



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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www.deq.idaho.gov

Brad Little, Governor
John Tippetts, Director

July 1, 2020

By certified mail

Steve Klatt, Director
Bonner County Road and Bridge
1500 Highway 2
Sandpoint, ID 83864

Subject: Final §401 Water Quality Certification for the East Side Rd. roadway improvement project,
NWW-2020-00252

Dear Mr. Klatt:

Enclosed is the Final Water Quality Certification for the above referenced Army Corps of Engineers project, (NWW-2020-00252). No comments were received during the 21-day period that the document was available on our website for public comment. Please make sure that your staff and contracted individuals read the document and are familiar with conditions of the certification (pg. 4-8).

If you have questions or concerns, please contact Chantilly Higbee at (208) 666-4605 or via email at Chantilly.higbee@deq.idaho.gov.

Sincerely,

A handwritten signature in blue ink that reads "Dan McCracken".

Dan McCracken
Regional Administrator
Coeur d'Alene Regional Office

c: Shane Skaar, Army Corps of Engineers



Idaho Department of Environmental Quality Final §401 Water Quality Certification

July 1, 2020

404 Permit Application Number: NWW-2020-00252; East Side Road, roadway improvement project, Milepost 10 and 11.0

Nationwide Permit Number: 23, Approved Categorical Exclusions

Applicant/Authorized Agent: Steve Klatt, Bonner County/Martin Plass, P.E. David Evans and Associates

Project Location: East Side Road; 48.365415 N, -116.836315 W; Located approximately 8 miles south of Coolin, Idaho in Bonner County

Receiving Water Body: East 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.

Based upon its review of the joint application for permit, received on May 18, 2020, 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 purpose of the project is to repair and stabilize two slide locations at mileposts (MP) 10 and 11 along Eastriver Road in Bonner County. In spring 2017, the hillside at these locations became saturated and failed. A slide occurred onto the roadway at MP 10. The roadway failed due to additional slides on the downhill slopes at MP 11. This project will stabilize the slopes and prevent future slides as a public safety measure. Water will be diverted away from the road and slope at each location to minimize future slides. These diversions will result in wetland fill at both locations. 3,017 cubic yards of wetland will be excavated, and 151 cubic yards of topsoil will be discharged to fill the wetlands, resulting in a permanent loss of 0.187 acres.

Work will be done between July and September 2021. 0.6 wetland banks credits will be purchased from the Valencia wetland bank to offset the impacts of 0.187 acres of wetland fill. Construction entrances will be hardened to prevent off-site track out. In order to minimize sedimentation to the East River, temporary and permanent stormwater and erosion controls will be installed and managed at the two project sites. A Stormwater Pollution Prevention Plan will be implemented by the contractor.

The 404 Joint Permit Application includes proposed work at a third site, MP 11.2. However, it was determined that construction at this location will avoid impacts to waters of the U.S. and will not require a permit from the Corps. Thus, the scope of this 401 Water Quality Certification is limited to proposed work at MP 10 and 11 and potential impacts to adjacent wetlands A1-A4 and I, which drain to the East River.

Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- Tier I 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 I review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier II 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 III 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 I protection for that use, unless specific circumstances warranting Tier II 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 East River within the Priest Subbasin assessment unit (AU) ID17010215PN003_04 (East River main stem - source to mouth). 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, 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).

According to DEQ's 2016 Integrated Report, the cold water aquatic life and salmonid spawning beneficial uses are not fully supported. Causes of impairment include sedimentation and temperature. As such, DEQ will provide Tier I protection (IDAPA 58.01.02.051.01) for the aquatic life use. The contact recreation beneficial use is unassessed. DEQ must provide an appropriate level of protection for the contact recreation use using information available at this time (IDAPA 58.01.02.052.05.c). This AU feeds into the Priest River (ID17010215PN001_05). A 2017 *Escherichia coli* sample taken in the Priest River indicates the water body fully supports the primary recreation use. DEQ will provide the same level of protection for the river's tributaries. Therefore, DEQ will provide Tier II protection (IDAPA 58.01.02.051.02), in addition to Tier I protection, for the contact recreation use.

The only pollutant of concern associated with this project is sediment. However, sediment is not relevant to recreational uses since sediment will not degrade water quality necessary to support recreation uses, and it is therefore unnecessary for DEQ to conduct a Tier II analysis.

Protection and Maintenance of Existing Uses (Tier I Protection)

A Tier I 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 existing and 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. Once a TMDL is developed, discharges of causative pollutants shall be consistent with the allocations in the TMDL (IDAPA 58.01.02.055.05). Prior to the development of the TMDL, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04).

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. The applicant will manage on-site stormwater flow using silt fencing, straw wattles, and small check dams. Disturbed areas will be stabilized with control measures that include erosion blankets, soil tackifiers, and permanent seeding. Construction entrances will be hardened to avoid off-site sediment track out. Fueling and maintenance of machinery will take place a minimum of 50 feet from surface water. Adequate spill containment and cleanup materials will be on site. In addition, permanent erosion and sediment controls will be implemented, which will minimize or prevent future sediment contributions from the project area. Stream banks and other areas

disturbed during construction will be revegetated. At MP 10, a ditch drainage system will be installed above and below the hillside. At MP 11, a drainage ditch system will be reconstructed above the slope, with a toe drain at the bottom which will include riprap at the outlet of the drain pipe. In addition to the proposed BMPs, we recommend avoiding construction work in wetlands as much as possible. We also recommend performing work during periods of low water flow.

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 existing and designated beneficial uses. The project will also be consistent with the *Priest River Subbasin Assessment and Total Maximum Daily Load (2001) and Addendum (2003)*.

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 existing and designated uses is maintained and protected in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

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 state 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 state, coverage under the EPA Stormwater Construction General Permit *must* be obtained. More information can be found at <https://www.epa.gov/npdes-permits/stormwater-discharges-construction-activities-region-10>.

Fill Material

9. Fill material subject to suspension shall be free of easily suspended fine material. The fill material to be placed shall be clean material only.
10. 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.
11. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.
12. All temporary fills shall be removed in their entirety on or before construction completion.
13. 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

14. 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.
15. One of the first construction activities shall be placing permanent and/or temporary erosion and sediment control measures around the perimeter of the project or initial work areas to protect the project water resources.
16. 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.
17. Permanent erosion and sediment control measures shall be installed at the earliest practicable time consistent with good construction practices and shall be maintained as necessary throughout project operation.
18. 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.

19. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
20. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
21. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
22. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.
23. 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.
24. To the extent reasonable and cost-effective, the activity submitted for certification shall be designed to minimize subsequent maintenance.
25. Sediment from disturbed areas or able to be tracked by vehicles onto pavement must not be allowed to leave the site in amounts that would reasonably be expected to enter waters of the state. Placement of clean aggregate at all construction entrances or exits and other BMPs such as truck or wheel washes, if needed, must be used when earth-moving equipment will be leaving the site and traveling on paved surfaces.

Turbidity

26. 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). *Any violation of this standard must be reported to the DEQ regional office immediately by calling (208) 666-4605. Leaving a voicemail is acceptable.*
27. All practical BMPs on disturbed banks and within the waters of the state must be implemented to minimize turbidity. Visual observation is acceptable to determine whether BMPs are functioning properly. If a plume is observed, the project may be causing an exceedance of WQS and the permittee must inspect the condition of the projects BMPs. If the BMPs appear to be functioning to their fullest capability, then the permittee must modify the activity or implement additional BMPs (this may also include modifying existing BMPs).
28. Containment measures such as silt curtains, geotextile fabrics, and silt fences must be implemented and properly maintained to minimize instream sediment suspension and resulting turbidity.

In-water Work

29. **Work in open water is to be kept at a minimum and only when necessary. Equipment shall work from an upland site to minimize disturbance of waters of the state. If this is not practicable, appropriate measures must be taken to ensure disturbance to the waters of the state is minimized.**
30. Construction affecting the bed or banks shall take place only during periods of low flow.
31. Fording of the channel is not permitted. Temporary bridges or other structures shall be built if crossings are necessary.

- a. Temporary crossings must be perpendicular to channels and located in areas with the least impact. The temporary crossings must be supplemented with clean gravel or treated with other mitigation methods at least as effective in reducing impacts. Temporary crossings must be removed as soon as possible after the project is completed or the crossing is no longer needed.
- 32. Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.**
33. Activities in spawning areas must be avoided to the maximum extent practicable.
34. Work in waters of the state shall be restricted to areas specified in the application.

Pollutants/Toxics

35. The use of chemicals such as soil stabilizers, dust palliatives, sterilants, growth inhibitors, fertilizers, and deicing salts during construction and operation should be limited to the best estimate of optimum application rates. All reasonable measures shall be taken to avoid excess application and introduction of chemicals into waters of the state.

Vegetation Protection and Restoration

36. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
37. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
38. Fencing and other barriers should be used to mark the construction areas.
39. Where possible, alternative equipment should be used (e.g., spider hoe or crane).
40. 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

41. Excavated streambed or staged fill material must be placed so it is isolated from the water's edge or wetlands and not placed where it could re-enter waters of the state.

Management of Hazardous or Deleterious Materials

42. 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.
43. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
44. 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. A log book of these inspections shall be kept on site and provided to DEQ upon request.

45. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
46. Equipment and machinery shall be steam cleaned of oils and grease in an upland location or staging area with appropriate wastewater controls and treatment prior to entering a water of the state. Any wastewater or wash water must not be allowed to enter a water of the state.
47. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
48. In accordance with IDAPA 58.01.02.850, in the event of an unauthorized release of hazardous material to state waters or to land such that there is a likelihood that it will enter state waters, the responsible persons in charge must
 - a. Make every reasonable effort to abate and stop a continuing spill.
 - b. Make every reasonable effort to contain spilled material in such a manner that it will not reach surface or ground waters of the state.
 - c. Call 911 if immediate assistance is required to control, contain, or clean up the spill. If no assistance is needed in cleaning up the spill, contact the appropriate DEQ regional office during normal working hours or Idaho State Communications Center after normal working hours (1-800-632-8000). If the spilled volume is above federal reportable quantities, contact the National Response Center (1-800-424-8802). Coeur d'Alene Regional Office: 208-769-1422 / 877-370-0017
 - d. Collect, remove, and dispose of the spilled material in a manner approved by DEQ.

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 Chantilly Higbee, Coeur d'Alene Regional Office at 208-666-4605 or via email at Chantilly.Higbee@deq.idaho.gov.



Dan McCracken

Regional Administrator

Coeur d'Alene Regional Office