



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1118 F Street • Lewiston, Idaho 83501 • (208) 799-4370

C.L. "Butch" Otter, Governor
Curt Fransen, Director

June 8, 2012

Anne Connor
Clearwater National Forest
12730 Highway 12
Orofino, Idaho 83544

Subject: Water Quality Certification for NWW-2012-199-C03 and NWW 2012-204-C03

Dear Ms. Connor:

Attached is the final §401 water quality certification for the above referenced project. The §401 process requires a public notice of 21 days. The comment period closed on June 4, 2012. No public comments were received by the Idaho Department of Environmental Quality. Therefore, DEQ is issuing the final certification.

If you have any questions or concerns, please do not hesitate to contact me at (208) 799-4370 or john.cardwell@deq.idaho.gov.

Sincerely,

A handwritten signature in blue ink that reads "John Cardwell".

John Cardwell
Water Quality Program Manager
Lewiston Regional Office

c: Beth Reinhart, ACOE, Coeur d'Alene
Clayton Steele, TRIM Record
Miranda Adams, TRIM Record



Idaho Department of Environmental Quality Final §401 Water Quality Certification

June 8, 2012

404 Permit Application Number: Musselshell Creek Relocation: NWW-2012-199-C03 and NWW-2012-204-C03

Applicant/Authorized Agent: Clearwater National Forest

Project Location: Clearwater County, Township 35 North, Range 6 East, Section 19 and Township 36 North, Range 6 East, Section 32.

Receiving Water Body: Deer Gulch, Musselshell 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, received on May 9, 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.

Project Description

The Clearwater National Forest proposes to restore the section of Musselshell Creek that was diverted through a tunnel for mining purposes in the early 1900s. The project will relocate Musselshell Creek out of the tunnel and back to its historic channel and natural floodplain in Deer Gulch, a tributary of Musselshell Creek. Relocating Musselshell Creek back to its original channel will restore the riparian area and provide aquatic organism passage.

Antidegradation Review

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

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 (IDAPA 58.01.02.052.05). 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.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 pollutants of concern for this project are sediment and temperature. 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 stream restoration project is located within the Clearwater Subbasin assessment unit (AU) ID17060306CL032_02 (Musselshell Creek – source 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). In addition to these beneficial uses, salmonid spawning has been determined to be an existing use (Beneficial Use Reconnaissance Program fish data, 2002, 2001, 1995).

The cold water aquatic life and salmonid spawning beneficial uses in this Musselshell Creek AU are not supported (2010 Integrated Report). The secondary contact recreation beneficial use is fully supported. As such, DEQ will provide Tier 1 protection only for the cold water aquatic life and salmonid spawning beneficial uses, and Tier 2 protection, in addition to Tier 1, for the recreation beneficial use (Idaho Code § 39-3603(2)(b)).

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.

Water bodies not supporting beneficial uses must be identified as water quality limited, and a total maximum daily load (TMDL) must be prepared for those pollutants causing impairment. This AU is included in the *Lolo Creek Watershed TMDL*, approved by the Environmental Protection Agency in December, 2011.

In the case of Musselshell Creek, the assessment data collected in accordance with DEQ's Water Body Assessment Guidance (WBAG) indicates that the cold water aquatic life and salmonid spawning beneficial uses are not supported. The *Lolo Creek Watershed TMDL* (DEQ, 2011) identified temperature as the impairment for several AUs within the subbasin, including the Musselshell Creek AU. It is necessary to ensure that project activities do not cause further temperature exceedances, whether directly or indirectly.

The pollutants of concern for this project are sediment and temperature. Sediment and temperature are not relevant to recreational uses, but are relevant to the aquatic life and salmonid spawning uses. To ensure sediment will not affect aquatic life and salmonid spawning, 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 described in the joint application for permit, the project area will be vegetated upon project completion, using native riparian species to help provide shaded habitat for fish.

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 and existing beneficial uses. In addition, the project will be consistent with the *Lolo Creek Watershed TMDL*. Assessment data shows that temperature impairments in Musselshell Creek are due to excess solar load from lack of shade (DEQ, 2011). Planting native riparian vegetation will help provide shade to Musselshell Creek. Additionally, avoiding in-stream work during project activities will help minimize potential sediment impacts.

High-Quality Waters (Tier 2 Protection)

Musselshell Creek is considered high quality for the secondary contact recreation beneficial use. As such, the water quality relevant to the secondary contact recreation use of Musselshell 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 contact recreation use of Musselshell Creek (IDAPA 58.01.02.052.04). The pollutants of concern for this project are sediment and temperature. Sediment and temperature are not relevant to recreational uses. Project activities are not expected to contribute sources of *E. coli* to Musselshell Creek. Therefore, this project will not result in a lowering of water quality with respect to any pollutant relevant to the Tier 2

protection for this water body. As such, the 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 state beyond project footprints.
6. 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.
7. 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. More information can be found at <http://yosemite.epa.gov/R10/WATER.NSF/NPDES+Permits/Region+10+CGP+resources>.

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. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.
3. All temporary fills shall be removed in their entirety on or before construction completion.

4. 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. 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.
2. 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.
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.
4. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
5. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
6. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.
7. 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.

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 each day during project implementation. A properly and regularly calibrated turbidimeter is recommended. Visual observation is acceptable. Turbidity shall not exceed background turbidity by more than fifty (50) NTU instantaneously or more than twenty-five (25) NTU for more than ten (10) consecutive days. If an exceedance occurs, the applicant must inspect the condition of the project 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).

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 state. If this is not

practicable, appropriate measures must be taken to ensure disturbance to the waters of the state is minimized.

2. Construction affecting the bed or banks shall take place only during periods of low flow.
3. Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.
4. Activities in spawning areas must be avoided to the maximum extent practicable.
5. Work in waters of the state shall be restricted to areas specified in the application.
6. To minimize sediment transport, stream channel or stream bank stabilization must be completed prior to returning water to a dewatered segment.

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. 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. Petroleum products and hazardous, toxic, and/or deleterious materials shall not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of waters of the state. Adequate measures and controls must be in place to ensure that those materials will not enter waters of the state as a result of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third-party activities.
2. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
3. Equipment and machinery shall be steam cleaned of oils and grease in an upland location or staging area with appropriate wastewater controls and treatment prior to entering a water of the state. Any wastewater or wash water must not be allowed to enter a water of the state.
4. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
5. Any spill less than 25 gallons must be cleaned up within 24 hours of the release but does not require reporting to DEQ. If the spill is less than 25 gallons and is not cleaned up within 24 hours, then it becomes a reportable quantity.

6. Any spill greater than or equal to 25 gallons must be cleaned up within 24 hours of the release and reported to DEQ by calling 1-800-632-8000 (Idaho State Communications Center). Any spill equal to or greater than 25 gallons is reportable immediately.
7. Any release that causes a sheen (of any size) in waters of the state must be reported immediately to the National Response Center at 1-800-424-8802 and the Idaho State Communication Center (1-800-632-8000).

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. The culvert's flow line shall match the existing stream invert at its entrance and exit. Adequate grade control shall be installed to prevent channel down cutting or excessive deposition from occurring.
2. The culvert shall be installed such that it does not impede fish passage.
3. 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.
4. Culverts shall be sized appropriately to maintain the natural drainage patterns.

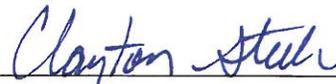
Treated Wood

1. Any use of treated wood materials in the aquatic environment must be conducted in accordance with DEQ's "Guidance for the Use of Wood Preservatives and Preserved Wood Products In or Around Aquatic Environments." This guidance is available online at http://www.deq.idaho.gov/media/488795-wood_products_guidance_final.pdf.

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 John Cardwell, Lewiston Regional Office at (208) 799-4370 or John.Cardwell@deq.idaho.gov.



Clayton Steele
Regional Administrator
Lewiston Regional Office