



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

2110 Ironwood Parkway • Coeur d'Alene, Idaho 83814 • (208) 769-1422

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

July 20, 2012

John Pankratz  
Eastside Highway District  
6095 E. Mullan Trail Road  
Coeur d'Alene, ID 83814

RE: Final §401 Water Quality Certification Burma Road Project; NWW 2010-601-B02

Dear Mr. Pankratz,

Enclosed is the final water quality certification for the Burma Road project. This certification was prepared in response to the June 4, 2012 Army Corps of Engineers request for DEQ to provide certification for their permit. Our draft certification process allowed the public to examine the draft document and provide written comments to DEQ for a 10 day period of time. The comment period was shortened in consideration of your deadline to secure funding for this project and ended on July 19, 2012. No comments were received and no substantive changes were made to the enclosed final certification. If you have any questions or concerns, please contact June Bergquist at 208.666.4605 or via email at [june.bergquist@deq.idaho.gov](mailto:june.bergquist@deq.idaho.gov).

Sincerely,

Daniel Redline  
Regional Administrator  
Coeur d'Alene Regional Office

Enclosure

c: Nicholle Braspennickx, Corps of Engineers - Boise Office  
Miranda Adams, DEQ State Office  
Jay Hassell, P.E. JUB Engineers Boise Office



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

July 20, 2012

**404 Permit Application Number:** NWW-2010-601-B02 ITD Key No. 09462 Burma Road

**Applicant/Authorized Agent:** Eastside Highway District/Jay Hassell P.E. JUB Engineers

**Project Location:** T49N R3W Section 20 East side of Coeur d'Alene Lake from Turner Bay east along Burma Road to the intersection with Gotham Bay Road

**Receiving Water Body:** Turner Creek and Coeur d'Alene Lake

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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.

DEQ has reviewed the facts and the figures presented in the public notice and joint application for permit for the above-referenced activity. DEQ has also reviewed and considered other material and information related to the proposed activity, including but not limited to the following: Joint Application Modifications dated 5-23-12 and SWPPP dated June 12, 2012.

Based upon its review and consideration of the information listed above, DEQ certifies that if the permittee(s) comply with the terms and conditions imposed by the above-referenced 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

Idaho Transportation Department and the Eastside Highway District proposes to widen, realign, and pave Burma Road, requiring permanent fill into Turner Creek, two unnamed intermittent tributaries of Turner Creek and adjacent wetlands in Kootenai County near Harrison, Idaho. Currently, cut slopes along this section of road are very steep, exhibit slope failures and have numerous seeps. Outer slopes are severely eroded and overly steepened in many locations. Wetland fills will impact 100 square feet of sloped wetland adjacent to an unnamed tributary to Turner Creek. The project will replace the culverts at three stream crossings. The crossing

locations are at Carlin Bay Road near its intersection with Burma Road at Turner Creek where fish passage will be restored with a bottomless arch culvert. The second crossing is along an unnamed tributary to Turner Creek at E. Emerald Drive. The third crossing is near the intersection of Burma Road and E. Canton Lane. These two new culverts will be the same diameter but longer to accommodate a widened roadway. At the intersection of Burma Road and Highway 97 a new 18 inch culvert will drain approximately 400 feet of newly constructed ditches, located on both sides of Burma Road, into Coeur d'Alene Lake. A grease trap is proposed to be placed in this drain to slow runoff and capture sediment from the new road ditches prior to its discharge into the lake. At the north end of the project, due to the new alignment of Burma Road, an 18 inch culvert will be used to cross a wetland located between Emerald Drive and Gotham Bay Road to maintain hydraulic connectivity.

Best management practices will include a bypass pipe and sandbag cofferdam to convey Turner Creek around the culvert replacement work. Stream crossings will be done during the low flow timeframe. Slopes will be compacted and sprayed with a soil tackifier and hydro-seeded at an appropriate time for plant survival. Silt fence and fiber wattles will be placed along slope contours. Four MSE Walls, two soil nail walls, and one soil nail/soldier pile wall will be constructed to ensure slope stability. Rock check dams will be placed in new road ditches. Sediment traps will be utilized near culvert outlets. Steep slopes will receive a spray on soil binder with the final application including grass seed.

## 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 58.01.02.052.05).
- 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 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 Burma Road project is located within the Coeur d'Alene Lake Subbasin assessment unit (AU) ID17010303PN027\_02 (Turner 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). A search of water rights for Turner Creek indicates this water is also used for irrigation, livestock watering, aesthetic and wildlife beneficial uses.

The cold water aquatic life use in this Turner Creek AU is fully supported (2010 Integrated Report). The primary contact recreation beneficial use is fully supported. As such, DEQ will provide Tier 2 protection for both the aquatic life use and the recreation beneficial use (IDAPA 58.01.02.051.02).

A stormwater discharge pipe installed as a part of this project to convey stormwater from the road surface will discharge to Coeur d'Alene Lake AU ID17010303PN001L\_0L. Designated beneficial uses of Coeur d'Alene Lake are cold water aquatic life, salmonid spawning, primary contact recreation, and domestic water supply. The cold water aquatic life use in Coeur d'Alene Lake is impaired (2010 Integrated Report). The primary contact recreation beneficial use is fully supported. As such, DEQ will provide for the purposes of this outfall, Tier 1 protection for the aquatic life use and Tier 2 for the recreation use (IDAPA 58.01.02.051.01 and IDAPA 58.01.02.051.02).

## ***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, EPA's Construction General 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.

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.

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

The Turner Creek is considered high quality for recreation and aquatic life uses. As such, the water quality relevant to recreation and aquatic life uses of the Turner 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 recreation and aquatic life uses of the Turner Creek (IDAPA 58.01.02.052.04). The only pollutant of concern for the Turner Creek portion of the project is sediment. Sediment is relevant to aquatic life uses. Therefore, permanent erosion and sediment controls must be implemented, which will minimize or prevent future sediment contributions from the project area. Conditions in this certification require that these measures be implemented, monitored and if necessary, revised.

Sediment is not a relevant pollutant to recreational uses of Coeur d'Alene Lake and therefore, this project will not result in a lowering of water quality with respect to Tier 2 protection for this waterbody.

Although this project may result in minimal short-term sediment impacts to the waterbodies, DEQ does not expect long-term impacts or degradation to Turner Creek (ID17010303PN027\_02 AU) or Coeur d'Alene Lake (AU ID17010303PN001L\_0L). 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.
8. 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. Fill material shall not be placed in a location or in a manner that impairs surface or subsurface water flow into or out of any wetland area.
3. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.
4. All temporary fills shall be removed in their entirety on or before construction completion.
5. 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. 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.
4. 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.
5. 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.
6. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
7. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
8. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
9. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.
10. Maximum fill slopes shall be such that material is structurally stable once placed and does not slough or erode into the stream channel during construction, during periods prior to revegetation, or after vegetation is established.
11. Dirt from disturbed areas must not be allowed to be tracked off-site by vehicles 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 construction equipment will be leaving the site and traveling on paved surfaces.

### ***Turbidity***

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 at 208-666-4605.
2. Best management practices must be installed for optimal function 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 until each crossing is completed and stable. A properly and regularly calibrated turbidimeter is required.

A background sample must be taken every time a sampling event occurs, both in Turner Creek and Coeur d'Alene Lake. The background location shall be at a relatively undisturbed area upstream of the project influence, or away from any project related disturbance in the lake. Background turbidity, location, date, and time must be recorded.

Monitoring must occur twice per day, or once every two hours when a plume is observed either in Turner Creek or Coeur d'Alene Lake. Monitoring shall be done at the point of

discharge and within any visible plume at a point closest to its source. 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. 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 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).

4. 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***

5. Construction affecting the bed or banks shall take place only during periods of low flow.
6. Forging of the channel is not permitted. Temporary bridges or other structures shall be built if crossings are necessary. This may require permit modification.
7. Work in waters of the state shall be restricted to areas specified in the application.
8. Measures shall be taken to prevent wet concrete or other construction materials from entering into waters of the state.
9. Stranded fish found in dewatered segments should be moved to a location (preferably downstream) with water.
10. To minimize sediment transport, stream channel and/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. 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. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
3. 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.
4. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
5. 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.
6. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
7. Spills of petroleum products must be cleaned up immediately in accordance with the WQS, IDAPA 58.01.02.851.04.
  - a. An above ground spill or overflow of petroleum that results in a release that is 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.
  - b. An above ground spill or overflow of petroleum that results in a release that is 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.
  - c. 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](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 or comments regarding the actions taken in this certification should be directed to June Bergquist at 208-666-4605 or email at [june.bergquist@deq.idaho.gov](mailto:june.bergquist@deq.idaho.gov).



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Daniel Redline  
Regional Administrator  
Coeur d'Alene Regional Office