



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1445 North Orchard • Boise, Idaho 83706 • (208) 373-0550

C.L. "Butch" Otter, Governor
Toni Hardesty, Director

February 22, 2012

Todd Haynes
Terna Energy LLC
P.O. Box 8028
Boise, ID 83707-2028

Re: Reference No. NWW-2012-00022-B01
Culvert Installation in Ryegrass Creek (After-the Fact 401 WQ Certification)

Dear Mr. Haynes:

The Department of Environmental Quality (DEQ) has considered water quality certification for construction related to the referenced project. DEQ is issuing the attached 401 Water Quality Certification subject to the terms and conditions contained therein.

This certification shall remain in effect until June 30, 2012, at which time construction must be completed.

Questions regarding the actions taken in this certification should be directed to Julia Achabal, DEQ Boise Regional Office, 208.373.0321, julia.achabal@deq.idaho.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Wagner", is written over a light blue horizontal line.

Pete Wagner
Regional Administrator
Boise Regional Office

JA: vee

c: Jamie Howard, COE, Boise
Miranda Adams, DEQ, State Office
Julia Achabal, DEQ, Boise Regional Office
Jack Gantz P.E., DEQ, Boise Regional Office
TRIM 2012AKF5



Idaho Department of Environmental Quality Final §401 Water Quality Certification

February 22, 2012

404 Permit Application Number: NWW 2012-00022-B01

Applicant/Authorized Agent: Terna Energy / Todd Haynes

Project Location: Project is located in Elmore County, Idaho at 43°2'32.17"N, 115°25'42.97"S, T4S, R9E, BM. Take I-84 exit 112, north on ID-78E/Hammett Hill Road to Bennett Road, west on Bennett Road to Rye Grass Road, north on Rye Grass Road 1.5 miles to Mainline Wind Farm.

Receiving Water Body: Ryegrass Creek

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 January 5, 2012, 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.

This permit shall remain in effect until June 30, 2012, at which time construction must be completed.

Project Description

Applicant constructed a culvert crossing in Ryegrass Creek under the assumption that this activity was self-permitting. However, the COE determined that this activity falls under a Nationwide Permit No. 12: Utility Line Activities. The project included installation of a 12-foot diameter corrugated metal culvert to allow construction of a 16-foot wide access road to the Mainline Wind Farm.

Antidegradation Review

In March 2011, Idaho incorporated new provisions in Idaho Code § 39-3603 addressing antidegradation implementation. At the same time, Idaho adopted antidegradation implementation procedures in the Idaho WQS. DEQ submitted the antidegradation implementation procedures to the US Environmental Protection Agency (EPA) for approval on April 15, 2011. On August 18, 2011, EPA approved the implementation procedures.

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 58.01.02.052.05).
- 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; 58.01.02.052.06).
- 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; 58.01.02.052.07).

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 (Idaho Code § 39-3603(2)(b)(i)). 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 (Idaho Code § 39-3603(2)(b)(iii)). The most recent federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (Idaho Code § 39-3603(2)(b)).

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

The culvert crossing of Ryegrass Creek is located within the assessment unit (AU) 17050101SW015_02. Uses for this AU have not been designated in Idaho's water quality standards; however, cold water aquatic life and secondary contact recreation are presumed uses. Because the Department presumes most waters of the state will support cold water aquatic life and primary and secondary contact recreation beneficial uses, the Department will apply cold water aquatic life and primary or secondary contact recreation criteria to undesignated water

(IDAPA 58.01.02.101.01.a). The cold water aquatic life beneficial use for Ryegrass Creek is fully supporting. Ryegrass Creek is included in Category 2 of the Integrated Report (DEQ 2010). Therefore, DEQ will provide Tier 2 protection in addition to Tier 1 for aquatic life and recreation uses in this AU. (Idaho Code §39-3603(2)(i)).

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.

DEQ understands that the culvert crossing at Ryegrass Creek has been constructed without permit or certification. The construction site was visited and stream conditions are dry. All work appeared to be done in a manner that did not degrade water quality or impact beneficial uses. To complete the project, additional conditions to ensure compliance with Idaho's water quality standards are required as part of the certification below.

While the culvert is already in place, DEQ has set forth in the certification 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. 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.

High-Quality Waters (Tier 2 Protection)

Ryegrass Creek is considered high quality for cold water aquatic life and recreation. As such, the water quality relevant to cold water aquatic life and recreation uses of the Ryegrass 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 the cold water aquatic life and recreation uses of the Ryegrass Creek (IDAPA 58.01.02.052.04). These pollutants include the following: sediment and *Escherichia coli*. The only pollutant of concern for this project is sediment. Sediment is not relevant to recreational uses, but is relevant to aquatic life uses. Therefore, DEQ must determine whether sediment discharges associated with this project will cause degradation.

DEQ understands that the culvert crossing at Ryegrass Creek has been constructed without permit or certification. The construction site was visited and stream conditions are dry. All work appeared to be done in a manner that did not degrade water quality or impact beneficial uses. To complete the project, additional conditions to ensure compliance with Idaho's water quality standards are recommended below.

As noted above, the applicant will implement, install, maintain, monitor, and adaptively manage 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. 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 the 17050101SW015_02 AU or the Ryegrass Creek. Therefore, DEQ concludes that this project complies with IDAPA 58.01.02.051.02 and IDAPA 58.01.02.052.06.

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

General Conditions

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.

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, cobble, and stone only.

Erosion and Sediment Control

2. Top elevations of bank stabilization shall be such that adequate freeboard is provided to protect from erosion at 100-year design flood elevation.
3. 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.

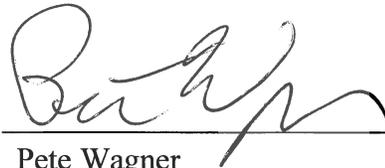
Culverts

4. Applicant shall re-grade the impacted channel bottom to pre-construction elevations (3154.5 feet elevation, per topographic survey completed in Fall 2011). Applicant shall place larger cobble rock in channel bottom impacted during construction, to reduce downstream sediment/fine material bedloads.
5. Applicant shall stabilize the upstream right bank of the installed culvert with additional clean, angular riprap to a sufficient length to prevent end cutting/erosion of stream bank under high flow conditions.
6. Applicant shall minimize/limit access and amount of equipment entering stream channel to complete the work.

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 regarding the actions taken in this certification should be directed to Julia Achabal, DEQ Boise Regional Office, 208.373.0321, julia.achabal@deq.idaho.gov.



Pete Wagner
Regional Administrator
Boise Regional Office