



April 29, 2020

**SUBMITTED VIA EMAIL TO: [IPDESGuidance@deq.idaho.gov](mailto:IPDESGuidance@deq.idaho.gov)**

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*RE: IWUA & TVWUA Comments on Draft Volume 5 (Storm Water)  
IPDES User's Guide to Permitting and Compliance*

To Whom it May Concern:

On behalf of the Idaho Water Users Association (IWUA) and Treasure Valley Water Users (TVWUA), we submit these comments relating to Volume 5 of the Idaho Pollution Discharge Elimination System (IPDES) User's Guide to Permitting and Compliance (IPDES Guidance). This section addresses the Idaho Department of Environmental Quality's (IDEQ) permitting processes for storm water. We appreciate IDEQ's efforts to develop IPDES guidance documents through an open and transparent public process.

Our members own and manage extensive water delivery and drainage systems that serve the irrigation and drainage needs of Idaho water users. Idaho statutory and common law protect the use, operation and maintenance of this critical infrastructure by prohibiting unauthorized discharges, modifications and other encroachments to these systems. Under Idaho law, a ditch owner's written permission is required for any such encroachment. Unauthorized discharges are of particular concern to our water users, because they can exceed ditch carrying capacities, hinder the control of flow, damage ditch channels, banks and works, and introduce contaminants that may adversely impact water quality. These concerns are documented in the enclosed IWUA Resolution 2019-12, which TVWUA fully supports.

Our members also actively participate in water quality management planning, funding, implementation, education and outreach. In the Treasure Valley, the Magic Valley and elsewhere in Idaho, our members have made great strides in reducing sediment and phosphorus in their agricultural return flows to help meet TMDL objectives and enhance beneficial uses.

For these reasons, several Treasure Valley water users have long-standing agreements with local municipalities and other entities to ensure that discharges into irrigation and drainage systems are reviewed, approved and permitted to prevent interference with and damage to our water delivery and drainage systems, enhance water quality, and ensure that dischargers remain fully responsible for complying with the Clean Water Act and other regulatory requirements applicable to their discharges.

With this background, we submit the following comments on Volume 5, section 5 of the April 15, 2020 draft.

**A. The Guidance Should Include an Explanation of the Relative Rights and Responsibilities of Ditch Owners and Discharges**

Volume 5 of the IPDES Guidance addresses the permitting processes for storm water discharges into Waters of the United States. *IPDES Guidance Vol. 5* at 1 (April 15, 2020 draft). The guidance recognizes that storm water runoff may reach waters of the US through an indirect path. *See id.* at 8 (discharge of pollutants “includes additions of pollutants in to waters of the US ... through pipes, sewers, *or other conveyances* owned by a state, municipality *or other person* which do not lead to a treatment works”) (emphasis added).

IDEQ acknowledges that an IPDES permit does not confer property rights to the permittee, and that the permittee may be required to obtain approvals or permits (e.g. section 4.2.7). Similarly, MS4 permits usually contain the following statement in “General Provisions”:

Property Rights. The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, nor any infringement of state or local laws or regulations.

Consistent with the background discussion of this letter, we propose that the User’s Guide include an explanation of the relative rights and responsibilities of ditch owners and dischargers, including specifically a discharger’s obligation to obtain a ditch owner’s permission to discharge into canal, lateral or drain. We will supplement this letter with explanatory language for this purpose before the next meeting on the draft User’s Guide.

**B. Language should be Included in Volume 5 to Prevent Unauthorized Discharges into Canals or Drains.**

Moreover, Volume 5 should include the following specific requirements to protect irrigation delivery and drainage systems from unauthorized discharges:

1. Section 2 (Notice of Intent): Section 2 provides the information required for any Notice of Intent (NOI). Language should be added to require that written permission be required as a part of the NOI. We suggest the following bullet point be added to the NOI requirements:

In the case of indirect discharges to Waters of the US (e.g. discharges through a canal, ditch, drain, pipeline or other facility not owned or operated by the applicant), written permission from the owner or operator of that facility must be submitted with the NOI.

2. Section 3 (Public Participation): Section 3 provides the process for public participation in the permitting process. It includes a list of entities for which notice is crafted “to elicit public participation.” We would suggest the following additional bullet point be added:

The owner or operator of any canal, ditch, drain, pipeline or other facility not owned or operated by the applicant and through which the applicant intends to discharge under the permit.

3. Section 4.1.2 (Eligibility): Section 4.1.2 speaks to eligibility requirements under the Construction General Permit. We would suggest the following additional language be added:

Discharge any pollutant or combination of pollutants to waters of the U.S. This includes additions of pollutants in to waters of the U.S. from surface runoff which is collected or channeled by man, discharges through pipes, sewers, or other conveyances leading to privately owned treatment works, or discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works. In the case of indirect discharges to Waters of the US through canals, ditches, drains, pipelines or other facilities not owned or operated by the applicant, prior written permission from the owner or operator of that facility is required.

Thank you again for the opportunity to submit comments and participate in the guidance development process.

Sincerely,



Paul Arrington  
Idaho Water Users Association



Roger Batt  
Treasure Valley Water Users Association

**Idaho Water Users Association  
Resolution 2019-12  
Unauthorized Storm Water Discharges & Encroachments**

WHEREAS, The Idaho Water Users Association is concerned that unauthorized urban storm water discharges into irrigation facilities is a serious problem for many of its member organizations; and

WHEREAS, The Idaho Water Users Association is further concerned that unauthorized encroachments of urban storm water discharged into facilities, easements, and rights-of-way is a serious problem for many of its member organizations; and

WHEREAS, Unauthorized urban storm water discharges and unauthorized encroachments impose upon irrigation entities substantial liability risks, increased maintenance costs, introduction of urban pollutants, exposure to major flooding events likely to cause substantial property damage and loss of life, major interruptions in water deliveries to patrons, and numerous additional cost increases, including litigation expenses; and

WHEREAS, The problems of unauthorized urban storm water discharges and unauthorized encroachments will become larger and more difficult to correct if immediate action is not taken to prevent the continuation of these problems; and

WHEREAS, The Bureau of Reclamation, cities, counties, planning and zoning commissions, highway districts and other government agencies have involvement and responsibility to help avoid unauthorized encroachments, including storm water discharges into irrigation facilities; and

WHEREAS, One of the purposes of the Idaho Water Users Association is to protect the interests of its members.

NOW, THEREFORE, BE IT RESOLVED, That the Idaho Water Users Association urges that all necessary and appropriate actions be taken by the involved and responsible government agencies to address the problems of unauthorized urban storm water discharges into facilities owned or operated by irrigation entities and unauthorized encroachments into facilities, easements, and rights-of-way owned or operated by irrigation entities within the State of Idaho.

BE IT FURTHER RESOLVED, That the Idaho Water Users Association recognizes that unauthorized urban storm water discharges and unauthorized encroachments in many cases constitute serious and substantial threats to the continued vitality and efficient operation of many of its member organizations and also may create a serious and substantial economic and public health risk to the citizens residing or working within the service area of irrigation entities or within the potential flood zone of the facilities owned or operated by those irrigation entities.

BE IT FURTHER RESOLVED, That unauthorized urban storm water discharges and unauthorized encroachments should be corrected as soon as possible in those cases where its member organizations are being adversely impacted.