STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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Brad Little, Governor
Jess Byrne, Director

February 23, 2021

Ms. Connie Jones
Senior Environmental Planner
Idaho Transportation Department D-4
216 South Date
Shoshone, Idaho 83352

**RE: Idaho §401 Water Quality Certification for NWW-2017-00583-B02**

Dear Ms. Jones:

On December 15, 2020, the Idaho Department of Environmental Quality (DEQ) received a request for a §401 Water Quality Certification (WQC) from the Idaho Transportation Department on Elk Creek, in Custer County.

DEQ drafted a WQC and began a public comment period on January 27, 2021 through February 22, 2021. DEQ received no comments and finalized the WQC.

Enclosed, please find DEQ's final WQC.

Please do not hesitate to contact me at 208.528.2650 or troy.saffle@deq.idaho.gov with questions or concerns about the WQC process and final permit.

Thank you.

Sincerely,

Troy Saffle
Regional WQ Manager
Idaho Falls Regional Office

enclosure

c: Beth Spelsberg, EDMS only
Shane Skaar, AOCE

Idaho Department of Environmental Quality

# Final §401 Water Quality Certification

February 23, 2021

**404 Permit Application Number:** NWW-2017-583-B02/Elk Creek Bridge Construction

**Applicant/Authorized Agent:** Idaho Transportation Department/Connie Jones

**Project Location:** 44.287783, -115.032608, Custer County

**Receiving Water Body:** Elk 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 December 15, 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

This project proposes to replace a structural plate pipe arch with a clear span bridge over Elk Creek in Custer County, Idaho. The project is located on State Highway 21, approximately 7.2 miles west of Stanley, Idaho near mile post 123 in the Sawtooth National Forest within the Sawtooth National Recreation Area. Once the bridge is constructed, the main pipe and a large portion of the fill material will be removed. Fill material consists of sacked riprap, which is made up of burlap sacks that were filled with concrete, and allowed to cure in place. There is sacked riprap surrounding the pipe, on each side and above as well as up to three feet of sacked riprap below the bottom of the pipe.

The roadway is 24 feet in width with one to two-foot shoulders. In addition to replacing the structural plate pipe arch two other adjoining pipe culverts will be repaired and extended. Work will be on-going during times of water flow within the channel. Any live water in the channel

will be diverted through temporary piping and no work will occur in flowing water. Cobble material may be placed after the excavation of the current structural plate pipe arch to stabilize the channel and create channel banks. The newly constructed channel segment will be pre-washed prior to fully activating. The construction site of the restored channel will be re-watered slowly to prevent the loss of sediment downstream as the construction site streambed absorbs reintroduced water, and to minimize any increase in turbidity.

## 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 Elk Creek within the Upper Salmon Subbasin assessment unit (AU) ID17060201SL057_02 (Elk Creek - source to mouth). This AU has the following assessed 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).

The AU potentially impacted by the proposed project is currently in Category 2 of Idaho's most recently approved Integrated Report. Category 2 AUs are those that have been found to be fully supporting designated uses through the beneficial use reconnaissance program assessments. Full support of designated uses has been found with each of the three assessments completed in the AU over the last 20 years. Tributaries of the Salmon River between North Fork and the headwaters provide critical spawning and rearing habitat, as well as thermal refuge for anadromous and resident fish species during the summer months (IDFG, 2019). The project is proposed to occur in areas of the Upper Mainstem Salmon River steelhead population within the Salmon River Major Population Group and also within the Valley Creek population of the Upper Salmon River Major Population Group (NMFS, 2019). This subbasin has also been included as a core area within the Upper Snake Bull Trout Recovery Unit (USFWS, 2015). Given this AU's full support status over many years, location within the Sawtooth National Recreation Area, and potential importance to threatened anadromous fish species as well as threatened bull trout and other important resident fish, this AU should be considered a high-quality water.

The only pollutant of concern associated with this project is sediment. However, sediment is not relevant to recreational uses since 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 this use.

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

Elk Creek is considered high quality for cold water aquatic life and salmonid spawning since the AU where the project is proposed is in Category 2 of DEQ's 2018/2020 Integrated Report. As such, the water quality relevant to these uses must be maintained and protected, unless a lowering of water quality is deemed necessary to accommodate important social or economic development.

The only pollutant of concern for this project is sediment. Because sediment is not relevant to contact recreation, project activities will not result in a lowering of water quality with respect to recreational beneficial use support. Sediment is relevant to the aquatic life and salmonid spawning beneficial uses and the permittee must minimize the transport of sediment and removal of riparian vegetation through implementation of best management practices (BMPs).

Work associated with stream bed excavation, stream stabilization, and the diversion of Elk Creek is proposed to occur in specified work window in the early fall (August 1 - September 12). In this time period, impacts to spring spawning fish species are reduced and the presence of threatened species is not likely. Impacts to the beneficial use of salmonid spawning during the planned in-water work period would be minimal and overall impacts to the beneficial use of cold water aquatic life would be temporary and of short duration.

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for each pollutant that is relevant to the cold water aquatic life and salmonid spawning use of Elk Creek (IDAPA 58.01.02.052.06). These pollutants include sedimentation/siltation. The proposed project includes several measures that will be used to reduce excess sediment from entering Elk Creek. The greatest potential for excess sedimentation to occur in Elk Creek would be when the diversion pipe and protected diversion barriers are placed and removed as well as when the work area is re-watered following completion of the new bridge. 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 Elk Creek - source to mouth AU or Elk Creek 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. 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.

## *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 *Idaho Catalog of Storm Water Best Management Practices*. Other resources may also be used for selecting appropriate BMPs.
2. 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.
3. 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.
4. 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.
5. Top elevations of bank stabilization shall be such that adequate freeboard is provided to protect from erosion at 100-year design flood elevation.
6. 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.
7. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
8. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
9. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
10. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.
11. 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.

12. To the extent reasonable and cost-effective, the activity submitted for certification shall be designed to minimize subsequent maintenance.
13. 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.

## *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.
4. 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.*

   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.

## *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.
3. Fording of the channel is not permitted. Temporary bridges or other structures shall be built if crossings are necessary.
   a. Temporary crossings must be perpendicular to channels and located in areas with the least impact. The temporary crossings must be supplemented with clean gravel or treated with other mitigation methods at least as effective in reducing impacts. Temporary crossings must be removed as soon as possible after the project is completed or the crossing is no longer needed.
4. Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.
5. Activities in spawning areas must be avoided to the maximum extent practicable.
6. Work in waters of the state shall be restricted to areas specified in the application.
7. Measures shall be taken to prevent wet concrete from entering into waters of the state when placed in forms and/or from truck washing.
8. Activities that include constructing and maintaining intake structures must include adequate fish screening devices to prevent fish entrainment or capture.
9. Stranded fish found in dewatered segments should be moved to a location (preferably downstream) with water.
10. To minimize sediment transport, stream channel or stream bank stabilization must be completed prior to returning water to a dewatered segment.

## *Vegetation Protection and Restoration*

1. Disturbance of existing wetlands and 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 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*

1. 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*

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. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
3. 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.
4. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
5. 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.
6. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
7. 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
   b. Make every reasonable effort to abate and stop a continuing spill.
   c. Make every reasonable effort to contain spilled material in such a manner that it will not reach surface or ground waters of the state.
   d. 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).
      - Idaho Falls Regional Office: 208-528-2650 / 800-232-4635
   e. 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 Troy Saffle, Idaho Falls Regional Office, at 208.528.2650 or troy.saffle@deq.idaho.gov.

Troy Saffle
Regional WQ Manager
Idaho Falls Regional Office