



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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

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

July 27, 2012

Ted Orr
2941 Highway 3
Deary, Idaho 83823

RE: Water Quality Certification for NWW-2012-179-C03

Dear Mr. Orr:

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 July 26, 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 cursive script that reads "John Cardwell".

John Cardwell
Water Quality 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

July 27, 2012

404 Permit Application Number: NWW-2012-179-C03

Applicant/Authorized Agent: Ted Orr

Project Location: Location is on State Road 3, Latah County, Township 40N, Range 2W, Section 27

Receiving Water Body: Pine 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 June 25, 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 project will replace an old culvert with an 8' X 44' long pipe arch, capable of passing 320 cubic feet per second (10 year, 24 hour event). In addition, 125 cubic feet of fill will be required to meet Natural Resource Conservation Service specifications. The work will be done when the stream channel is dry.

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; 58.01.02.052.05).
- 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

The culvert replacement project is located within the Clearwater Subbasin assessment unit (AU) ID17060306CL055_02 (Pine Creek). 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 (Potlatch River Subbasin Assessment and TMDL, 2008).

The cold water aquatic life use in this Pine Creek AU is not fully supported due to excess nutrients, sediment, and temperature (2010 Integrated Report). The secondary contact recreation beneficial use is fully supported. As such, DEQ will provide Tier 1 protection only for the aquatic life use and Tier 2 protection, in addition to Tier 1, for the recreation beneficial use (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. Water bodies not supporting existing or designated 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 Pine Creek AU is included in the *Potlatch River Subbasin Assessment and TMDL, 2008*.

The project is located in an intermittent section of the Pine Creek AU and this project will be constructed when there is no water present in the channel. However, the applicant will implement, install, maintain, monitor, and adaptively manage best management practices (BMPs) for permanent erosion and sediment control in order to minimize or prevent future sediment contributions as a result of this project. 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 and will be consistent with the *Potlatch River Subbasin Assessment and TMDL, 2008*. The critical low flow period for Pine Creek is considered to extend from June through September and coincides with pollutant increases. Constructing this project during this time period when the stream is dry ensures the level of water quality protection for designated and existing uses in compliance with IDAPA 58.01.02.051.01 and 58.01.02.052.07.

High-Quality Waters (Tier 2 Protection)

Pine Creek is considered high quality for secondary contact recreation. As such, the water quality relevant to the secondary contact recreation use of Pine 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 secondary contact recreation use of Pine Creek (IDAPA 58.01.02.052.04). The only pollutant of concern for this project is sediment and is not relevant to secondary contact recreation. Permanent erosion and sediment controls must be implemented, which will minimize or prevent future sediment contributions from the project area. DEQ does not expect long-term impacts or degradation to the Pine Creek AU. 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 work windows, work when Pine Creek is no longer dry, 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. 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, 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. 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. All construction will be conducted when there is no water present at the work site and in the channel.
2. 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 Pine Creek when there is flow. 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. 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. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.

Vegetation Protection and Restoration

1. 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 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 channel of Pine Creek prior to refueling, repair, and/or maintenance.
3. 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.
4. 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.

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.

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 Cindy Barrett, Lewiston Regional Office at (208) 799-4370 or Cynthia.Barrett@deq.idaho.gov.



Clayton Steele

Regional Administrator

Lewiston Regional Office