



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

November 13, 2017

1118 F Street • Lewiston, Idaho 83501 • (208) 799-4370
www.deq.idaho.gov

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

Ruthie Carpenter
1049 Ruby Creek Road
Harvard, Idaho 83834

Subject: FINAL 401 Water Quality Certification for NWW-2017-557, Ruthie Carpenter – Palouse River Bank Stabilization

Dear Ms. Carpenter:

A public comment period occurred from October 18, 2017 to November 8, 2017. During that period the Idaho Department of Environmental Quality (DEQ) received comments from the Idaho Conservation League. DEQ considered the comments proposed and modified the water quality certification accordingly. The final Section 401 water quality certification for the above referenced project is attached.

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

This letter is to inform you that DEQ has evaluated the information submitted to us by the U.S. Army Corps of Engineers and is issuing the attached 401 certification, subject to the terms and conditions contained therein.

If you have any questions or concerns please contact me at (208) 799-4370 or john.cardwell@deq.idaho.gov.

Sincerely,

A handwritten signature in blue ink that reads "John Cardwell".

John Cardwell
Regional Administrator
Lewiston Regional Office

cc: Shane Slate, ACOE Project Manager
Loren Moore, DEQ State Office
Sujata Connell, DEQ LRO



Idaho Department of Environmental Quality Final §401 Water Quality Certification

November 14, 2017

404 Permit Application Number: NWW-2017-557

Applicant/Authorized Agent: Ruthie Carpenter

Project Location: T41N R 3W S3 NW1/4 SW1/4,
Latitude: 46.924956° Longitude: -116.707082°

Receiving Water Body: Palouse 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 September 20, 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 will stabilize, reinforce, and protect 730 linear feet of eroding river bank of the Palouse River. 941 cubic yards of riprap will be placed for erosion protection, native riparian willow, and alder tree species will be planted within the treated areas to provide bank stabilization and shade. Best management practices implemented will follow Natural Resources Conservation Service (NRCS) "Streambank Protection Standard and Specification" (https://www.nrcs.usda.gov/wps/portal/nrcs/detailfull/national/technical/cp/ncps/?cid=nrcs143_026849). All instream work will be conducted during the low flow season to minimize impacts.

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 employs a water body by water body approach to implement Idaho's antidegradation policy. This 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 is provided Tier I protection for that use, unless specific circumstances warrant Tier II protection. (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 pollutants of concern for this project are sediment and temperature. 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 and temperature.

Receiving Water Body Level of Protection

This project is located on the Palouse River within the Palouse River Subbasin assessment unit (AU) ID17060108CL016_04 (Palouse River - Strychnine Creek to Hatter Creek). This AU has the following designated beneficial uses: cold water aquatic life, salmonid spawning, primary contact recreation, and domestic water supply. 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 receiving water body AU is fully supporting its cold water aquatic life beneficial use. Primary contact recreation and domestic water supply beneficial uses were not assessed in the 2014 Integrated Report. As such, DEQ will provide Tier II protection in addition to Tier I for this water body (IDAPA 58.01.02.051.02; 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.

During construction of this project, the applicant will 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. Permanent erosion and sediment controls will be installed during construction that will minimize or prevent future sediment contributions from the project area. Riparian vegetation will be planted to re-establish riparian shade and prevent thermal loading to the Palouse River. 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 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).

High-Quality Waters (Tier II Protection)

The Palouse River is assessed as high quality for cold water aquatic life and presumed high quality for salmonid spawning, primary contact recreation, and domestic water supply beneficial uses. It's designated for cold water aquatic life, salmonid spawning, primary contact recreation, and domestic water supply beneficial uses. As such, the water quality relevant to these beneficial uses 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 cold water aquatic life, salmonid spawning, primary contact recreation, and domestic water supply beneficial uses of the Palouse River (IDAPA 58.01.02.052.06). These pollutants include sediment, temperature and *E. coli* bacteria. Project Activities are not expected to contribute sources of *E. coli* to the Palouse River. There is no public water supply beneficial use near the project area (IDAPA 58.01.02.252.b.i). Excess sediment and temperature are pollutants relevant to the aquatic life beneficial uses, the permittee will minimize the transport of sediment and thermal loading through the implementation of best management practices (BMPs). Project activities are not expected to contribute thermal loading to the Palouse River. The removal of riparian vegetation must be kept at a minimum to avoid erosion, maintain habitat, and prevent an increase in solar radiant heating of the Palouse River. Project revegetation efforts will restore and improve pre-project riparian shade conditions. This project must also be carried out in a manner that prevents sediment from entering the stream uncontrolled. As such, the project complies with IDAPA 58.01.02.051.02 and IDAPA 58.01.02.052.06.

In order to maintain the ambient water quality conditions, permanent erosion and sediment controls must be implemented that will minimize or prevent future sediment contributions from the project area. The provisions in the 404 permit, coupled with the conditions of this certification, ensure that degradation to the Palouse River - Strychnine Creek to Hatter Creek AU

or the Palouse River will not occur. Therefore, DEQ concludes that this project complies with the Tier II provisions of Idaho's WQS (IDAPA 58.01.02.051.02; 58.01.02.052.06 and 58.01.02.052.08).

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. 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.
5. 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

1. 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.
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. Top elevations of bank stabilization shall be such that adequate freeboard is provided to protect from erosion at 100-year design flood elevation.
4. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
5. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
6. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.
7. 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.

Turbidity

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). *Any violation of this standard must be reported to the DEQ regional office immediately.*
2. 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).
3. 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

1. 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.

2. Construction affecting the bed or banks shall take place only during periods of low flow.

Pollutants/Toxics

1. 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

1. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
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.

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. A log book of these inspections shall be kept on site and provided to DEQ upon request.
3. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
4. 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.
5. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
6. 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).
- Lewiston Regional Office: 208-799-4370 / 877-541-3304

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 Mark Sellet at (208) 799-4370 or email at mark.sellet@deq.idaho.gov.



John Cardwell
Regional Administration
Lewiston Regional Office

Army Corps of Engineers Nationwide Permit # NWW-2017-557 Water Quality Certification

The Idaho Department of Environmental Quality prepared a 401 Water Quality Certification (WQC) for the draft 404 permit proposed to be issued by Army Corps of Engineers (ACOE) to Ruthie Carpenter-Palouse River bank stabilization project. DEQ conducted a 21-day public comment period from October 18, 2017 through November 8, 2017. DEQ received comments from one organization, The Idaho Conservation League (ICL). The comments are listed below with corresponding responses from DEQ.

1. Permit Documents

We request that DEQ provide the documentation on which DEQ based its Draft 401 Certification of the permittee's proposed activity. We also request that DEQ provide this information in its electronic public notice for future draft 401 certifications. This documentation includes, but is not limited to, the permittee's 404 permit application and the permittee's joint application for permit.

DEQ's Draft 401 Certification in this instance frequently refers back to the permittee's permit application documents, in order to explain how and why the permittee's proposed project will comply with the applicable water quality requirements. However, DEQ's public notice did not provide any of the documents or background information to which it referred in its 401 certification. As such, the general public and concerned citizens lack the necessary information to understand the proposed project and DEQ's certification.

Including supporting documents and information is standard DEQ practice in other permitting contexts such as air permitting. There, DEQ attaches the permittee's permit application along with DEQ's statement of basis and draft air permit. Although, DEQ does not draft statements of bases in the 401 context, we request DEQ provide the other relevant supporting documents and information when presenting a draft 401 certification for public review. Doing so would not necessitate significant time or resources on DEQ's part, and including these documents would significantly support and facilitate public involvement and understanding.

Response:

- The ACOE request for certification and supporting documentation for the Palouse River bank stabilization project is available by contacting the ACOE or by email:

Walla Walla District
CENWW-OC
201 North 3rd AVE
Walla Walla, WA 99362-1876
foia-nww@usace.army.mil
Phone: 509-527-7706
Fax: 509-527-7819

2. Project Location and Project Description

We request DEQ provide the latitude and longitude for the proposed project and for all future project proposals. We also request that the Project Description provide more detail of the scope, actions, and impacts anticipated from the permittee's proposal.

As a general matter, DEQ should always provide the latitude and longitude or an address to the location of the proposed project or activity. Providing this information whether required by rule or not is a basic courtesy, which assists the general public and allows them to more easily locate the proposed project.

Response:

- DEQ provides the legal project location to the ¼, ¼ section. A narrative description of the project location is also provided in the project description section of the certification.
- DEQ has updated the certification to include the scope latitude longitude and actions in the project description. The Antidegeneration Review section and the Protection and Maintenance of Existing Uses section of the certification also provide more project detail and scope.

3. Tier II Protection

We request that DEQ explain why it did not accord this stretch of the Palouse River Tier II level review for certain beneficial uses protected in this water body, including agricultural and industrial water supply, wildlife habitat, and aesthetics. Pursuant to IDAPA 58.01.02.52.05., water bodies identified in the Integrated Report as fully supporting assessed uses will be provided Tier II protection, and water bodies identified as not assessed will be provided an appropriate level of protection on a case-by-case basis using information available at the time of a proposal for a new or reissued permit or license. Although DEQ correctly provided Tier II protection for the cold water aquatic life, salmonid spawning, primary contact recreation, and domestic water supply beneficial uses, it is unclear why this level of protection was not accorded to the full complement of beneficial uses protected in this water body. We request DEQ explain its application of Tier II protection in this regard and explain how its application complies with IDAPA 58.01.02.052.05.

In addition, we request DEQ ensure that water quality is maintained and protected in this water body by providing more direction to the permit applicant as to the specific best management practices (BMPs) that will protect water quality in this instance and must be implemented.

Idaho regulation mandates that DEQ maintain and protect the high quality water of the state. IDAPA 58.01.02.051.02. This mandate includes, among other things, the further requirement that DEQ assure that there shall be achieved cost-effective and reasonable best management practices for nonpoint source control. See *id.* However, DEQ did not provide assurances in this 401 certification that this high quality water body will be protected and maintained.

At page 3, DEQ states, "The provisions in the 404 permit, coupled with the conditions of this certification, ensure that degradation to the Palouse River – Strychnine Creek to Hatter Creek AU or the Palouse River will not occur." But DEQ does not provide and explain the provisions in the 404 permit that prevent water quality degradation, and DEQ only added vague conditions in its 401 certification,

which fail to provide the permit applicant guidance on how to protect water quality. An example of one of the vague conditions in this 401 certification occurs at page 5, where DEQ states:

“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.”

DEQ is the agency tasked with providing authority and expertise on protecting water quality in the state of Idaho. Accordingly, we request DEQ identify a portfolio of required and recommended BMPs in this 401 certification that the permit applicant implement to protect the water body in this case from potential impacts of the proposed project.

Response:

- This assessment unit is designated for, and had been assessed as fully supporting, cold water aquatic life beneficial use. In addition to this use, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100). Protection of these uses will generally be satisfied by complying with the water quality criteria found in IDAPA 58.01.02.200. Because cold water aquatic life use is considered a more sensitive use than agricultural and industrial water supply, wildlife habitat, and aesthetics, these uses are considered to be supported when cold water aquatic life is supported.
- Best Management Practices (BMPs) is commonly used as a descriptor for all relevant state and federal conservation practices. BMPs are commonly used to address all nonpoint sources of pollution generated in agricultural, silvicultural, transportation and other sectors. The permittee is designated as having the primary responsibility for oversight and implementation of selected BMPs to ensure water quality standards are not exceeded downstream as the work is being completed, or as a result of the work being completed.

Erosion and Sediment Control

Provision 6 should specify that native plant species that maximize river shading should be used for revegetation of the project area.

Response:

- DEQ agrees that planted riparian species that maximize river shading will help keep stream temperatures lower by shading solar inputs. DEQ accepts BMPs developed by associated designated land management agencies.

4. Management of Hazardous or Deleterious Materials

Provisions 1 and 3 should define "vicinity" and provide an appropriate distance by which petroleum products; hazardous, toxic, and/or deleterious materials; and equipment and machinery must be kept away from waters of the state.

Response:

- In provisions 1 and 3, "vicinity" would be interpreted as any area of size as long as the pollutant(s) are not discharged in concentrations that:
 - Will or can be expected to result in violation of the water quality standards applicable to the receiving water body or downstream waters; or
 - Will injure designated or existing beneficial uses; or
 - Is not authorized by the appropriate authorizing agency for those discharges that require authorization (IDAPA 58.01.02.080).