HLRWSD) installed collector lines through the District.

In 1987 HLRWSD and Kootenai County formed the Hayden Area

Regional Sewer Board (HARSB) and constructed the WWTP near the Coeur d'Alene airport. From 1987 until 1991 the WWTP discharged its treated waste water to the interim community drain field.

In 1989 HARSB received a National Pollutant Discharge Elimination System (NPDES) from the EPA for a seasonal discharge of treated waste water to the Spokane River of .75 million gallons per day (mgd). As part of the NPDES permit, certain conditions were imposed upon HARSB's ability to discharge into the Spokane River and specifically prohibited discharges of any treated waste water from June 1 until September 30 each year unless the river flows at least 2,000 cubic feet per second (cfs) as measured at the Post Falls Dam.

Following the 1989 approval for the NPDES permit from EPA, HARSB conducted an outlet pipe from WWTP to the river and commenced discharging into the river on a seasonal basis in 1992. Current discharges are .25 mgd during the discharge season.

The WWTP currently provides primary and secondary treatment of sewage consisting of pre-chlorination, trash and grit removal by screening, followed by biological treatment, and further treatment by secondary clarification followed by chlorination.

The restriction on discharging waste water into the river during the summer months, from June through September, was an important basis relied on by the EPA and Department that the discharges will not effect water quality relating to phosphorous, sensitive salmonids, esthetics, or dissolved oxygen depressions.

Phase II discharge of treated waste water into the Spokane River during the seasonal discharge periods will increase, but will remain within the limits imposed by the NPDES permit.

The HARSB will be required to comply with the current NPDES permit including any changes that are made to the permit by the EPA.

During the period of the year in which HARSB is prohibited from disposing of treating waste water into the Spokane River, the waste water is applied on the land in accordance with the appropriate State permit which permits discharge of effluent over the aquifer during the active growing season.

On November 12, 1991, the Department received an amended loan application from the Hayden for Phase II of the Waste Water Collection Expansion Project for Hayden to include funds for the construction of Phase II of the sewer collection lines and associated facilities.

Following the amended loan application in December 1991, the Department received an addendum to the final Step 201 Facilities Plan which set forth the information regarding public notice and comment and a description of the city's proposal for Phase II. The addendum provides that Phase II collector lines and facilities can be constructed without increasing the capacity of the WWTP or exceeding the currently-allowed discharge in the NPDES permit. Phase II will result in an estimated .127 mgd of treated waste water, bringing the total actual discharges to approximately .377

mgd, approximately one-half of the currently-permitted amount of .750 mgd.

In December 1991 a Report on the Physical and Chemical Water Quality of the Spokane River Outlet Reach of Lake Coeur d'Alene, Kootenai County, Idaho, 1990 and 1991 (draft Falter Report) was released to the public, and on January 24, 1992, the Department issued a Proposed Finding of No Significant Impact (PFONSI) and release the Draft Environmental Information Document (DEID) for the city of Hayden, Phase II collection system expansion and provided for thirty day public comment. Notice of the PFONSI and DEID was published in the Coeur d'Alene Press and Idaho Statesman and mailed to all members provided on the mailing list, and copies of the complete documents were available for anyone requesting the same at the DEQ offices and the city of Hayden City Hall. Following notice of the PFONSI and DEID, the Department received one response from the public, that being from the SRA, which is a document entitled "Comments to Finding of No Significant Impact (FONSI) Waste Water Collection Expansion City of Hayden Project No. 1892-04" prepared and signed by Charles Sheroke, attorney at law, dated February 13, 1992 (SRA comments).

On February 4, 1992, HARSB voluntarily began construction of phosphorous removal facilities at the WWTP and the removal would be utilized initially during the spring runoff as recommended by the draft falter report.

On April 24, 1992, the Department issued a Finding of No

Significant Impact (FONSI) and released the Final Environmental Information Document (FEID). Identified in the FEID were the 1982 Hayden Facilities Plan, the 1982 EPA EAR, and Addendum to Hayden Facilities Plan, and the NPDES permit which were repeatedly referenced and provided sources of information which were relied on by the Department in completing the environmental review.

In April 1992 the final version of the falter report dated March 1992 (Final Falter Report) was released to the public.

On May 14, 1992, the Department and Hayden entered into an agreement for the contract of the WWTF to fund construction of Phase II, and on May 22, 1992, SRA filed its Petition for Hearing. The final funding has not been approved for release by the Department pending the outcome of this appeal.

The SRA is a non-profit membership corporation, the members being comprised of persons owning property in close proximity to or along the Spokane River, although it is not an organization representing all such property owners but only those who have elected to be members of the association.

Approximately 164 residences along the Spokane River below the HARSB's WWTP outlet take drinking water directly from the river.

The Phase II Collector Project involves the installation of a gravity collector system to serve approximately 565 existing residences and 58 vacant lots.

The sewer construction is restricted to serving existing developed areas within the City of Hayden. The existing roadways

will have to be excavated for the sewer lines and installation of plastic sewer collectors, service lines and grass swale storm water control facilities will be installed in areas currently using dry wells for storm runoff disposal.

The location of the Phase II collector area is located to service existing high density developed areas which are eligible for a grant from the Board of Health and Welfare.

The area to be serviced by the Phase II collector system is within the facility's planning area boundary presented in the 1982 Hayden Wastewater Facility Plan.

Previous restrictions on lot sizes or development in the city of Hayden have been reduced from five acres and have now permitted development on a more intensive basis.

The Phase II collector service areas will service areas already developed at residential density and is not designed to promote or facilitate additional residential development.

The Phase II collection system consists of 8 inch to 10 inch pipes which are designated collectors since their main purpose is to collect the waste water from individual homes fronting the service line. No interceptors which would extend outside the facility's planning area boundary are included in the Phase II Project.

The City of Hayden has attempted to remove the threat of the pollution to the Rathdrum Prairie aquifer from septic systems and has attempted to achieve the maximum environmental protection for

the water quality in the aquifer as well as the Spokane River. Unless connected to a central sewer collection facility, the majority of homes in the City of Hayden will continue to utilize septic tanks which ultimately discharge into the Rathdrum Prairie Aquifer.

Local improvement district assessments have been approved by the City of Hayden to finance the City's portion of the Phase II System.

The discharge of Hayden from the WWT will represent 6% of the total discharge from Coeur d'Alene and Post Falls combined and Hayden, Coeur d'Alene and Post Falls discharge combined represents .03% of the total Spokane River high flow. The City of Hayden will not discharge the WWTF into the Spokane River from June 1 through September 30 unless the river flow exceeds 2000 cfs.

In addition to eliminating the use of septic tanks over the Rathdrum Prairie Aquifer, the installation of the Phase II Wastewater Expansion Project will result in an improvement insofar as storm water runoff. Existing dry wells receiving storm water runoff will be modified so that the runoff will go into the grassy swales instead of directly into the aquifer as presently exists.

The City of Hayden has adopted a Storm Water Management Plan which requires developers to comply with the Storm Water Management Plan. The guidelines as adopted by the City of Hayden are approved by the Environmental Protection Agency.

C. M. Falter, B. Riggers and J. W. Carlson from the University

of Idaho conducted an eighteen month study of the Spokane River between June, 1990 and December, 1991, and published in March, 1992 the "Final Physical and Chemical Water Quality of the Spokane River Outlet Reach of Lake Coeur d'Alene, Kootenai County, Idaho, 1990 and 1991". Dr. Falter concluded that the discharge from the WWTP when fully implemented under Phase II as contemplated would not cause any water quality risk to the Spokane River.

The EID explains the basis for the decisions made therein to the public in a reasonable fashion.

The FEID references the 1982 EPA EAR, the 1982 Hayden Facilities Plan, the Facilities Plan Addendum, studies regarding the water quality of Rathdrum prairie sole source aquifer and the Spokane River, the NPDES Permit and documents produced during the review of the NPDES Permit Application, all of which documents were available for inspection by any interested persons during the public comment period.

The Department issued a draft finding of no significant impact as required IDAPA §16.01.12041,03,a and b, the public was allowed thirty days for comment.

Following the thirty day comment period following the publication of the EID the Department reassessed the project to determine whether or not an environmental impact statement would not be required.

The proposed project is the only feasible alternative and the no action alternative was properly rejected by the Department as an

alternative due to the increases in nitrate levels in the groundwater which are a public health concern resulting from the continued use of individual septic tanks and subsurface sewage disposal drain fields over the Rathdrum prairie sole source aquifer.

Coeur d'Alene, Post Falls, Rathdrum and communities in the Spokane Valley have similar long-term construction programs to extend wastewater collection systems and are attempting to provide centralized wastewater collection for as many people as possible out of concern for possible adverse health consequences of individual septic tanks and subsurface sewage disposal drain fields over the Rathdrum prairie sole source aquifer.

The overall environmental impact of the project will be extremely positive because of the reduction in septic tank discharges over the Rathdrum prairie sole source aquifer.

The effluent from the WWTP is not expected to effect the egg or larval stages of fish living down stream from the WWTP out fall.

The public was notified about the proposed project though a legal notice published in the *Coeur d'Alene Press* and *The Idaho Statesman* in Boise.

The Petitioner received actual notice of the proposed project and had an opportunity to respond to the EID.

The FEID considered the potential cumulative impacts on the Spokane River from the Coeur d'Alene WWTP and HARSB WWTP discharges.

The potential cumulative impacts upon the Spokane River were also considered during the NPDES permitting process.

The areas served by the proposed Phase II Expansion Program is already developed and residential development is likely to continue to occur whether or not the area is sewerred.

The impacts to fisheries from the cumulative effects of the discharges from the HARSB WWTP have been properly considered by the Respondent not to be significant.

The Idaho Historical Society's comments regarding the proposed project have been addressed by the Respondent.

The proposed project is vitally important in eliminating discharge of untreated sewage pollutants into the Rathdrum prairie sole source aquifer.

The Petitioner's opposition to the project has delayed the sewerling project.

A copy of the City of Hayden Final Step One 201 Facilities Addendum and the Falter Report were provided to the Spokane River Association.

The draft EID dated January 13, 1992 was sent by first class mail, postage prepaid, to Frank White as Chairman of the Spokane River Association to his designated address at P. O. Box 1737, Post Falls, Idaho 83854.

The Spokane River Association, through its attorney, Charles Sheroke, made written comments which were integrated into the FEID.

The only protests or complaints regarding the proposed

project, including the entire 201 Facilities Plan have been by the Spokane River Association.

The Kootenai Environmental Alliance, a group concerned with environmental issues, has not objected to the project, nor have any of its members.

Representatives of the Spokane River Association have attended nearly every meeting of the Kootenai Sewage Management Committee in which the wastewater treatment project was discussed. Some of the representatives attending included Jim Christopher, Keith Bramen, Frank White, Jim Willem, Rogene Kingston, Bob Rosin and Larry Russell.

Richard C. Panabaker, the Mayor of the City of Hayden, corresponded with Frank White, in his official capacity as Chairman of the Spokane River Association concerning all aspects of the sewer project.

The project will not significantly affect the pattern and type of land use, whether industrial, commercial, agricultural, recreational, or residential, or the growth and distribution of population.

The project will not conflict with local, regional, or state land use plans or policies.

The project will have no significant adverse affects on wet lands, either indirect or cumulative, and no major part of the project will be located in any wet lands.

The project will not significantly affect a species or their

habitats identified on the U.S. Department of Interior's or State's threatened and endangered species lists, nor will it be located in any habitat.

The project will not directly cause or induce changes that significantly displace population, alter the character of existing residential areas, or affect a flood plain, or adversely affect significant amounts of important farm lands or agricultural operations on the land.

The project will not directly, indirectly, or cumulatively have any significant adverse affect on park lands, preserves, or other public lands, or areas of recognized scenic, recreational, archeological, or historical value.

The project will not directly or through induced development have a significant affect upon air quality, noise levels (other than temporary noise levels due to operation of heavy equipment during the construction phase), surface water, ground water quality or quantity, water supply, fish, shell fish, wildlife, or their natural habitat.

The present classification of water quality for the Spokane River is not being challenged as too low to protect present or recent uses.

The project is not highly controversial.

The project will not produce significant cumulative impacts nor are there any related federal, state, or local or tribal resource projects that will result in significant cumulative

impacts.

The project will not violate any federal, state, local, tribal law or requirements imposed for the protection of the environment.

CONCLUSIONS OF LAW

The Board of Health and Welfare has legal authority and jurisdiction in this matter pursuant to Title 67, Chapter 52, Idaho Code; Chapter 36, Title 39, Idaho Code; Title 5, Chapter 3, "Rules Governing Contested Case Proceedings and Declaratory Rulings"; and, Title 1, Chapter 12, "Rules and Regulations for Administration of the Waste Water Treatment Facility Loans," Rules and Regulations of the Idaho Department of Health and Welfare.

The Board of Health and Welfare administers the Waste Water Treatment Facility Loan Program (WWTFLP) in Idaho through the Idaho Department of Health and Welfare pursuant to I.C. §§ 39-3601, et seq. (WPAA) and Idaho Department of Health and Welfare Rules and Regulations, Title 1, Chapter 12, "Rules and Regulations For Administration of Waste Water Treatment Facility Loans" (Waste Water Loan Regulations).

The Idaho Water Quality Standards are somewhat dictated by federal law. States are required to submit water quality standards to EPA for approval under the Federal Water Pollution Control Action (Clean Water Act). See 33 U.S.C. §1313. The Clean Water Act and implementing regulations set forth minimum requirements for state water quality standards. See 40 C.F.R. Part 131. If a state fails to submit water quality standards to EPA for approval or if

EPA does not approve a state's water quality standards, EPA is required to promulgate enforceable water quality standards for the state. *Id.*

The Department has elected not to adopt the provisions of NEPA, the CEQ regulations or federal NEPA case law and has properly exercised its right to main its flexibility in operating its state program. Idaho's Water Quality Standards have been submitted to and approved by EPA. The waste water loan regulations effective January 1, 1989, have been reviewed and approved by EPA, and EPA has approved capitalization grants to the State of Idaho since 1989. Accordingly, the Idaho State WPAA and the state waste water loan regulations are the applicable substantive laws for a review of the issues presented in this case concerning the adequacy of the environmental review and the determination of no significant environmental impact.

EPA regulates point source discharges into Idaho waters through a permit system which establishes technology-based effluent limitations. The permit system is known as the National Pollutant Discharge Elimination System, or NPDES. See 33 U.S.C. §1342.

To comply with the Federal Clean Water Act, codified as amended at 33 U.S.C. §1251-1387, a person or entity wishing to discharge pollutants into waters of the United States must secure an NPDES Permit from the Federal Environmental Protection Agency. EPA may not issue an NPDES Permit unless the resulting discharge will comply with State Water Quality Standards. 33 U.S.C.

§1311(b)(1)(C), 1342.

Indeed, federal regulations governing the NPDES program even require that, before granting a permit (or deciding on what permit conditions to impose), the permitting agency must evaluate the effect of the receiving water in diluting the effluent. 40 C.F.R. §122.44(d)(1)(ii). This regulation provides that each NPDES Permit must include, among other things, conditions or requirements necessary to "[a]chieve water quality standards established under [the Act], including State narrative criteria for water quality." This regulation also includes the requirement concerning the ability of the receiving water to dilute the effluent:

When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an instream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

The current and proposed discharges into the Spokane River are within the limits of the NPDES permit. While SRA is challenging the permit in a federal proceeding, the permit is presently valid and IDHW is in compliance with the same.

The NPDES permit was issued, the determination was made by the EPA that State water quality standards were not being violated and

the determination continues to be valid.

The EID is in a format specified by the Department, IDAPA §16.01.12041,01.b.

The Department complied with IDAPA §16.01.12041,03,a and b in providing a thirty day public comment period following publication of the draft finding of no significant impact.

The Department complied with IDAPA §16.01.12041,03,b in reassessing the project following the public comment period after publication of the EID.

The FEID summarizes the need for the proposed project and refers to several sources documenting the need for the project in compliance with the Wastewater Facilities Loan Account Handbook of Procedures

IDHW properly concluded that none of the environmental impacts which may occur as a result of the proposed Phase II expansion are significant.

The public was notified about the proposed project though a legal notice published in the *Coeur d'Alene Press* and *The Idaho Statesman* in Boise.

The Respondent properly concluded that the project was not controversial.

As a general rule, matters in issue in an administrative proceeding must be established by a preponderance of the evidence. See *Walker v. Bd. of Pardons*, 803 P.2d 1241 (Utah 1990) (burden of proof is by preponderance of the evidence in administrative

proceedings); see also *Martin v. Ambach*, 443 N.E.2d 953 (N.Y. 1980) (party asserting the affirmative on an issue being tried before an administrative tribunal is required to prove its allegations by preponderance of the credible evidence.)

The burden of proof is upon the SRA to prove that there is a violation of Idaho law or any other applicable rules, regulations or statutes, which is consistent with general principles of administrative law, since in an administrative proceeding, the general rule is that the burden of proof is on an applicant for benefits or privileges. See, e.g., 73A C.J.S. §128 at 35 (1985).

The issue in this case is whether there is substantial competent evidence to support SRA's allegations that the Respondent erred in not requiring an EIS, and whether the SRA's rights to due process of law have been violated. The SRA has failed to carry its burden of proof on both issues.

Neither the proceedings before the Department nor the proceedings before this Board in the contested case operate in any manner to violate the SRA's rights to due process of law.

The Respondent has complied with all applicable rules and regulations in the formulation of the Environmental Information Document for the City of Hayden Phase II Collection System Expansion dated January 13, 1992, the Finding of No Significant Impact dated April 24, 1992, and the Final Environmental Information document for City of Hayden Phase II Collection System Expansion dated April 20, 1992.

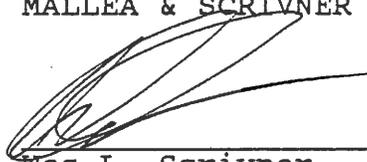
The FEID properly concluded that an environmental impact statement was unnecessary, the evaluation in the FEID was factually supported and addressed the criteria set forth in the Waste Water Facilities Loan Account Chapter 5 Review and Approval of Facility Plans and Environmental Assessments.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is the recommendation of the hearing officer that the Petitioner's appeal be dismissed.

DATED this 13th day of January, 1993.

MALLEA & SCRIVNER



Wes L. Scrivner
Hearing Officer