



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

October 18, 2012

Mr. Martin Taylor
James Sewell & Associates, LLC
1205 Hwy 2, Suite 101
Sandpoint, ID 83864

RE: Draft §401 Water Quality Certification for Tom McGarragh Project Pend Oreille River;
NWW 2012-447-C03

Dear Mr. Martin,

Section 401 of the Federal Clean Water Act requires that states issue certifications for activities which are authorized by a Federal permit and that may result in a discharge to surface waters. In Idaho, the Department of Environmental Quality (DEQ) is responsible for reviewing these activities and evaluating whether the activity will comply with Idaho Water Quality Standards; including any applicable water quality management plans (e.g. Total Maximum Daily Loads). A federal permit cannot be issued until DEQ has provided a certification or waived certification either expressly or by taking no action.

Enclosed is the draft water quality certification for the McGarragh project which you are the authorized agent. This certification was prepared in response to the September 27, 2012 Army Corps of Engineers request for DEQ to provide certification for their permit. Additional information necessary to develop the draft certification was received on October 12, 2012. Our draft certification process allows the public to examine the draft document and provide written comments to DEQ for a 30 day period of time. At the end of this comment period, DEQ will consider the comments and provide our final certification decision.

If you have any questions or concerns, please contact June Bergquist at 208.666.4605 or june.bergquist@deq.idaho.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Redline", is written over a large, light-colored scribble.

Daniel Redline
Regional Administrator
Coeur d'Alene Regional Office

Enclosure

c: Beth Reinhart, Corps of Engineers - Coeur d'Alene Office



Idaho Department of Environmental Quality Draft §401 Water Quality Certification

October 18, 2012

404 Permit Application Number: NWW-2012-447-C03, Fill in wetlands adjacent to Pend Oreille River

Applicant/Authorized Agent: Tom McGarragh/Martin Taylor

Project Location: T56N, R3W section 20; street address: 539 and 575 Thistledown Lane, Laclede, Idaho

Receiving Water Body: Pend Oreille River

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: Idaho Department of Lands joint application L-96-S-2186 and 2187; Tom McGarragh Grading/Stormwater Management & Erosion Control Plan; email from Marty Taylor to Jamie Brunner and Clare Marley dated August 30, 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

The applicant proposes to discharge 1,020 cubic yards of fill material into 0.90 acre of wetland associated with the development of two residential home sites, 310 feet of driveway, 160 feet of pathway, and a shared waterfront yard 100 feet by 40 feet by 12 inches in depth. The yard fill includes a rock face to prevent fill from slumping into the river. No fill will be placed below the ordinary high water mark of 2062.5 feet (summer pool) of the Pend Oreille River. The

applicant's drawings indicate riprap along the entire waterfront. This work is not included in this application per the Public Notice under "Additional Information" and therefore, was not considered part of the proposed project in this certification.

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 wetland fill is located within the Pend Oreille Lake Subbasin assessment unit (AU) ID17010214PN002_08 (Pend Oreille River – Pend Oreille Lake to Priest River). This AU has the following designated beneficial uses: cold water aquatic life, domestic water supply, primary contact recreation, agricultural, industrial, wildlife habitats and aesthetics. Salmonid spawning is also indicated as an existing use, but is not yet assessed (2010 Integrated Report). There is no available information indicating the presence of any additional existing beneficial uses.

The cold water aquatic life use in this Pend Oreille River AU is not fully supported due to excess dissolved nitrogen gas and temperature (2010 Integrated Report). The primary contact recreation beneficial use is not assessed and there are no data available to make a support status determination at this time. Because the collection of necessary data to determine the recreational use support status of this AU would take considerable time, the applicant has agreed to consider the Pend Oreille River a high quality water for the purposes of this antidegradation review in order to prevent further delays in the issuance of this certification. Therefore, 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). DEQ will re-evaluate the level of antidegradation protection afforded to this assessment unit based on available information when preparing future 401 certifications for federally-permitted activities that may affect this waterbody (IDAPA 58.01.02.052.05.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 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. A TMDL has not yet been completed for the Pend Oreille River but it is considered high priority for TMDL development (2010 Integrated Report).

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 and existing beneficial uses.

There is no available information indicating the presence of any existing beneficial uses aside from those that are already designated or identified 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 and 58.01.02.052.07.

High-Quality Waters (Tier 2 Protection)

The Pend Oreille River is considered high quality for recreational uses. As such, the water quality relevant to recreational uses of the Pend Oreille River 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 recreational uses of the Pend Oreille River (IDAPA 58.01.02.052.06). These pollutants include the following: E. coli, mercury and phosphorus. The only pollutant of concern for this project is sediment. A chronic discharge of sediment can be a significant source of phosphorus; however, in this case permanent best management practices will be utilized to prevent such a condition from developing. Riprap will face the yard fill so it doesn't erode into the river and grassed detention areas and grassed bio-filtration swales will be permanent best management practices to treat stormwater runoff from impervious surfaces. Additionally, silt fence will be placed around all stock piles of erodible materials, and along the shoreline at the yard fill location. Conditions of this certification also add additional measures to minimize or prevent sediment from entering the river and adjacent wetlands. 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 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>.
9. The applicant shall provide to DEQ a signed statement (see Attachment A) from any contractor working on the project stating that he/she has read and understands the conditions of this certification and the Army Corps of Engineers Section 404 permit. These statements must be provided to DEQ prior to the contractor beginning work at the project site.

Fill Material

1. 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.
2. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.

Erosion and Sediment Control

1. To prevent the exceedance of Idaho's WQS, suitable BMPs for sediment and erosion control shall be selected and installed before starting construction at the site. One resource that may be used in selecting 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. 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.
3. At a minimum, BMPs must be inspected and maintained daily during project implementation.
4. BMP effectiveness shall be monitored during project implementation. If the BMPs are not effective, they shall be enhanced or replaced with BMPs that will function to protect water resources.
5. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
6. If vegetation such as grass is to be used as a BMP, it shall be sufficiently mature to function as a BMP. Until the vegetation can function as a BMP, additional BMPs shall be implemented, to fully compensate for the vegetation's anticipated lack of performance.
7. The new yard area and other fills subject to flood inundation shall be protected from floodwaters with best management practices sufficient enough to prevent erosion of the fill by flowing water.

8. Fill slopes shall be such that material is structurally stable once placed and does not slough into wetlands during construction, during periods prior to revegetation, or after vegetation is established.

Turbidity Monitoring

1. Turbidity monitoring must be conducted, recorded, and reported as described below. A properly and regularly calibrated turbidimeter is required if a plume, as described below, is observed.

WHEN: Monitoring must occur every time a plume of turbidity is observed in the Pend Oreille River resulting from project activity. A designated Observer shall visually check the river a minimum of three times per day (equally distributed throughout the work day) during active construction. Monitoring shall be initiated if a plume is noted by the Observer or reported by other workers or otherwise made known to construction site personnel. Two samples are required for every monitoring event:

WHERE: First, a sample must be taken to establish a background turbidity level. Take the sample at a relatively undisturbed area immediately up-current from all in-river discharges related to this project. Background turbidity, location, date, and time must be recorded prior to monitoring the plume.

The second sample shall be taken in the river at the point of discharge and within any visible plume. The turbidity, location, date, and time must be recorded for each sample.

WHY: Results from the compliance point sampling must be compared to the background levels sampled during each monitoring event. 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.

ACTION: 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). Report the incident to the DEQ regional office immediately at 208-666-4605 (phone message is acceptable).

REPEAT: Once the modification has been completed, turbidity sampling shall be repeated to determine if the remedy was effective. If it was not effective, then additional modifications shall be made until WQS are met.

2. Copies of daily logs for turbidity sampling (if any were required) must be available to DEQ upon request. The log must include background measurements (in NTUs) for each sampling event; compliance point (plume) 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 each exceedance and subsequent actions taken, follow up sampling, and the effectiveness of the actions.

Vegetation Protection and Restoration

1. Work shall be conducted during frozen conditions or during the driest summer months to prevent equipment from working in standing or flowing water and to minimize sediment transport during filling activity.
2. 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.
3. Locate and mark equipment travel lanes in such a way as to prevent damage to protected wetlands and river shoreline.

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. 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.
3. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
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 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. 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 June Bergquist, Coeur d'Alene Regional Office, at 208-666-4605 or via email at june.bergquist@deq.idaho.gov .

DRAFT

Daniel Redline
Regional Administrator
Coeur d'Alene Regional Office

Attachment A

**Tom McGarragh applicant/Martin Taylor authorized agent
Wetland Fill Adjacent to Pend Oreille River
NWW-2012-447-C03**

Statement of Understanding of Water Quality Certification

I have read and understand the conditions of the §401 Water Quality Certification for this project. I have also reviewed the Army Corps of Engineers permit and all plans related to site disturbance and stormwater management for this project.

Signature

Date

Printed Name

Title

Company