

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH**

IDAHO DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff,

vs.

CITY OF DEARY, IDAHO,

Defendant.

CASE NO.: CV29-24-0789

CONSENT JUDGMENT

Plaintiff, Idaho Department of Environmental Quality (“Department”) and Defendant, City of Deary (“City”) hereby consent to the entry of the following Consent Judgment.

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Idaho Code §§ 39-108 and 1-705.
2. This Court has personal jurisdiction over the City Pursuant to Idaho Code §§ 5-514(a) and (c) because, upon information and belief, the City has committed acts and omissions within the State of Idaho of which this cause of action arises, and which violate the laws of the State of Idaho. Additionally, the City owns real property within the State of Idaho, which is related to the subject matter involved in this action.
3. Venue is proper in this Court for this matter pursuant to Idaho Code § 39-108 and 5-404 because the violations and the causes of action alleged in the Complaint filed in this matter occurred and the action arose in the county in which this Consent Judgment has been issued.
4. The Complaint states claims upon which relief may be granted against the City.

5. For purposes of this Consent Judgment and the underlying Complaint, the City has waived all objections and defenses that it may have to the filing of the Complaint and the jurisdiction of the Court or to venue in this District and will not challenge the filing of the Complaint, the entry of this Consent Judgment or this Court's jurisdiction and authority to enter and enforce this Consent Judgment.

II. PARTIES BOUND

6. This Consent Judgment will apply and be binding upon the City. Unless otherwise agreed to by the Department, no change in ownership, corporate, or partnership status relating to the WWTP or conveyance of title, easement, or other interest, including but not limited to any lease or transfer of assets or real or personal property, will alter the City's obligation to comply with the requirements of this Consent Judgment or to ensure compliance by any successor or assign.
7. The City will notify any prospective purchaser of the terms and conditions of this Consent Judgment and the current status of completion of the requirements of this Consent Judgment.
8. The City will provide notice to the Department of the offer for sale or transfer of the WWTP, and the identity of the purchaser or party to which the property will be transferred prior to closing of any sale or transfer of the property or any portion thereof.

III. BACKGROUND AND FINDINGS

For purposes of entry of this Consent Judgment, the Court finds as follows:

9. The City of Deary, Idaho, is a person within the meaning of Idaho Code § 39-103(11) and IDAPA 58.01.25.010.66.

10. The City owns and operates a Wastewater Treatment Plant (WWTP) located at 1010-1012 Highway 9, Deary, Idaho, 83823, with an outfall located at Latitude: 46.799642°, Longitude: -116.572540. The WWTP is a POTW under IDAPA 58.01.25.010.76.
11. The WWTP discharges effluent containing pollutants into waters of the United States.
12. The discharge of pollutants from the WWTP is regulated by IPDES Permit ID0020788 (“Permit”), which mandates, among other things, specific effluent limits, monitoring, reporting, and submittal to the Department of various documents or reports.
13. Monthly discharge monitoring reports submitted by the WWTP to the Department between September 2022 and September 2024 show violations of the following effluent limits; pH, Escherichia coli, total suspended solids, and biological oxygen demand effluent limits as required by the Permit.
14. During the month of December 2022, the WWTP failed to perform and submit to the Department monitoring information about the receiving water for total nitrogen/ammonia, temperature, and pH as required by the Permit.
15. While the WWTP did not submit the following 2022 documents and reports by the due dates listed in the Permit, the documents were eventually submitted. The 2022 documents included the receiving water monitoring station approval request, inflow and infiltration annual report, and receiving water monitoring annual report.
16. During the Department’s inspection of the Defendant’s facility on March 7, 2024, the Department found the following facility operational violations; four instances of noncompliance to report any violation of a maximum daily effluent limit within twenty-four hours, four instances of noncompliance to submit written 5-day notice of maximum daily effluent limit violations, failure to maintain pH calibration logs, failure to observe and keep a

written log of receiving water conditions, and failure to properly store sodium hypochlorite and calcium thiosulfate within a secondary containment.

17. To resolve these matters, including continuing effluent exceedances as stated in this Consent Judgment, without further litigation or controversy, and without admission of any fact or law, the parties agree to the following terms and actions:

THEREFORE, it is ORDERED, ADJUDGED, and DECREED:

IV. COMPLIANCE REQUIREMENTS

18. To resolve the violations alleged in the Complaint and ongoing violations of the effluent limitations established by the Permit, the City shall undertake the following:

- a. Continue to comply with all terms and conditions found in the Permit, except as otherwise expressly provided for in the attached Consent Judgment Agreement Schedule and this Consent Judgment.
- b. Achieve compliance with effluent limitations and Permit conditions by completing the tasks by the dates contained in the Consent Judgment Agreement Schedule, attached as Exhibit A and incorporated by reference.
- c. Provide written verification to the Department that the tasks and upgrades listed in the Agreement Schedule are completed, and the WWTP is achieving effluent limits for the violations listed in the Complaint filed in this case.

V. PENALTIES

19. Pursuant to Idaho Code §§ 39-108(5) and 39-175E, the City has accrued a civil penalty of five hundred seventy-four thousand dollars (\$574,400.00) for past and continuing violations as listed in the Complaint filed in the above-entitled case. Due to good faith and unique factors as listed in the Complaint and this Consent Judgment, the penalty has been reduced by two

hundred eighty seven, two hundred dollars (\$287,200.00). The adjusted remaining penalty is two hundred twenty-nine thousand, seven hundred sixty dollars (\$229,760.00). Of the adjusted penalty, the City must pay the Department a total of fifty-seven thousand, four hundred forty dollars (\$57,440.00) for the alleged violations within fifteen (15) calendar days of the effective date of this Judgment. The remaining penalty of two hundred twenty-nine thousand, seven hundred sixty dollars (\$229,760.00) will be administered consistent with the Stipulated Penalty provisions specified in this Consent Judgment. Payment will be made to:

Fiscal Office
Idaho Dept. of Environmental Quality
1410 N. Hilton
Boise, ID 83706

a. Stipulated Penalties: In the event that the City fails to comply with any of the requirements appearing in this Consent Judgment, the City will be in violation of this Judgment and may be subject to stipulated penalties, at the Department's discretion, up to the full amount of two hundred twenty-nine thousand, seven hundred sixty dollars (\$229,760.00). The City must provide the stipulated penalty payment to the Department within thirty (30) days of receiving written notice from the Department. Stipulated penalty payments will be made to the Department's Fiscal Office as listed above. Payment of the stipulated penalty does not relieve the City of any of its obligations under this Judgment and does not preclude the Department from seeking any other relief available under law and equity.

b. Supplemental Environmental Project: The City may undertake a supplemental environmental project (SEP) to settle up to seventy-five percent (75%) of the penalty amount. The SEP must be in conformance with Idaho Code § 39-108(5)(b) and DEQ Policy Statement PS20-13, "Supplemental Environmental Projects" attached as Exhibit B and incorporated by reference. SEP proposals must be submitted to the Department for review and approval no later than thirty

(30) days from the effective date of this Judgment. Any approved SEP proposal must be completed as soon as possible but in no event longer than three (3) years from the effective date of this Consent Judgment.

VI. COST OF SUIT

20. Each Party to this action will bear its own costs and attorney's fees.

21. In the event this Court subsequently determines that the City has violated the terms of this Consent Judgment, the City will be liable to the Department for any costs, attorney's fees, or other expenses incurred by the Department in any action or proceeding against the City for non-compliance with this Judgment.

VII. EFFECT OF SETTLEMENT

22. Each Party hereto warrants that it is not relying on any warranties, representations, statements, or promises of the other Party concerning any facts, matters, or events which are the subject of this Consent Judgment and the releases herein, except as expressly set forth in this Consent Judgment.

23. In the event any term of this Consent Judgment is held to be invalid or unenforceable by a court, the remaining terms of the Consent Judgment will remain in force.

24. Nothing herein will be construed to bar, alter, or limit the ability of the Department to pursue, and the Department expressly reserves the right to pursue any legal or equitable, judicial, or administrative relief to it to remedy any violation of the terms of this Consent Judgment.

25. This Consent Judgment does not relieve the City from its obligation to comply with any of the provisions of the EPHA, I.C. §§ 39-101, *et. seq.*, the Department's Rules, including the IPDES rules, IDAPA 58.01.25, or other applicable local, State or Federal law. The Department retains all authority and reserves all rights to take any actions authorized by law to protect human

health and the environment. This Consent Judgment does not affect the right of the Department or the State of Idaho to pursue appropriate relief for any violations of the Permit or in law not specifically addressed in this Judgement.

26. Nothing in this Consent Judgment, including the City's actions undertaken pursuant to this Judgment, will be construed as an admission of fact or law except for the purpose of enforcing this Consent Judgment.

VIII. FORCE MAJEURE

27. The City will cause all work or required reporting to be performed within the time limits set forth herein, unless performance is delayed by events which constitute a force majeure. For the purposes of this Consent Judgment, a force majeure is an event arising from circumstances beyond the reasonable control of the City which delays performance of any obligations required by this Judgment. Increases in costs will not be considered an event of force majeure. The City will notify the Department within three (3) calendar days after any event which the City contends is a force majeure through the Department's E-Permitting System. Such notification will describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by the City to minimize the delay, and the timetable by which these measures will be implemented. The City will have the burden of demonstrating that the event is a force majeure. The decision of whether an event is a force majeure will be made by the Department, subject to dispute resolution under this Consent Judgment. Said decision will be immediately communicated by the City in writing. If a delay is attributable to a force majeure, the time-period for performance under this Consent Judgment will be extended, in writing, by the amount of time that is attributable to the event constituting the force majeure.

IX. DISPUTE RESOLUTION

28. The parties agree to attempt, in good faith, to resolve through informal dispute resolution methods any dispute arising under this Consent Judgment. If such informal resolution is not successful within 30 days, either party may seek resolution of the dispute by the Court.

X. NOTICES AND SUBMISSIONS

29. Unless otherwise provided herein, notifications to, or communications with the Department will be deemed submitted on the date they are sent by facsimile, electronic mail, or postmarked and sent by mail service.

30. Unless otherwise directed by the Department, all communication required to be sent to the Department will be addressed to:

IPDES Compliance and Enforcement
Supervisor
Idaho Dept. of Environmental
Quality 1410 N. Hilton Street
Boise, ID 83706-1255

31. Unless otherwise directed by the City, all communication required to be sent to the City will be addressed to:

Jason Johnson,
Mayor
City of Deary
PO Box 236
Deary, ID 83826

XI. RETENTION OF JURISDICTION

32. The Court will retain jurisdiction to enforce the terms of this Consent Judgment and to resolve any disputes arising hereunder until the Judgment has been satisfied and the Consent Judgment is terminated in accordance with the provisions of this Judgment.

XII. MODIFICATION

33. Except as specifically provided for herein, there will be no modifications or amendments of this Consent Judgment without written agreement of the Parties to this Consent Judgment and approval by this Court.

XIII. PUBLIC COMMENT

34. This Consent Judgment shall be lodged with the Court for a period of not less than thirty (30) Days for the Department's public notice and comment process in accordance with Idaho Code § 39-108(b)(9) and IDAPA 58.01.25.500.04.c. After consideration of public comments, the Department reserves the right to withdraw or withhold its consent if the comments regarding the Consent Judgment disclose facts or considerations indicating that this Consent Judgment is inappropriate, improper, or inadequate.

XIV. EFFECTIVE DATE

35. This Consent Judgment will take effect on the date it is entered by the Court.

XV. TERMINATION AND DISMISSAL

36. The parties, through their counsel, agree that upon completion of the actions required by this Consent Judgment, they will file a stipulated motion requesting that the Court terminate this Consent Judgment and dismiss the Complaint with prejudice, consistent with the terms set forth in the stipulation.

XVI. SIGNATORIES AND SERVICE

37. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Judgment and to execute and legally bind such Party to this Consent Judgment.
38. The Parties consent to the entry of this Consent Judgment without further notice.

39. The Parties further agree not to oppose entry of this Consent Judgment by this Court or to challenge any provision of this Judgment.

40. The City need not file an answer or other responsive pleading to the Complaint in this action unless or until the Court expressly declines to enter this Consent Judgement, in which case the City's responsive pleading to the Complaint would be due in the timeframe set forth in the Idaho Rules of Civil Procedure or in an order of this Court.

THE UNDERSIGNED PARTIES enter into this Consent Judgment in Latah County case number CV29-24-0789:

FOR THE STATE OF IDAHO:

JESS BYRNE
Director, Idaho Department of Environmental Quality
Date: _____

Reviewed and approved as to form:

MICHAEL SHORT
Deputy Attorney General, Idaho Attorney General's Office
Date: _____

FOR THE CITY OF DEARY

JASON JOHNSON
Mayor, City of Deary
Date: _____

Reviewed and approved as to form:

Counsel for The City
Date: _____

SO ORDERED THIS _____ DAY OF _____ 2025.

District Judge

EXHIBIT A

EXHIBIT A

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF

CONSENT JUDGMENT AGREEMENT SCHEDULE

City of Deary

PO Box 236

Deary, ID 83826

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In accordance with the Consent Judgment, Section IV (Compliance Requirements), the City of Deary (City) must complete the following activities to resolve the alleged violation(s) and, unless otherwise specified, submit any required documentation to the Department through the E-Permitting System:

1. By June 30, 2027, implement the plan and schedule to locate the sources of inflow and infiltration (I&I) as found in the City's I&I evaluation (see IPDES ID0020788, Section 3.11).
2. By December 31, 2028, submit to the Department a list of identified sources of I&I and a notification that implementation of the I&I source location schedule is complete.
3. By December 31, 2029, submit a notification to the Department that a Preliminary Engineering Report (PER), compliant with the requirements of IDAPA 58.01.16.411, has been furnished to the Department's Lewiston Regional Office. The PER must specify the corrective actions required to eliminate identified I&I from entering the collection system.
4. By June 30, 2030, submit a notification to the Department that the associated Plans and Specifications (P&S) supporting the corrective actions necessary to eliminate identified I&I from entering the collection system have been furnished to the Department's Lewiston Regional Office.
5. By December 31, 2030, begin the collection system repairs and upgrades identified in the PER and submit to the Department a statement that repairs and upgrades have begun.
6. Within 30 days of completing all collection system repairs and upgrades, submit a notification to the Department that an Idaho-licensed Professional Engineer representing the City has provided record drawings, or a statement of material compliance, to the Department's Lewiston Regional Office.
7. Within 180 days of completing all collection system repairs and upgrades, submit to the Department a statement that plant optimization is complete and that the permit-required effluent limits have been achieved.

8. Beginning in July 2025, submit semi-annual progress reports to the Department on the 31st of each January and July until the Consent Judgement is terminated. The semi-annual progress reports supersede the I&I annual reporting requirements (Permit section 3.11) and must include, at a minimum:
- a. A summary of all major activities performed to accomplish each of Consent Judgement requirements 1 – 7.
 - b. A detailed description of any issues encountered including actions taken to return to and maintain compliance with the Permit.
 - c. An update on funding status relevant to meeting Consent Judgement requirements 1 – 7.
 - d. A record of any missed deadlines and the associated corrective actions that have been or will be undertaken to maintain the timeline in this Consent Judgement.
 - e. Future actions and milestones targeted for the next semiannual report.

Paragraph	Requirement	Deadline
(1)	Implement the plan and schedule to locate I&I sources	June 30, 2027
(2)	Submit list of identified I&I sources and notify the Department	December 31, 2028
(3)	Notify the Department that a PER has been submitted to the Lewiston Regional Office	December 31, 2029
(4)	Notify the Department that the P&S have been submitted to the Lewiston Regional Office	June 30, 2030
(5)	Begin collection system repairs and upgrades and notify the Department	December 31, 2030
(6)	Notify the Department that record drawings or a statement of material compliance have been submitted to the Lewiston Regional Office	Within 30 days of completing repairs and upgrades
(7)	Submit to the Department a statement that effluent limits have been achieved	Within 180 days of completing repairs and upgrades
(8)	Submitting semi-annual progress reports to the Department	Every 31 st of January and July