STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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

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

October 5, 2012

Mr. Michael Burgan
Coeur D'Alene Regulatory Office
Walla Walla District, Corps of Engineers
2065 West Riverstone Drive, Suite 201
Coeur D'Alene, Idaho 83814

Subject: Water Quality Certification for NWW-2012-273

Dear Mr. Burgan:

Attached is the final §401 water quality certification for the above referenced project. The §401 process requires a public notice. The comment period has closed. 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 contact me at (208) 799-4370 or john.cardwell@deq.idaho.gov.

Sincerely,

John Cardwell
Water Quality Program Manager
Lewiston Regional Office

c: Russell Koepke, Applicant
Clayton Steele, TRIM Record
Miranda Adams, TRIM Record

Idaho Department of Environmental Quality

Final §401 Water Quality Certification

October 5, 2012

404 Permit Application Number: NWW-2012-273-C03

Applicant/Authorized Agent: Mr. Russell Koepke

Project Location: Township 36 N, Range 5 E, Section 11, south of Pierce, Idaho
lat 46.48213, long -115.79955
Receiving Water Body: Orofino 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 September 7, 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 includes the placement of riprap along the right descending bank of Orofino Creek at three separate locations, and the placement of riprap along both banks of an unnamed tributary to Orofino Creek. The proposed bank stabilization along Orofino Creek has not yet started, but the riprap has already been placed along the unnamed tributary of Orofino Creek. The Corps intends to verify both aspects of the project are authorized under NWP 13, with an after-the-fact verification for the work on the unnamed tributary to Orofino Creek.

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; 58.01.02.052.08).
- 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 streambank stabilization project is located within the Clearwater Subbasin assessment unit (AU) 17060306CL039_04 (Orofino Creek – source to mouth). This AU has the following designated beneficial uses: cold water aquatic life, salmonid spawning, and primary contact recreation. There is no available information indicating the presence of any existing beneficial uses aside from those that are already designated.

Although the cold water aquatic life, salmonid spawning, and primary contact recreation designated beneficial uses in this Orofino Creek AU are not assessed in the 2010 Integrated Report, current distribution of cold water and anadromous fisheries resources in Orofino Creek are well documented, including Steelhead, Rainbow trout, Mountain Whitefish and Brook trout (Idaho Department of Fish and Game, Clearwater Regional Fisheries Salmon and Steelhead Distributions in Idaho; 2013-2018 Fisheries Management Plan). As such, DEQ will provide Tier 1 protection, and Tier 2 protection in addition to Tier 1 for the designated beneficial uses (IDAPA 58.01.02.051.02; 58.01.02.051.01).

Protection and Maintenance of E

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.

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. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
4. Spills of petroleum products must be cleaned up immediately in accordance with the WQS, IDAPA 58.01.02.851.04.

    a. 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.

    b. 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.

    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 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.
3. 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 or comments regarding the actions taken in this certification should be directed to Cynthia Barrett at (208) 799-4370 or Cynthia.Barrett@deq.idaho.gov.

Clayton Steele
Regional Administrator
Lewiston Regional Office