



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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C. L. "Butch" Otter, Governor
John A. Tippetts, Director

January 28, 2016

Mr. Wade Allen
Idaho Transportation Department
PO Box 97
Rigby, Idaho 83442

RE: NWW-2015-00543-B02

Dear Mr Allen:

Enclosed, please find 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 January 19, 2016. We received no public comments and are pleased to issue this final certification.

If you have any questions or concerns, please do not hesitate to contact me at 208.528.2650 or troy.saffle@deq.idaho.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Troy Saffle".

Troy Saffle
Regional Manager
Idaho Falls Regional office

c: Nicholle Braspennickx, ACOE Boise
Nicole Deinarowicz, TRIM reference



Idaho Department of Environmental Quality Final §401 Water Quality Certification

January 28, 2016

404 Permit Application Number: NWW-2015-00543-B02

Applicant/Authorized Agent: Idaho Transportation Department /Wade Allen

Project Location: 43°51'54.50"N, -111°10'59.03"W

Receiving Water Body: Badger 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 November 24, 2015, 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 Badger Creek Bridge, Teton Co. project will replace the existing bridge over Badger Creek on SH 32. The existing bridge structure has a width of 30.5 feet. The road consists of two 12 foot lanes with a total pavement width of 28 feet. This road has no curb and gutter and is rural in nature. Bridge will be replaced in the same location as original bridge. The project will discharge approximately 135 cubic yards of riprap below the ordinary high water mark of Badger Creek and the temporary discharge of approximately 1100 cubic yards of fill (gravel, soil, rock, culverts) below the ordinary high water mark for a temporary detour road (shoo fly) around the construction site. This fill material will be placed on geo fabric barrier and will be removed at the completion of the project. All impacts associated with the shoo fly are temporary and the temporary fill will not change the contours of the existing stream channel. The project will result in permanent fill of 0.01 acres of forested wetland. Work will be performed in the dry. However, if the creek is running at time of construction an in-water work window of July 5th through

October 31st which has been authorized by Idaho Department of Fish and Game for Yellowstone Cutthroat trout.

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 on Badger Creek within the Teton assessment unit (AU) ID17040204SK058_03 (Badger Creek – diversion to spring). 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 uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

The cold water aquatic life use in this Badger Creek AU is not fully supported due to excess sediment (2012 Integrated Report). The primary contact recreation beneficial use is unassessed. 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. AU ID17040204SK058_03 is included in the Teton River subbasin assessment and TMDL (February 2003)

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, the project will be consistent with the *Teton River TMDL*. The project will comply with the TMDL by minimizing sediment inputs because the project will be completed when the stream has no water during the irrigation season. Additionally, portions of the new bridge will be built outside of the stream channel. If the creek is running at time of construction, turbidity monitoring will be performed for all in water work.

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 and 58.01.02.052.07.

High-Quality Waters (Tier 2 Protection)

The Badger Creek is considered high quality for secondary contact recreation. As such, the water quality relevant to secondary contact recreation uses of the Badger 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 uses of the Badger Creek (IDAPA 58.01.02.052.06). The only pollutant of concern for this project is sediment. Sediment is not relevant to recreational uses. 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.

Permanent erosion and sediment controls must be implemented, which will minimize or prevent future sediment contributions from the project area. Although this project may result in minimal short-term sediment impacts to the water body, DEQ does not expect long-term impacts or degradation to AU ID17040204SK058_03 or Badger Creek. 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. Applicant must photo-document the de-watered creek or creek prior to beginning construction activities and weekly throughout the project life. These photos shall be supplied to DEQ within 60 days of project completion.
2. 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.
3. 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.

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.

Erosion and Sediment Control

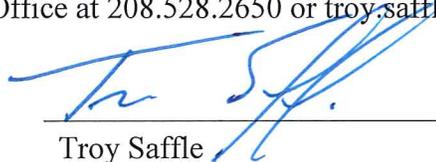
1. Sediment resulting from this activity must be mitigated to prevent violations of the turbidity standard as stipulated under the Idaho WQS (IDAPA 58.01.02.250.02.e). Any violation of this standard must be reported to the DEQ regional office immediately.
2. Permanent erosion and sediment control measures 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. Maximum fill slopes shall be such that material is structurally stable once placed and does not slough into the stream channel during construction, during periods prior to revegetation, or after vegetation is established.

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 Troy Saffle, of the Idaho Falls Regional Office at 208.528.2650 or troy.saffle@deq.idaho.gov.



Troy Saffle
Regional Manager
Idaho Falls Regional Office