



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

900 North Skyline, Suite B • Idaho Falls, ID 83402 • (208) 528-2650

C. L. "Butch" Otter, Governor  
Curt A. Fransen, Director

July 7, 2014

Mr. Charles Anderson  
7515 Halcyon Pointe Drive  
Montgomery, Alabama 36117

Mr. Dan Green  
1656 Monte Vista Drive  
Pocatello, Idaho 83201

**RE: NWW-2011-00247**

Dear Messrs. Anderson and Green:

Enclosed, please find the final §401 water quality certification for the above referenced project. The 401 process requires a public notice of 21-days. The comment period closed on August July 3, 2014. After considering public comments, we are pleased to issue this final certification.

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

Sincerely,

A handwritten signature in black ink, appearing to read "T. Saffle".

Troy Saffle  
Regional Manager  
Idaho Falls Regional office

c: James Joyner, ACOE  
Miranda Adams, TRIM Reference only



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

July 7, 2014

**404 Permit Application Number:** NWW-2011-00247

**Applicant/Authorized Agent:** Charles Anderson/Dan Green

**Project Location:** 44.041944, -114.461111W

**Receiving Water Body:** East Fork Salmon River

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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 February 18, 2014, 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 applicant proposes planting vegetation, bank sloping and barb placement for bank protection for a residential home site on the East Fork Salmon 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 1 Protection. The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected

(IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier 1 review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).

- Tier 2 Protection. The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless deemed necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).
- Tier 3 Protection. The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ is employing a water body by water body approach to implementing Idaho's antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05.a). Any water body not fully supporting its beneficial uses will be provided Tier 1 protection for that use, unless specific circumstances warranting Tier 2 protection are met (IDAPA 58.01.02.052.05.c). The most recent federally approved Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

### ***Pollutants of Concern***

The primary pollutant of concern for this project is sediment. As part of the Section 401 water quality certification, DEQ is requiring the applicant comply with various conditions to protect water quality and to meet Idaho WQS, including the water quality criteria applicable to sediment.

### ***Receiving Water Body Level of Protection***

This project is located on the East Fork Salmon River within the Upper Salmon Subbasin assessment unit (AU) ID17060201SL103\_04 (East Fork Salmon River - Germania Creek to Herd Creek). This AU has the following designated beneficial uses: cold water aquatic life, primary contact recreation, domestic water supply and salmonid spawning.

The cold water aquatic life, salmonid spawning and primary contact recreation uses in this the East Fork Salmon River AU are identified as not assessed (2010 Integrated Report); however the applicant agreed to treat the East Fork as a high quality water. As such, DEQ will provide Tier 2 protection for both uses potentially impacted by sediment generated from this proposed project (IDAPA 58.01.02.051.02; 58.01.02.051.01).

### ***Protection and Maintenance of Existing Uses (Tier 1 Protection)***

As noted above, a Tier 1 review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. The numeric and narrative criteria in the WQS are set at levels that ensure protection of designated beneficial uses.

During the construction phase, the applicant will implement, install, maintain, monitor, and adaptively manage best management practices (BMPs) directed toward reducing erosion and

minimizing turbidity levels in receiving water bodies downstream of the project. In addition, permanent erosion and sediment controls will be implemented, which will minimize or prevent future sediment contributions from the project area. As long as the project is conducted in accordance with the provisions of the project plans, Section 404 permit, and conditions of this certification, then there is reasonable assurance the project will comply with the state's numeric and narrative criteria. These criteria are set at levels that protect and maintain designated and existing beneficial uses. The primary BMPs used to prevent further sediment delivery to the stream are through the construction of a by-pass channel, allowing permitted work to be completed in dry conditions. As a condition of this certification, when the stream is returned to its native course, the applicant must use a gradual approach for returning the flow, in order to prevent the mobilization and transport of sediment and turbidity. The applicant must visually monitor in-stream turbidity when returning flows to the natural channel. Additionally, project activities must avoid disturbance to, or removal of, existing riparian vegetation, which provides stabilization of stream banks and shade.

### ***High-Quality Waters (Tier 2 Protection)***

The East Fork Salmon River is considered high quality for aquatic life, salmonid spawning and recreation uses. As such, the water quality relevant to aquatic life, salmonid spawning and recreation uses of the East Fork Salmon River 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 aquatic life, salmonid spawning and recreation uses of the East Fork Salmon River (IDAPA 58.01.02.052.06). These pollutants include the following: sediment. Sediment is not relevant to recreational uses, but is relevant to aquatic life including salmonid spawning activities. Project activities must not cause increases in sediment that will lower water quality or harm these designated uses. The applicant must conduct turbidity monitoring as described below to ensure that the water quality criteria developed to protect aquatic life are met during project implementation. Permanent erosion and sediment controls must be implemented, which will minimize or prevent future sediment contributions from the project area. Although this project may result in minimal short-term sediment impacts to the water body, DEQ does not expect long-term impacts or degradation to the Upper Salmon Subbasin AU or the East Fork Salmon River. Furthermore, this project is intended to restore eroding stream banks on the property and should help minimize future contributions of sediment to the East Fork Salmon River. Therefore, DEQ concludes that this project complies with the Tier 2 provisions of Idaho's WQS (IDAPA 58.01.02.051.02 and IDAPA 58.01.02.052.06).

## **Conditions Necessary to Ensure Compliance with Water Quality Standards or Other Appropriate Water Quality Requirements of State Law**

### ***General Conditions***

1. 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. 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.
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. The applicant shall provide photos showing pre-construction conditions, work occurring in the diverted stream channel, the completed project and the restored diversion channel within 60 days of project completion.

### **Turbidity**

1. 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).
2. Containment measures such as silt curtains, geotextile fabrics, and silt fences must be implemented and properly maintained to minimize in-stream sediment suspension and resulting turbidity.
3. Turbidity monitoring must be conducted, recorded, and reported as described below. Monitoring must occur when project activities may result in turbidity increases above background levels, and especially when flows are diverted back into the natural channel. *A properly and regularly calibrated turbidimeter is recommended, but visual observation is acceptable.*

A sample must be taken every hour at a relatively undisturbed area approximately 200 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.

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.

### ***Vegetation Protection and Restoration***

1. Disturbance of existing native vegetation shall be kept to a minimum.
2. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
3. Fencing and other barriers should be used to mark the construction areas.
4. Where possible, alternative equipment should be used (e.g., spider hoe or crane).
5. If authorized work results in unavoidable vegetative disturbance, riparian vegetation shall be successfully reestablished to function for water quality benefit at pre-project levels or improved at the completion of authorized work.

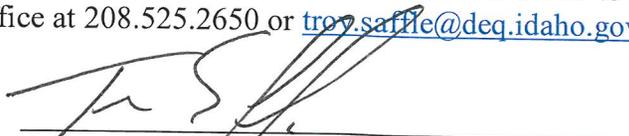
### ***Required Notification***

The permittee must notify the Idaho Falls DEQ Regional Office when authorized work begins.

### **Right to Appeal Final Certification**

The final Section 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the “Rules of Administrative Procedure before the Board of Environmental Quality” (IDAPA 58.01.23), within 35 days of the date of the final certification.

Questions or comments regarding the actions taken in this certification should be directed to Troy Saffle, of the Idaho Falls Regional Office at 208.525.2650 or [troy.saffle@deq.idaho.gov](mailto:troy.saffle@deq.idaho.gov).



Troy Saffle  
Regional Manager  
Idaho Falls Regional Office