



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

444 Hospital Way #300 • Pocatello, ID 83201 • (208) 236-6160

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

July 8, 2014

Mayor Brent Lewis, City of Paris  
P.O. Box 364  
Paris, ID 83261

RE: State of Idaho water quality certification for the replacement of the culinary water line from Paris Spring to the City of Paris.

Dear Mayor Lewis:

Enclosed is the Idaho Department of Environmental Quality's §401 Water Quality Certification for your project: Paris Creek waterline crossing, Paris, Idaho. A copy of this certification also has been sent to the U.S. Army Corps of Engineers. This action is also covered under the U.S. Army Corps of Engineers' Nationwide Permit 12 (NWW-2012-408, City of Paris DQ-1403). Please contact me with any questions at 208-236-6160.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Mladenka", is written over a blue horizontal line.

Greg Mladenka  
Water Quality Scientist

Cc: Robert B. Butler, Butler Engineering  
Bruce Olenick, Pocatello Regional Administrator  
James M. Joyner, ACOE – Sr. Project Manager



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

July 7, 2014

**404 Permit Application Number:** NWW-2012-408, City of Paris water transmission line

**Applicant/Authorized Agent:** Mayor Brent Lewis/Robert B. Butler, Butler Engineering & Land Surveying, Inc.

**Project Location:** Sections 8,17,18 and 31, T14S, R42E and 43E; 42.2196° N -111.4435° W

**Receiving Water Body:** Upper Paris Creek

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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.

Based upon its review of the joint application for permit, received on April 24, 2014, 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, including without limitation, the approval from the owner of a private water conveyance system, if one is required, to use the system in connection with the permitted activities.

### Project Description

The City of Paris is replacing an existing culinary water line, crossing Paris Creek in the process. This activity will temporarily impact 0.43 acres of riparian area and wetlands.

### 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***

This project is located adjacent to upper Paris Creek within the Bear Lake Subbasin assessment unit (AU) ID16010201BR013\_02b. 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.

The cold water aquatic life and salmonid spawning uses in the upper Paris Creek AU are not fully supported due to unknown causes (2010 Integrated Report). The primary contact recreation beneficial use has not been assessed. But the only pollutant of concern is sediment and sediment is not relevant to recreational uses. Therefore, it is unnecessary for DEQ to determine whether the AU is a high quality water for recreation uses, because this project will not create impacts that could affect the recreation use. As sediment is the only pollutant of concern for this project, DEQ will provide Tier 1 protection for the aquatic life and salmonid spawning uses (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. A TMDL has not yet been developed for this water body. Prior to completion of a TMDL, DEQ is required to ensure compliance with the antidegradation policy and implementation procedures and the provisions in Idaho Code §39-3610. (IDAPA 58.01.02.055.04.) DEQ through this antidegradation review and 401 certification is ensuring compliance with the antidegradation policy and implementation procedures. Idaho Code §39-3610 requires the development of a TMDL, and prior to development, those actions deemed necessary to prohibit further impairment of uses in the water body. As further discussed below, the conditions in this certification and the permit provisions will ensure that there is no further impairment of uses as a result of this project. Indeed, DEQ believes this project should not increase sediment loading to the stream.

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.* In addition, compliance with the criteria will ensure there is no further impairment of uses, in compliance with Idaho Code §39-3610.

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 the Tier 1 provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07) and the provisions applicable to impaired waters prior to the development of TMDLs.

## **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. 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.
4. 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.
5. 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.
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 suspended 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. Fill over the pipeline at stream crossings shall be native material replaced and compacted in a manner which prevents infiltration of stream flows into the pipeline bedding. If necessary, impermeable bedding should be placed along the pipe downslope of each stream crossing.
3. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.
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. Plans indicate temporary earthen fill will be placed to create coffer dams (D10-D13). Fill must be completely contained in material such as bulk bags or sand bags to facilitate complete removal from the stream channel.
2. Construction shall be accomplished when minimum surface water is present, during late summer or fall periods.
3. 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.

4. 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.
5. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
6. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
7. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.

### ***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.

### ***Required Notification***

The permittee must notify the Pocatello DEQ Regional Office when authorized work begins.

### **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 Greg Mladenka, Pocatello Regional Office, 208-236-6160, [greg.mladenka@deq.idaho.gov](mailto:greg.mladenka@deq.idaho.gov).

  
7-8-14  
Bruce Olenick  
Regional Manager  
Pocatello Regional Office