



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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

C. L. "Butch" Otter, Governor
Jon Tippetts, Director

October 25, 2017

Lon Colton, Oneida County Clerk
10 E. Court Street
Malad, ID 83252

RE: State of Idaho water quality certification for State Highway 37 Improvements.

Dear Mr. Colton:

Enclosed is the Idaho Department of Environmental Quality's §401 Water Quality Certification for your project: Rock Creek Highway 37 Improvements. A copy of this certification also has been sent to the U.S. Army Corps of Engineers. This action is also permitted by U.S. Army Corps of Engineers' Nationwide (14) Permit NWW-2017-460-B02. Please contact me at 208-236-6160 if you have any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Mladenka", with a long horizontal flourish extending to the right.

Greg Mladenka
Water Quality Scientist

Cc:

Nicole Braspennickx, USACE, Boise

Ec:

Bruce Olenick, DEQ, Pocatello Regional Administrator
Lynn Van Every, DEQ Regional Water Quality Manager



Idaho Department of Environmental Quality Final §401 Water Quality Certification

October 25, 2017

404 Permit Application Number: NWW-2017-460-B02

Applicant/Authorized Agent: Oneida County, Lon Colton

Project Location: State Old Highway 37, 42.23355 -112.74232

Receiving Water Body: Rock 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, received on August 17, 2017, 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

This project's purpose is to increase erosion and flooding protection for Highway 37 along Rock Creek in the "Narrows" section. The project will allow for increased flow capacity in several crossings of Rock Creek and add several cross drainage pipes for spring seeps.

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 Rock Creek within the Curlew Valley Subbasin assessment unit (AU) ID16020309BR003_03a (Rock Creek, Curlew Valley). This AU has the following beneficial uses: cold water aquatic life, salmonid spawning and secondary contact recreation. 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 2014 Integrated Report, this AU is not fully supporting one or more of its assessed uses. The aquatic life use in this receiving water body AU is not fully supported. Causes of impairment include sedimentation/siltation and physical substrate habitat alterations. The contact recreation beneficial use is also not fully supported. Causes of impairment include *Escherichia coli*. As such, DEQ will provide Tier 1 protection for both the aquatic life and contact recreation uses (IDAPA 58.01.02.051.01).

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. 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 existing and designated beneficial uses.

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 <http://yosemite.epa.gov/R10/WATER.NSF/NPDES+Permits/Region+10+CGP+resources>.

Fill Material

1. Fill material subject to suspension shall be free of easily suspended fine material. The fill material to be placed shall be clean material 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.
3. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.
4. All temporary fills shall be removed in their entirety on or before construction completion.
5. 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

6. 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.
7. 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.
8. 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.

9. 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.
10. Top elevations of bank stabilization shall be such that adequate freeboard is provided to protect from erosion at 100-year design flood elevation.
11. 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.
12. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
13. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
14. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
15. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.
16. 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.
17. To the extent reasonable and cost-effective, the activity submitted for certification shall be designed to minimize subsequent maintenance.
18. 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.

Vegetation Protection and Restoration

19. Disturbance of existing wetlands and native vegetation shall be kept to a minimum. Woody shrubs and trees that are removed need to be replaced with appropriate native species as near to the point of disturbance as possible.
20. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
21. Fencing and other barriers should be used to mark the construction areas.
22. Where possible, alternative equipment should be used (e.g., spider hoe or crane).
23. 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.

Turbidity

24. 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.*
25. 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).
26. 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.
27. Turbidity monitoring must be conducted, recorded, and reported as described below. Monitoring must occur each day during project implementation when project activities result in visible turbidity increases above background levels. *A properly and regularly calibrated turbidimeter is required.*

A sample must be taken initially and every hour thereafter while a plume is still being observed at a relatively undisturbed area approximately 50-100 feet up-current from in-water disturbance or discharge to establish background turbidity levels for each monitoring event. Background turbidity, location, date, and time must be recorded prior to monitoring down-current.

Monitoring must occur every hour while a plume is being observed approximately 100-200 feet down-current from the in-water disturbance or point of discharge and within any visible plume. The turbidity, location, date, and time must be recorded for each sample or observation.

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, the project is causing an exceedance of the WQS. If an exceedance occurs, the permittee 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).

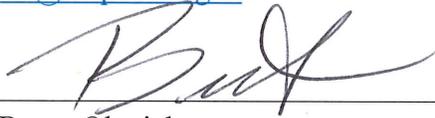
Copies of daily logs for turbidity monitoring must be available to DEQ upon request. The log must include background measurements (in NTUs) or observations; compliance point measurements or observations; comparison of background and compliance point monitoring as a numeric value (in NTUs) or in narrative form; and location, time, and date for each sampling event. The report must describe all exceedances and subsequent actions taken and the effectiveness of the action including subsequent monitoring.

28. Turbidity standards are stipulated under the Idaho WQS (IDAPA 58.01.02). *Any violation of this standard must be reported to the DEQ regional office immediately.*

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 at 208-236-6160; greg.mladenka@deq.idaho.gov.



Bruce Olenick
Regional Administrator
Pocatello Regional Office