



## Idaho Department of Environmental Quality Draft §401 Water Quality Certification

June 17, 2016

**404 Permit Application Number:** NWW-2016-00222-I02

**Applicant/Authorized Agent:** Lemhi and County Road and Bridge Departments/Lemhi Soil and Water Conservation District

**Project Location:** N 44.956523, W -113.636935

**Receiving Water Body:** Agency Creek

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Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); and Idaho Code §39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has authority to review activities receiving Section 404 dredge and fill permits and issue water quality certification decisions.

Based upon its review of the joint application for permit, publicly noticed on May 25, 2016, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the activity will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02), and other appropriate water quality requirements of state law.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits.

### Project Description

A single undersized culvert conveys Agency Creek underneath Agency Creek Road, owned by Lemhi County. The culvert will be replaced with a 28' x 33' prefabricated modular steel bridge to provide an additional 1.1 miles of unimpaired fish passage for all life stages of ESA-listed anadromous and resident steelhead and Chinook, as well as restore a more natural condition to the channel at this location. Grade control structures will be placed in-channel to protect bridge footing undercutting by the river. All construction disturbances will be rehabilitated by seeding and planting native vegetation.

### Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- Tier 1 Protection. The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier 1 review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier 2 Protection. The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless deemed necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).
- Tier 3 Protection. The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ is employing a water body by water body approach to implementing Idaho's antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05.a). Any water body not fully supporting its beneficial uses will be provided Tier 1 protection for that use, unless specific circumstances warranting Tier 2 protection are met (IDAPA 58.01.02.052.05.c). The most recent federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

### ***Pollutants of Concern***

The primary pollutant of concern for this project is sediment. As part of the Section 401 water quality certification, DEQ is requiring the applicant comply with various conditions to protect water quality and to meet Idaho WQS, including the water quality criteria applicable to sediment.

### ***Receiving Water Body Level of Protection***

This project is located on Agency Creek within the Lemhi River subbasin, assessment unit (AU) ID17060204SL056a\_04 (Agency Creek – Diversion to mouth). This AU has not yet been designated. Because DEQ presumes most waters in the state will support cold water aquatic life and primary or secondary contact recreation beneficial uses, undesignated waters are protected for these uses (IDAPA 58.01.02.101.01.a). There is no available information indicating the presence of any existing beneficial uses aside from those that are already designated.

According to DEQ's 2012 Integrated Report, this AU is included in Category 3 (Unassessed Waters). The applicant has agreed to assume the water body high quality with respects to cold water aquatic life and contact recreation for antidegradation review purposes. As such, DEQ will provide Tier 2 protection, in addition to Tier 1, for cold water aquatic life and contact recreation beneficial uses (IDAPA 58.01.02.051.02; 58.01.02.051.01).

### ***Protection and Maintenance of Existing Uses (Tier 1 Protection)***

As noted above, a Tier 1 review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. The numeric and narrative criteria in the WQS are set at levels that ensure protection of designated beneficial uses.

During the construction phase, the applicant will implement, install, maintain, monitor, and adaptively manage best management practices (BMPs) directed toward reducing erosion and minimizing turbidity levels in receiving water bodies downstream of the project. In addition, permanent erosion and sediment controls will be implemented, which will minimize or prevent future sediment contributions from the project area, including reestablishing riparian vegetation and reseeding banks after construction. The project area will be dewatered prior to construction to reduce the potential for turbidity. As long as the project is conducted in accordance with the provisions of the project plans, Section 404 permit, and conditions of this certification, then there is reasonable assurance the project will comply with the state's numeric and narrative criteria.

There is no available information indicating the presence of any existing beneficial uses aside from those that are already designated and discussed above; therefore, the permit ensures that the level of water quality necessary to protect both designated and existing uses is maintained and protected in compliance with IDAPA 58.01.02.051.01 and 58.01.02.052.07.

### ***High-Quality Waters (Tier 2 Protection)***

The applicant has agreed to presume Agency Creek high quality for cold water aquatic life and contact recreation. As such, the water quality relevant to cold water aquatic life and contact recreation uses of Agency Creek must be maintained and protected, unless a lowering of water quality is deemed necessary to accommodate important social or economic development.

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for each pollutant that is relevant to cold water aquatic life and contact recreation uses of Agency Creek (IDAPA 58.01.02.052.06). The only pollutant of concern for this project is sediment. Sediment is not relevant to recreational uses. Therefore, this project will not result in a lowering of water quality with respect to recreational beneficial use support. Sediment is relevant to the cold water aquatic life beneficial use and, as such, the permittee must minimize the transport of sediment through the implementation of best management practices (BMPs). To the extent possible, the project area will be dewatered by installing stream by-pass and grade control structures to minimize sediment transport in addition to, reducing the opportunity for sediment to impair beneficial uses. Although this project may result in minimal short-term sediment impacts to the water body, DEQ does not expect long-term impacts or degradation to Agency Creek. As such, the project complies with IDAPA 58.01.02.051.02 and IDAPA 58.01.02.052.06.

Permanent erosion and sediment controls must be implemented, which will minimize or prevent future sediment contributions from the project area. The provisions in the 404 permit, coupled with the conditions of this certification, ensure that degradation to Agency Creek will not occur. Therefore, DEQ concludes that this project complies with the Tier 2 provisions of Idaho's WQS (IDAPA 58.01.02.051.02; 58.01.02.052.06 and 58.01.02.052.08).

## Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law

### ***General Conditions***

1. Applicant shall contact the Idaho Falls Regional Office of DEQ with a pre-construction notice of five (5) working days.
2. This certification is conditioned upon the requirement that any modification (e.g., change in BMPs, work windows, etc.) of the permitted activity shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401. Such modifications may not be implemented until DEQ has determined whether additional certification is necessary.
3. DEQ reserves the right to modify, amend, or revoke this certification if DEQ determines that, due to changes in relevant circumstances—including without limitation, changes in project activities, the characteristics of the receiving water bodies, or state WQS—there is no longer reasonable assurance of compliance with WQS or other appropriate requirements of state law.
4. If ownership of the project changes, the certification holder shall notify DEQ, in writing, upon transferring this ownership or responsibility for compliance with these conditions to another person or party. The new owner/operator shall request, in writing, the transfer of this water quality certification to his/her name.
5. A copy of this certification must be kept on the job site and readily available for review by any contractor working on the project and any federal, state, or local government personnel.
6. Project areas shall be clearly identified in the field prior to initiating land-disturbing activities to ensure avoidance of impacts to waters of the US beyond project footprints.
7. The applicant shall provide access to the project site and all mitigation sites upon request by DEQ personnel for site inspections, monitoring, and/or to ensure that conditions of this certification are being met.
8. The applicant is responsible for all work done by contractors and must ensure the contractors are informed of and follow all the conditions described in this certification and the Section 404 permit.
9. If this project disturbs more than 1 acre and there is potential for discharge of stormwater to waters of the US, coverage under the EPA Stormwater Construction General Permit *must* be obtained.

### ***Fill Material***

1. Fill material shall be free of organic and easily suspendable fine material. The fill material to be placed shall include clean earth fill, sand, and stone only.
2. All temporary fills shall be removed in their entirety on or before construction completion.

3. Excavated or staged fill material must be placed so it is isolated from the water edge or wetlands and not placed where it could re-enter waters of the state uncontrolled.

### ***Erosion and Sediment Control***

1. Sediment resulting from this activity must be mitigated to prevent violations of the turbidity standard as stipulated under the Idaho WQS (IDAPA 58.01.02.250.02.e). Any violation of this standard must be reported to the DEQ regional office immediately.
2. BMPs for sediment and erosion control suitable to prevent exceedances of state WQS shall be selected and installed before starting construction at the site. One resource that may be used in evaluating appropriate BMPs is DEQ's *Catalog of Stormwater Best Management Practices for Idaho Cities and Counties*, available online at <http://www.deq.idaho.gov/media/494058-entire.pdf>. Other resources may also be used for selecting appropriate BMPs.
3. One of the first construction activities shall be placing permanent and/or temporary erosion and sediment control measures around the perimeter of the project or initial work areas to protect the project water resources.
4. Permanent erosion and sediment control measures shall be installed in a manner that will provide long-term sediment and erosion control to prevent excess sediment from entering waters of the state.
5. Permanent erosion and sediment control measures shall be installed at the earliest practicable time consistent with good construction practices and shall be maintained as necessary throughout project operation.
6. Top elevations of bank stabilization shall be such that adequate freeboard is provided to protect from erosion at 100-year design flood elevation.
7. Structural fill or bank protection shall consist of materials that are placed and maintained to withstand predictable high flows in the waters of the state.
8. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
9. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
10. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
11. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.
12. Maximum fill slopes shall be such that material is structurally stable once placed and does not slough into the stream channel during construction, during periods prior to revegetation, or after vegetation is established.
13. To the extent reasonable and cost-effective, the activity submitted for certification shall be designed to minimize subsequent maintenance.
14. Sediment from disturbed areas or able to be tracked by vehicles onto pavement must not be allowed to leave the site in amounts that would reasonably be expected to enter waters of the state. Placement of clean aggregate at all construction entrances or exits and other

BMPs such as truck or wheel washes, if needed, must be used when earth-moving equipment will be leaving the site and traveling on paved surfaces.

### ***Turbidity***

1. All practical BMPs on disturbed banks and within the waters of the state must be implemented to minimize turbidity during in-water work.
2. Containment measures such as silt curtains, geotextile fabrics, and silt fences must be implemented and properly maintained to minimize in-stream sediment suspension and resulting turbidity.
3. Turbidity monitoring must be conducted, recorded, and reported as described below. Monitoring must occur each day during project implementation. A properly and regularly calibrated turbidimeter is required.

A sample must be taken once daily and after any precipitation events at a relatively undisturbed area approximately 50 meters up-current from in-water disturbance or discharge to establish background turbidity levels for each monitoring event. Background turbidity, location, date, and time must be recorded prior to monitoring down-current.

Monitoring must occur continuously approximately down-current from the in-water disturbance or point of discharge and within any visible plume. The turbidity, location, date, and time must be recorded for each sample.

Results from the compliance point sampling must be compared to the background levels sampled during each monitoring event. If the downstream turbidity exceeds upstream turbidity by 50 nephelometric turbidity units (NTU) or more, then the project is causing an exceedance of the WQS. If a visible plume is observed, then the project may be causing an exceedance of the standard and turbidity sampling is required to determine if the criterion is exceeded. If an exceedance occurs, the applicant must inspect the condition of the projects BMPs. If the BMPs appear to be functioning to their fullest capability, then the applicant must modify the activity (this may include modifying existing BMPs).

Copies of daily logs for turbidity monitoring must be available to DEQ upon request. The log must include background measurements (in NTUs); compliance point measurements; comparison of background and compliance point monitoring as a numeric value (in NTUs); and location, time and date for each sampling event. The report must describe all exceedances and subsequent actions taken, monitoring, and the effectiveness of the action.

### ***In-water Work***

1. Work in open water is to be kept at a minimum and only when necessary. Equipment shall work from an upland site to minimize disturbance of waters of the US. If this is not practicable, appropriate measures must be taken to ensure disturbance to the waters of the US is minimized.
2. Forging of the channel is not permitted. Temporary bridges or other structures shall be built if crossings are necessary.

3. Temporary crossings must be perpendicular to channels and located in areas with the least impact. The temporary crossings must be supplemented with clean gravel or treated with other mitigation methods at least as effective in reducing impacts. Temporary crossings must be removed as soon as possible after the project is completed or the crossing is no longer needed.
4. Work in waters of the state shall be restricted to areas specified in the application.
5. Measures shall be taken to prevent wet concrete from entering into waters of the state when placed in forms and/or from truck washing.
6. Activities that include constructing and maintaining intake structures must include adequate fish screening devices to prevent fish entrainment or capture.
7. Stranded fish found in dewatered segments should be moved to a location (preferably downstream) with water.
8. To minimize sediment transport, stream channel or stream bank stabilization must be completed prior to returning water to a dewatered segment.

### ***Pollutants/Toxics***

1. The use of chemicals such as soil stabilizers, dust palliatives, sterilants, growth inhibitors, fertilizers, and deicing salts during construction and operation should be limited to the best estimate of optimum application rates. All reasonable measures shall be taken to avoid excess application and introduction of chemicals into waters of the state.

### ***Vegetation Protection and Restoration***

1. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
2. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
3. Fencing and other barriers should be used to mark the construction areas.
4. Where possible, alternative equipment should be used (e.g., spider hoe or crane).
5. If authorized work results in unavoidable vegetative disturbance, riparian and wetland vegetation shall be successfully reestablished to function for water quality benefit at pre-project levels or improved at the completion of authorized work.

### ***Dredge Material Management***

1. Upland disposal of dredged material must be done in a manner that prevents the material from re-entering waters of the state.

### ***Management of Hazardous or Deleterious Materials***

1. Adequate measures and controls must be in place to ensure that petroleum products and hazardous, toxic, and/or deleterious materials will not enter waters of the state.

2. Daily inspections of all fluid systems on equipment to be used in or near waters of the state shall be done to ensure no leaks or potential leaks exist prior to equipment use. A log book of these inspections shall be kept on site and provided to DEQ upon request.
3. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
4. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).

### **Culverts**

1. The culvert shall not constrict the stream channel and shall not be angled such that the outflow is directed toward the stream bank.
2. The culvert outflow shall be armored with riprap to provide erosion control. This riprap will be clean, angular, dense rock that is free of fines and resistant to aquatic decomposition.
3. Culverts shall be sized appropriately to maintain the natural drainage patterns.

## **Right to Appeal Final Certification**

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the “Rules of Administrative Procedure before the Board of Environmental Quality” (IDAPA 58.01.23), within 35 days of the date of the final certification.

Questions or comments regarding the actions taken in this certification should be directed to Troy Saffle at [troy.saffle@deq.idaho.gov](mailto:troy.saffle@deq.idaho.gov) or 208.528.2650.

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Troy Saffle

Regional Manager

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