



Idaho Department of Environmental Quality Final §401 Water Quality Certification

March 20, 2012

404 Permit Application Number: NWW-2011-00556-I02

Applicant/Authorized Agent: Harriman State Park/Keith Hobbs/Jim DeRito

Project Location: Section 19, Township 12N, Range 42E

Receiving Water Body: Big Bend and Antelope Creeks

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, 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

Undersized culverts will be removed and replaced with creek-spanning bridges on Big Bend and Antelope Creeks, approximately 100 yards above each stream's confluence with the Henry's Fork. These culverts are part of a two-track road used by vehicles and ATVs for maintenance of riparian fencing along the Henry's Fork during the summer months. The culverts have caused eroded and widened conditions above and below each crossing.

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 proposed activity is located within the assessment unit (AU) ID17040202SK015_02. This AU has the following designated beneficial uses: cold water aquatic life, salmonid spawning, primary contact recreation, and domestic water supply.

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. 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. These criteria are set at levels that protect and maintain designated beneficial uses. Because there is no available information indicating the presence of any existing uses other than the designated uses, the permit will ensure 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 IDAPA 58.01.02.052.05.

High-Quality Waters (Tier 2 Protection)

The streams are considered high quality for cold water aquatic life, and primary contact recreation. Additionally, because there is no existing, readily available data on these streams, the applicant agreed to afford Tier 2 Protection to these uses. As such, the water quality relevant to these uses of the streams 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 secondary contact recreation uses of the streams (IDAPA 58.01.02.052.04). 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 primary contact recreation.

Sediment can impact the cold water aquatic life use and salmonid spawning use. 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. Lastly, the project will be completed during the Idaho Fish and Game's recommended construction window to prevent impacts to spawning rainbow trout.

Although this project may result in minimal short-term sediment impacts to the water body, DEQ does not expect long-term impacts or degradation from sediment to the AU or the streams. 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.

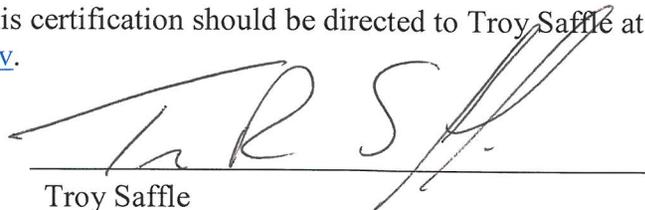
Turbidity

3. Turbidity monitoring must be conducted and recorded as described below. Monitoring must occur each day during project implementation. The applicant shall provide a monitoring plan to DEQ for review and comment prior to construction beginning.
4. Turbidity monitoring must be reported. Copies of daily logs for turbidity monitoring must be available to DEQ upon request. The log must include background measurements (in NTUs) or observations; compliance point measurements or observations; comparison of background and compliance point monitoring as a numeric value (in NTUs) or in narrative form; 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.

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 Troy Saffle at 208.528.2650 or troy.saffle@deq.idaho.gov.



Troy Saffle

Regional Manager

Idaho Falls Regional Office