



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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www.deq.idaho.gov

Brad Little, Governor
John H. Tippetts, Director

April 23, 2020

Todd Hubbard,
Idaho Transportation Department, District 5
5151 S. 5th Ave
Pocatello, Id 83201

Subject: Final \$401 Water Quality Certification for the ITD US 91 Road Widening Phase II project, NWW-2015-00353

Dear Mr. Hubbard:

Enclosed is the final water quality certification for the above referenced individual Army Corps of Engineers project, (NWW-2015-00353). 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 (pages 4-6).

If you have questions or concerns, please contact Matt Schenk (208) 236-6160 or via email at Matthew.Schenk@deq.idaho.gov.

Sincerely,

A handwritten signature in blue ink that reads "Lynn VanEvery".

Lynn VanEvery
Water Quality Manager
Pocatello Regional Office of the DEQ

Enclosure

c: Shane Skaar, Army Corps of Engineers - Boise Regulatory Field Office



Idaho Department of Environmental Quality Final §401 Water Quality Certification

April 23, 2020

404 Permit Application Number: NWW-2015-00353, US-91 Road Widening Project, Shelly to York Road Phase II

Nationwide Permit Number: 23, Approved Categorical Exclusions

Applicant/Authorized Agent: Idaho Department of Transportation District 5

Project Location: Latitude 43.414945° N; Longitude -112.097514° W near Shelly, ID in Bingham and Bonneville counties

Receiving Water Body: Snake 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 March 9, 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 this project is to improve US-91 from New Sweden Rd in the City of Shelley to York Road to resolve existing & future capacity, safety, substandard roadway and operational problems. This project will widen approximately four miles of US-91 from 2-lane to 5-lanes, with two travel lanes in each direction, a 14 foot center turn lane, and five foot shoulders. Work will add intersection turn-lanes, relocate lateral irrigation ditches and replace culverts.

The proposed road widening activity will permanently impact 0.49 acres of wetlands and 0.53 acres of unnamed tributaries to the Snake River. The proposed project is located between mile post 119 to 123 on US-91, near latitude 43.414945° N and longitude -112.097514° W, in Bonneville and Bingham Counties, near Shelly, Idaho.

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 unnamed tributaries to the Snake River within the American Falls Subbasin assessment unit (AU) ID17040206SK022_04 (River Mile 791 (T01N R37E Sec. 10) to American Falls Reservoir). This AU has been designated for 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 2016 Integrated Report, this receiving water body AU is not supporting its assessed uses. The aquatic life and contact recreation beneficial uses are not fully supported; the cause of impairment is mercury. As such, DEQ will provide Tier I protection for this water body (IDAPA 58.01.02.051.01; 58.01.02.052.07).

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 designated and existing beneficial uses. In addition, the project will be consistent with the *American Falls Subbasin Total Maximum Daily Load Plan: Subbasin Assessment and Loading Analysis*.

To ensure this project will not degrade water quality, the applicant will conduct work in the dry season. These construction activities are also obliged to comply with the NPDES Construction General Permit and the applicant will develop and implement a Storm Water Pollution Prevention Plan, which will include dust management, chemical and waste management, a written plan for containing and disposing of concrete material and best management practices to minimize water quality impacts. The proposed work will ensure sediment and erosion controls are in place throughout the duration of construction and until all disturbed areas are revegetated and stabilized.

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.

Vegetation Protection and Restoration

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

Management of Hazardous or Deleterious Materials

19. 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.
20. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
21. 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.
22. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
23. 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.
24. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
25. 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).

- Pocatello Regional Office: 208-236-6160 / 888-655-6160
- 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 Matthew Schenk, Pocatello Regional Office of the Idaho Department of Environmental Quality, 1-208-236-6160, Matthew.Schenk@deq.idaho.gov.



Bruce Olenick
Regional Administrator
Pocatello Regional Office