



ADVOCATES for the **West**
P.O. Box 1612 | Boise, ID 83701

December 2, 2015

Via Certified Mail, Return Receipt Requested

Commissioner Rich Yzaguirre
Commissioner Dave Case
Commissioner Jim Tibbs
Ada County Board of County Commissioners
200 W. Front St.
Boise, Idaho 83702

**RE: Notice of Intent to Sue Ada County Over Violations of Clean Water Act
at the Expo Idaho Property.**

Dear Commissioners:

Idaho Rivers United hereby provides notice, pursuant to Section 505 of the Federal Water Pollution Control Act (“Clean Water Act”), 33 U.S.C. § 1365, of its intent to initiate a suit against Ada County and the Ada County Board of County Commissioners (collectively “the County”) to enforce provisions of the Clean Water Act, 33 U.S.C. § 1251, *et seq.* The County owns more than 300 acres of property bounded by the Boise River, Chinden Blvd., Glenwood St., and East Remington, which includes Expo Idaho (5610 N. Glenwood St., Garden City, ID 83714), Hawk Stadium (5600 N. Glenwood St., Garden City, ID 83714), Les Bois Park (5610 N. Glenwood St., Garden City, ID 83714), and adjacent or contiguous facilities and land owned or operated by Ada County, herein collectively referred to as the “Expo Idaho Property.” Based upon reasonable investigation and belief, Ada County is illegally discharging stormwater and animal waste without a Clean Water Act National Pollutant Discharge Elimination System (“NPDES”) permit, or permits, from the Expo Idaho Property to the Boise River. Idaho Rivers United intends to seek redress for the past and continuing illegal discharge of pollutants from the Expo Idaho Property to the Boise River without a valid Clean Water Act NPDES permit, or permits, as set forth in further detail below.

Unless the County takes the steps necessary to remedy its ongoing violations of the Clean Water Act, Idaho Rivers United intends to file suit in U.S. District Court following the expiration of the required 60-day notice period, seeking injunctive relief and civil penalties in the amount of \$37,500.00 per day per violation enumerated below and for any similar violations subsequently identified by Idaho Rivers United. If the County has any information suggesting that one or more of the violations outlined in this notice did not occur or are stated incorrectly, please immediately provide that information to Idaho Rivers United, specifying the violation in question.

PERSONS GIVING NOTICE

The full name, address, and telephone number of the party providing this notice is:

Idaho Rivers United
Att'n: Kevin Lewis
PO Box 633
Boise, ID 83701
(208) 343-7481

The attorney representing Idaho Rivers United in this notice is:

Bryan Hurlbutt
Advocates for the West
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Boise, ID 83701
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bhurlbutt@advocateswest.org

IDAHO RIVERS UNITED'S COMMITMENT TO IMPROVING WATER QUALITY IN THE BOISE RIVER

Idaho Rivers United is a nonprofit conservation organization based in Boise, Idaho. Idaho Rivers United's mission is to protect and restore the rivers of Idaho. Since being founded in 1990, Idaho Rivers United has become a powerful force for safeguarding Idaho's imperiled wild steelhead and salmon, protecting and enhancing stream flows, improving water quality, and defending and promoting the many benefits that flow from Idaho's rivers, including the Boise River. Idaho Rivers United's 3,500 members work together to keep Idaho's rivers fishable, swimmable, full of fish, and flourishing for present and future generations.

Staff, members, and supporters of Idaho Rivers United live, recreate, and work throughout the Boise River watershed, including at, near, and downstream of the Expo Idaho Property. Idaho Rivers United staff, members, and supporters frequently visit, recreate in, and engage in activities in and along the Boise River near the Expo Idaho Property and in areas impacted by pollution discharges from the Expo Idaho Property. Idaho Rivers United staff, members, and supporters own property near the Expo Idaho Property and in areas impacted by pollution discharges from the Expo Idaho Property. Idaho Rivers United staff, members, and supporters are harmed by these unlawful discharges.

POLLUTION ISSUES ON THE BOISE RIVER

Once one of the most polluted rivers in Idaho, the Boise River has been substantially cleaned up and sees more recreational visitors than any other river in the State. However pollution is still a problem. Upstream of the Expo Idaho Property, the river is relatively clean with few pollution sources. But downstream of the Expo Idaho Property, the Boise River becomes increasingly polluted as more pollution sources discharge to river.

The “Lower Boise River: is a 64-mile stretch of the Boise River from the Lucky Peak Dam outfall upstream of Boise, through Ada and Canyon Counties, to its mouth with the Snake River at Parma, Idaho. Stretches of the Lower Boise River are listed by the State of Idaho as “impaired” for failing to meet water quality standards for nutrients, sediment, and bacteria. Nutrient pollution can result in excessive algae growth and negatively impact ecological and recreational conditions, such as dissolved oxygen, pH, macroinvertebrate and fish abundances and community composition, swimming, fishing, boating, and aesthetics. Nutrient pollution sources to the Lower Boise River include fertilizer runoff from agriculture, publicly owned treatment works, municipal separate storm sewer systems, industrial wastewater and stormwater, and other sources. Sediment pollution harms aquatic life by impairing natural vegetation growth, disrupting natural food chains, clogging fish gills, lowering fish growth rates, affecting fish egg and larvae development, and activating transported nutrients. Most sediment pollution is attributable to human land use practices, including agricultural and construction sites. Bacteria pollution adversely impacts recreation on the Boise River and can cause serious sickness. Major sources of of bacteria pollution are runoff of animal waste from agriculture and urban lands.

Pollutants carried in “stormwater runoff” from the Expo Idaho Property contribute to pollution on the Lower Boise River. Stormwater runoff is generated when rain or melting snow flows over land or impervious surfaces and does not soak into the ground. As runoff flows over land and hard surfaces, such as streets, parking lots, and rooftops, it picks up pollutants, such as sediment, fertilizers, pesticides, animal waste, and oil and grease. As set forth below, precipitation that falls on the Expo Idaho Property can become stormwater runoff and pick up pollutants from parking lots, roads, buildings, animal confinement areas, and other surfaces on the Property, which then flows untreated to the Boise River and its local tributaries.

DISCHARGES WITHOUT AN NPDES PERMIT

Section 301(a) of the Clean Water Act prohibits the discharge of any pollutant by any person into the waters of the United States except as authorized by a permit issued under Section 402 of the Act. 33 U.S.C. § 1311(a). Section 402(a) of the Act provides that the EPA Administrator may issue permits under the National Pollutant Discharge Elimination System (“NPDES”) program for the discharge of any pollutant into the waters of the United States under terms and conditions prescribed by the Administrator. 33 U.S.C. § 1342(a). Each discharge of a pollutant that is not authorized by an NPDES permit constitutes a violation of Section 301(a) of the Act. 33 U.S.C. § 1311(a). Ada County has violated and continues to violate section 301(a) of the Act, 33 U.S.C. § 1311(a), by discharging pollutants from the Expo Idaho Property into waters of the United States, including the Boise River, without an NPDES permit(s) as set forth below.

A. Unpermitted MS4 Discharges

Under the Clean Water Act and its implementing regulations, an owner/operator of a Municipal Separate Storm Sewer System (“MS4”) is required to obtain an NPDES permit to discharge stormwater into waters of the United States. *See* 33 U.S.C. § 1342(p). EPA regulations implementing the Clean Water Act define an MS4 as a conveyance or system of conveyances that is: (1) owned by a state, city, town, village, or other public entity that discharges to waters of the U.S.; (2) designed or used to collect or convey stormwater (including

storm drains, pipes, and ditches); (3) not a combined sewer, and (4) not part of a Publicly Owned Treatment Works (POTW). 40 C.F.R. § 122.26(b)(8). Permits for MS4s “shall include a requirement to effectively prohibit non-stormwater discharges into the storm sewers” and “shall require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the [EPA] Administrator or the State determines appropriate for the control of such pollutants.” 33 U.S.C. § 1342(p)(3)(B).

Based upon reasonable investigation and belief, the Expo Idaho Property is located within the Boise Urbanized Area; Ada County is a public entity; Ada County owns a conveyance or system of conveyances on the Expo Idaho Property which collect or convey stormwater to the Boise River and/or other waters of the U.S.; this conveyance(s) is not a combined sewer or part of a POTW; and the County does not have a valid MS4 permit or other NPDES permit for these discharges, in violation of the Clean Water Act.

Since 1990, MS4s in medium and large cities and urban areas with populations of 100,000 or more, including the Boise Urbanized Area, have been required to obtain NPDES MS4 permits for stormwater discharges. NPDES permit number IDS-027561 is a current permit for the Boise Urbanized Area authorizing the discharge from MS4 outfalls owned by co-permittees Ada County Highway District (ACHD),¹ Boise State University, City of Boise, City of Garden City, Drainage District #3, and the Idaho Department of Transportation. The permit establishes conditions, prohibitions, and management practices for discharges of storm water from the MS4s owned or operated by the co-permittees. The permit requires implementation of a cooperative jurisdiction-wide municipal stormwater management program (SWMP), and outlines actions and activities to be used by all permittees to control pollutants in urban stormwater discharges to the maximum extent practicable. The permit also requires monitoring of certain stormwater discharges to assess the effectiveness of best management practices and to estimate pollutant loading to the Boise River and its tributaries.

Ada County is not a co-permittee to IDS-027561, and the stormwater conveyances on the County’s Expo Idaho Property are not covered by that NPDES permit. Attached is a map obtained by Idaho Rivers United through a Public Records Request made to ACHD. *See Attachment A.* The map identifies storm drains, catch basins, inlet/outlet structures, and manholes located on Expo Idaho Property and owned by Ada County. Based upon reasonable investigation and belief, these features collect and convey stormwater from the Expo Idaho Property directly to the Boise River, to the Eureka Drain (a water of the United States, which flows into the Boise River), and/or to other waters and conveyances that flow into the Boise River and/or the Eureka Drain. On information and belief, stormwater is also conveyed to the Eureka Drain and Boise River via overland flow from the Expo Idaho Property.

Ada County has unlawfully discharged stormwater through these and/or other conveyances located on the Expo Idaho Property to the Boise River on every day during the last five years on which rainfall and/or snowmelt was sufficient to cause discharges to the Boise River, the Eureka Drain, and other waters and conveyances that flow into the Boise River. On information and belief, such discharges generally occur on days with 0.1 inches or more of

¹ ACHD is an independent government entity, independent from Ada County.

precipitation. *See Attachment B* (NOAA precipitation records for Boise). These discharges include turbidity, zinc, copper, oil, nutrients, animal waste, and/or other pollutants. The violations described herein will continue to occur until Ada County obtains authorization to discharge stormwater from the Expo Idaho Property from EPA through a valid NPDES permit and comes into compliance with that NPDES permit.

B. Unpermitted CAFO Discharges

Under the Clean Water Act and its implementing regulations, large concentrated animal feeding operations (“CAFOs”) are point source discharges subject to NPDES permitting requirements. *See* 33 U.S.C. § 1362(14). “Animal feeding operation” (“AFO”) is defined as a facility where: (1) animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (2) crops, vegetation, forage growth, or post-harvest residues are not sustained over any portion of the facility. 40 C.F.R. § 122.23(b)(1). “Large CAFO” is defined to include any AFO that stables or confines more than 500 horses. *Id.* at 122.23(b)(4). Any person who discharges from a CAFO must apply for a permit. 40 C.F.R. § 122.21(a). EPA has interpreted “propose to discharge” as designed, constructed, operated, or maintained such that a discharge will occur. 40 C.F.R. § 122.23(d). All CAFOs are required to implement a nutrient management plan (NMP), which must include BMPs addressing manure storage, animal mortality, production area water, direct contact, chemical management, conservation, testing, land application, and record keeping. 40 C.F.R. §122.42(e)(1).

EPA has developed the General Permit for Concentrated Animal Feeding Operations in Idaho, NPDES Permit No. IDG01000. The CAFO General Permit was first issued in 1997 and was reissued in 2012. Eligible CAFOs may apply for authorization under the terms and conditions of the proposed permit by submitting a Notice of Intent (NOI) and an NMP. If a CAFO is not eligible for coverage under the General Permit, the owner/operator must apply for an individual NPDES permit. The NMP must, at a minimum, include practices and procedures necessary to implement the applicable effluent limitations and standards under the General Permit. Among other effluent limitations and standards, the CAFO General Permit prohibits the discharge of manure, litter, or process wastewater pollutants into waters of the U.S. from the CAFO production area and requires the production area to meet specified design, construction, operation, and maintenance specifications.

Based upon reasonable investigation and belief, Les Bois Park (which is part of Ada County’s Expo Idaho Property) is a Large CAFO that discharges pollutants from the production area and other areas to the Boise River and other waters and conveyances that flow into the Boise River. The County does not have a valid CAFO NPDES permit or other NPDES permit for these discharges. Thus, any discharge of pollutants from Les Bois Park without an NPDES Permit is in violation of the Clean Water Act.

Les Bois Park (5610 N. Glenwood St., Garden City, ID 83714) is approximately 70 acres of race track, grand stand, stalls, horse wash racks, show rings, riding arenas, horse barns with stalls, draft horse barns with stalls, and other facilities located on the Expo Idaho Property. On information and belief, more than 500 horses are stabled at Les Boise Park for more than 45 days each year, making it a Large CAFO; and Ada County discharges animal waste and other

pollutants from Les Bois Park via overland flow, buried pipes, and the Eureka drain directly to the Boise River and to the Expo Idaho MS4 system that discharges to the Boise River and other waters and conveyances that flow to the Boise River.

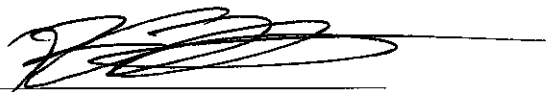
Idaho Rivers United has reason to believe that Ada County has unlawfully discharged pollutants from Les Bois Park CAFO to the Boise River on every day during at least the last five years on which rainfall and/or snowmelt was sufficient to cause discharges to the Boise River, the Eureka Drain, and other waters and conveyances that flow into the Boise River. On information and belief, such discharges generally occur on days with 0.1 inches or more of precipitation. *See Attachment B* (NOAA precipitation records for Boise). These discharges include phosphorus and other nutrients, *E. coli*, *Salmonella*, and/or other pollutants. The violations described herein will continue to occur until Ada County obtains authorization to discharge pollutants from Les Bois Park through a valid NPDES permit(s) and comes into compliance with that NPDES permit.²

PENALTIES AND INJUNCTIVE RELIEF

Ada County is in violation of the Clean Water Act, as set forth above. Idaho Rivers United anticipates filing suit 60 days from the date of this notice in Federal District Court, requesting penalties, injunctive relief, and attorneys fees, if Ada County has not yet taken appropriate remedial action to halt these violations of the Clean Water Act by either obtaining all needed NPDES permits and coming into compliance with those permits, or ceasing the discharge of these harmful pollutants into the Boise River. Section 309 of the Act, 33 U.S.C. § 1319(d), adjusted by 40 C.F.R. § 19.4, provides for penalties of up to \$37,500.00 per day per violation. Ada County is liable for each of the numerous violations identified above that have occurred over the last five years and for all violations that continue to occur. Idaho Rivers United may discover additional violations, and Idaho Rivers United will seek additional penalties for these violations as they are identified.

One of the principal purposes of the notice requirement in the Clean Water Act is to allow the parties to discuss resolution of claims short of litigation. During the 60-day notice period, Idaho Rivers United and the undersigned attorney will be available to discuss alternative remedies and actions that might be taken to assure future compliance with the Clean Water Act. If you wish to discuss any aspect of this notice, please contact me.

Sincerely,



Bryan Hurlbutt
ADVOCATES FOR THE WEST

Attorney for Idaho Rivers United

² Idaho Rivers United has reason to believe Les Bois Park is a Large CAFO, and the County must, therefore, obtain an NPDES permit covering discharges for a Large CAFO. However, if Les Bois Park does not constitute a Large CAFO, the County still must obtain an NPDES permit for the stormwater discharges from Les Bois Park described herein.

cc:

Gina McCarthy, Administrator
U.S. EPA
1200 Pennsylvania Ave. NW
Washington, DC 20460

Dennis McLerran, Regional Administrator
U.S. EPA Region 10
1200 Sixth Ave., Ste. 900
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James Wertz, Director
EPA Idaho Operations Office
950 West Bannock, Suite 900
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John Tippets, Director
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706

ATTACHMENT A
ACHD Storm Drain Ownership Map

Description: IRU obtained this map through a Public Records Request to the Ada County Highway District. This map identifies storm drains, catch basins, inlet/outlet structures, and manholes located on Expo Idaho Property and owned by the County.

Ada County Fairgrounds - Storm Drain Ownership

Legend

- Receiving Water
- Arterials
- ACHD Ownership
- ITD Ownership
- Ponds

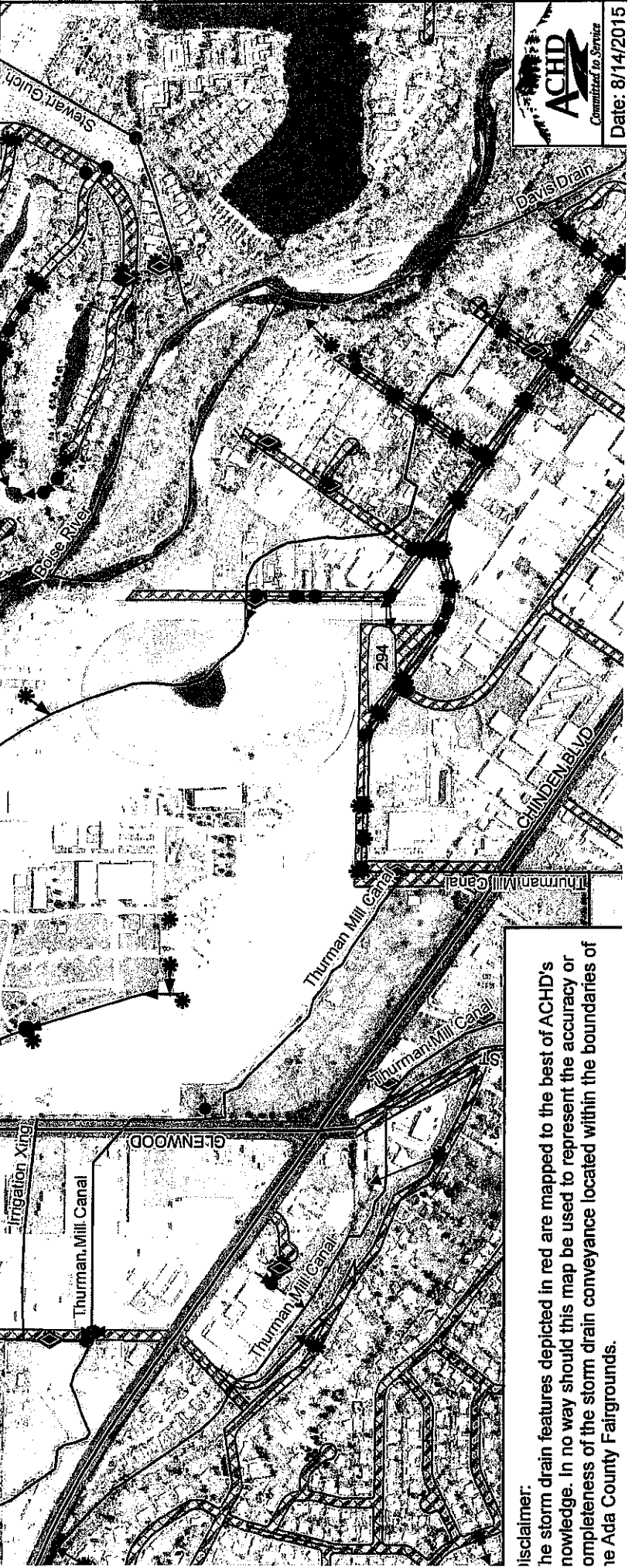
ACHD Storm Drain Feature

- CATCH BASIN
- MANHOLE
- SAND/GREASE TRAP
- STORM DRAIN

Not ACHD Owned Storm Drain Feature

- Storm Drain
- CATCH BASIN
- INLET/OUTLET STRUCTURE
- MANHOLE

0 500 1,000 Feet



Disclaimer:
The storm drain features depicted in red are mapped to the best of ACHD's knowledge. In no way should this map be used to represent the accuracy or completeness of the storm drain conveyance located within the boundaries of the Ada County Fairgrounds.

ATTACHMENT B

NOAA Record of Climatological Observations, Boise Precipitation (Jan. 2010 – Nov. 2015)

Description: Idaho Rivers United obtained Boise precipitation records from January 2010 to November 2015 by submitting an online request to NOAA's Record of Climatological Observations. This is an exact copy of the records generated by NOAA on November 16, 2015 and sent to Idaho Rivers United.