



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

October 14, 2020

**404 Permit Application Number:** Cascade River LLC, River District Subdivision, NWW-2019-00577-B03

**Applicant/Authorized Agent:** Cascade River LLC

**Project Location:** Latitude 44.500°N, Longitude -116.021°W, northeast of State Highway 55 adjacent to the North Fork Payette River, near the city of Cascade in Valley County, Idaho.

**Receiving Water Body:** North Fork Payette River and associated wetlands

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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 October 10, 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 River District proposes to construct a 122-acre mixed-use development. The development will include 135 single family lots, 9 cottage lots, 43 townhouse lots, 52 multi-family lots, 11 commercial lots, 34 common lots as well as utilities, roads, parking areas, and other associated uses. The subdivision will be built in five phases over a 10-year period.

Wetland impacts associated with the North Fork Payette River and wetlands associated with drainage areas adjacent to the property are expected to occur as a result from the construction of an open water pond, road construction activities, and grading lots for development. Permanent wetland impacts are expected to total 4.17 acres and temporary impacts are expected to account for 0.28 acres. The project proponent will be required to submit a final mitigation plan to be approved by the Corps of Engineers for the permanent loss of wetlands. The mitigation will be

established during the first phase of the development in order to maximize its benefits and to allow for maturing of the wetlands prior to commencing development (phase 2-5).

## **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 pollutants of concern for this project are sediment, temperature, and nutrients. 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 North Fork Payette River within the North Fork Payette Subbasin assessment unit (AU) 17050123SW001\_06 (NF Payette River-Cascade to Smiths Ferry). This AU has the following designated beneficial uses: salmonid spawning, coldwater aquatic life, primary contact recreation, and domestic water supply (IDAPA 58.01.02.110.17). 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 aquatic life uses for this AU are not fully supported. Causes of impairment include low flow alterations and sediment/siltation. 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. Because of this 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.b).

### ***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. The *North Fork Payette River Subbasin Assessment and Total Maximum Daily Load* establishes a load allocation for the North Fork Payette, of 80% for a bank stability target. The project proponent must ensure that the development maintains an 80% or greater bank stability on each section of impacted stream during and after construction. If bank stability within the project area or sections downstream are found to fall below 80% as a result of the project, the River District Subdivision must submit a bank stabilization plan to DEQ, and outline activities to mitigate on-site for any increase in sediment load.

Increased surface water retained at the site, including the pond and created wetlands, has the potential to increase surface water temperature in the Payette River through surface and subsurface alluvial flow. The project proponent must ensure that the site does not increase temperatures in the Payette River. The River District Subdivision shall collect background temperature data upstream and downstream of the project reach. Data collection will help the subdivision adaptively manage the area ensuring protection of Idaho's Water Quality Standards. As described in the certification conditions below, the River District Subdivision shall enter into an agreement with DEQ to further monitor and mitigate any water temperature impacts from the project where appropriate.

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).

### ***High-Quality Waters (Tier II Protection)***

The North Fork Payette River is considered high quality for primary contact recreation. As such, the water quality relevant to this use 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 primary contact recreation uses of the North Fork Payette River (IDAPA 58.01.02.052.06). These pollutants include the following: sediment, temperature, and nutrients.

Temperature and sediment are not relevant to recreational uses since temperature and sediment will not degrade water quality necessary to support recreation uses, and it is therefore unnecessary for DEQ to conduct a Tier II analysis for these pollutants. However, nutrients are often attached to sediment and therefore the two are interrelated. The requirement to maintain a bank stability of 80% will ensure that nutrient loading from bank sluffing will not occur. Established wetlands associated with the NF Payette River act as a filter and help to remove excess nutrients prior to entering the NF Payette River. In order to minimize impacts to wetlands the contractor shall implement Best Management Practices, and obtain coverage under the Construction General Permit (CGP), which requires the implementation of a Stormwater Pollution Prevention Plan (SWPP). Authority for issuing stormwater permits will transfer from EPA to DEQ on July 1, 2021. Additionally, the proposed development has been designed to avoid and minimize impacts to delineated wetland areas to the greatest extent possible. The 4.17 acres of permanent losses to wetlands will be mitigated by creating and enhancing 9.20 acres of wetlands through an approved mitigation plan. 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, which 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 NF Payette River-Cascade to Smiths Ferry AU or the North Fork Payette 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. Cascade River LLC shall conduct a pre-construction meeting with DEQ, primary contractors and Cascade River LLC staff.
2. Cascade River LLC shall notify DEQ of any change in the design, construction, and or mitigation plan that is described in the Application.
3. Cascade River LLC shall submit for DEQ's review and comment prior to finalizing any permanent stormwater infrastructure for the River District development.
4. The River District Subdivision and DEQ shall enter into an agreement to implement a post-project temperature monitoring and on-site mitigation program to offer additional assurance water quality standards are maintained. If temperatures downstream of the project increase as described in the agreement, the River District Subdivision will offset the increase by implementing on-site mitigation measures in the Payette River according to the agreement.
5. Prior to commencement of construction Cascade River LLC shall submit to DEQ for review and comment a bank stability monitoring plan for the NF Payette River along any areas that could potentially be impacted by the development. Monitoring for bank stability shall remain for up to 5 years following the full completion of build out. If bank stabilization is not maintained, DEQ may request additional monitoring.
6. Cascade River LLC shall submit to DEQ for review and comment an annual bank stability monitoring results report. If bank stability is found to be below 80%, Cascade River LLC shall submit to DEQ for review and approval a remediation plan that may include on-site mitigation.
7. 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.
8. 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.
9. 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.
10. 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.

11. 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.
12. 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.
13. 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.
14. 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**

15. Fill material subject to suspension shall be free of easily suspended fine material. The fill material to be placed shall be clean material only.
16. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.
17. All temporary fills shall be removed in their entirety on or before construction completion.
18. 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**

19. 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 <https://www.deq.idaho.gov/media/60184297/stormwater-bmp-catalog.pdf>. Other resources may also be used for selecting appropriate BMPs.
20. 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.
21. 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.
22. 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.
23. Top elevations of bank stabilization shall be such that adequate freeboard is provided to protect from erosion at 100-year design flood elevation.

24. 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.
25. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
26. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
27. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
28. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.
29. 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.
30. To the extent reasonable and cost-effective, the activity submitted for certification shall be designed to minimize subsequent maintenance.
31. Sediment from disturbed areas or that is 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***

32. 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.*
33. 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).
34. 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.
35. Turbidity monitoring must be conducted, recorded, and reported as described below. Monitoring must occur each day during project implementation when project activities may result in turbidity increases above background levels. *A properly and regularly calibrated turbidimeter is required.*

A sample must be taken at a relatively undisturbed area, 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 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 stop all work and 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.

### ***In-water Work***

36. Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.
37. Work in waters of the state shall be restricted to areas specified in the application.
38. Measures shall be taken to prevent wet concrete from entering into waters of the state when placed in forms and/or from truck washing.

### ***Pollutants/Toxics***

39. 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***

40. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
41. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
42. Fencing and other barriers should be used to mark the construction areas.
43. Where possible, alternative equipment should be used (e.g., spider hoe or crane).
44. 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***

45. Upland disposal of dredged material must be done in a manner that prevents the material from re-entering waters of the state.

### **Management of Hazardous or Deleterious Materials**

46. 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.
47. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
48. 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.
49. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
50. 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.
51. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
52. 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).
    - Boise Regional Office: 208-373-0550 / 888-800-3480
  - d. Collect, remove, and dispose of the spilled material in a manner approved by DEQ.

### ***Mixing Zones***

53. If a mixing zone, or alternatively a point of compliance is desired, then the permittee must contact the appropriate DEQ regional office to obtain authorization.

## **Treated Wood**

54. DEQ's [Guidance for the Use of Wood Preservatives and Preserved Wood Products In or Around Aquatic Environments](#) must be considered when using treated wood materials in the aquatic environment. Within this guidance document DEQ references the [Best Management Practices for the Use of Treated Wood in Aquatic and Wetland Environments](#). This document provides recommended guidelines for the production and installation of treated wood products destined for use in sensitive environments.

## **Required Notification**

The permittee must notify the Boise Regional Office when authorized work begins and when authorized work ends. Please contact Kati Carberry at (208) 373-0434 or by email at [kati.carberry@deq.idaho.gov](mailto:kati.carberry@deq.idaho.gov).

## **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 58.01.02.03), within 35 days of the date of the final certification.

Questions or comments regarding the actions taken in this certification should be directed to DEQ Boise Regional Office, Kati Carberry, (208) 373-0434 or [kati.carberry@deq.idaho.gov](mailto:kati.carberry@deq.idaho.gov).

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