

2110 Ironwood Parkway
Coeur d'Alene, ID 83814 • (208) 769-1422



Brad Little, Governor
Jess Byrne, Director

April 10, 2023

By email: Damon.Allen@itd.idaho.gov

Damon Allen
Idaho Transportation Department District 1
600 W. Prairie Ave.
Coeur d'Alene, ID 83815

Subject: Final Section 401 Water Quality Certification for the SH-200 McGhee to Kootenai St. project

Dear Damon Allen:

Enclosed is the Final Section 401 Water Quality Certification for the U.S. Army Corps of Engineers Nationwide Permit 14: Linear Transportation. No comments were received during the 21-day period that the document was available on our website for public comment. Please make sure that you and anyone performing this work read the document and are familiar with the conditions of this certification prior to beginning work. Please also notify the Department of Environmental Quality Coeur d'Alene Regional Office when work begins, at 208-769-1422. If you have questions, please contact Chantilly Higbee at 208-666-4605 or via email at Chantilly.Higbee@deq.idaho.gov.

Sincerely,

A handwritten signature in blue ink that reads "Dan McCracken".

Dan McCracken
Regional Administrator, Coeur d'Alene Regional Office

2023AKF20

Encl. 1 Final Section 401 Water Quality Certification

c: Mike Hartz, ITD-D1, Michael.Hartz@itd.idaho.gov
Jacob Cordtz, U.S. Army Corps of Engineers, Jacob.W.Cordtz@usace.army.mil



Idaho Department of Environmental Quality

Final § 401 Water Quality Certification

April 10, 2023

Project Name: SH-200 McGhee to Kootenai Street

Federal Permit: § 404 Nationwide Permit 14, Linear Transportation

Applicant/Authorized Agent: Damon Allen/Mike Hartz, Idaho Transportation Department – District 1

Project Location: State Highway 200 between McGhee Road and Kootenai Bay Road (Mileposts 31.76 to 32.45) within the community of Kootenai in Bonner County; 48.309502, -116.518269

Receiving Water Body: Wetlands adjacent to Pend Oreille Lake

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 federal permits and issue water quality certification decisions.

Based upon its review of the certification request, received on 3/15/2023, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit and the conditions set forth in this water quality certification, then it is reasonable for DEQ to conclude that the activity will comply with water quality requirements, including 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.

1 Project Description

The project will widen the portion of State Highway 200 between McGhee Road and Kootenai Bay Road (mileposts 31.75 and 32.45). Roadway widening will necessitate the filling and reestablishment of drainage ditches primarily along the south side of the highway. Excavators, loaders, pavers, and dump trucks will be used during the activity. Approximately 0.293 acres of wetlands will be filled. The project is proposed to occur in 2024 during the dry season.

2 Antidegradation Review

As part of its water quality standards program, Idaho has an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051). DEQ has adopted regulations to implement the antidegradation policy (IDAPA 58.01.02.052).

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 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).

2.1 Pollutants of Concern

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

2.2 Receiving Water Body Level of Protection

This project is located adjacent to Pend Oreille Lake within the Pend Oreille Lake subbasin assessment unit (AU) ID17010214PN018L_0L. Pend Oreille Lake is designated for cold water aquatic life, primary contact recreation, and domestic water supply beneficial uses.

According to DEQ's 2022 Integrated Report, the aquatic life use in this receiving water body AU is not fully supported. Causes of impairment include flow regime modification, mercury, and total phosphorus. The contact recreation beneficial use is also not fully supported, with mercury listed as the cause of impairment. As such, DEQ will provide Tier I protection for both the aquatic life and contact recreation uses (IDAPA 58.01.02.051.01).

In addition to the uses analyzed in this section, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

2.3 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).

The U.S. Environmental Protection Agency (EPA) approved DEQ's *Total Maximum Daily Load (TMDL) for Nutrients for the Nearshore Waters of Pend Oreille Lake* (2002). This TMDL has set a target reduction for phosphorus (end point of 9 micrograms per liter) in the nearshore areas of the lake; the project must comply with this target. Phosphorus is not a pollutant of concern for this project. Therefore, the project will comply with the TMDL target.

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 work will occur during the dry season to minimize soil erosion and saturated soil conditions.

If the project is conducted in accordance with the provisions of the project plans, federal permit, and conditions of this certification, then it is reasonable for DEQ to conclude that 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).

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

The following conditions are necessary to ensure this project complies with Idaho water quality standards and other appropriate water quality requirements of State law applicable to Pend Oreille Lake.

3.1 General Conditions

This certification is based on the certification request submitted by the project proponent on 3/15/2023 and is conditioned upon the requirement that any modification (e.g., change in 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.

Because DEQ is certifying only the activity described in the certification request, this condition is necessary to ensure that discharges under circumstances that differ from those described in the certification request will comply with 33 U.S.C. § 1341, 40 CFR Part 121, and other applicable water quality requirements, including without limitation 33 U.S.C. § 1311(a), Idaho Code § 39-108, IDAPA 58.01.02.051, IDAPA 58.01.02.052, IDAPA 58.01.02.080, IDAPA 58.01.02.200, IDAPA 58.01.02.210, IDAPA 58.01.02.250, IDAPA 58.01.02.251, IDAPA 58.01.02.252, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

1. 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.

Because DEQ is certifying only the activity described in the certification request based on information available at the time of certification, this condition is necessary to ensure that discharges from activities not described in the certification request, or where there has been a change in the characteristics of or WQS applicable to the receiving water body, will comply with 33 U.S.C. § 1341, 40 CFR Part 121, and other applicable water quality requirements, including without limitation 33 U.S.C. § 1311(a), Idaho Code § 39-108, IDAPA 58.01.02.051, IDAPA 58.01.02.052, IDAPA 58.01.02.080, IDAPA 58.01.02.200, IDAPA 58.01.02.210, IDAPA 58.01.02.250, IDAPA 58.01.02.251, IDAPA 58.01.02.252, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

2. 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.

This condition is necessary to ensure that, in the event of an ownership change, DEQ has the minimum information to support ongoing compliance with 33 U.S.C. § 1341, 40 CFR Part 121, this water quality certification, and other applicable water quality requirements, including without limitation Idaho Code § 39-108, IDAPA 58.01.02.080, and IDAPA 58.01.02.400.

3. 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.

This condition is necessary to ensure all responsible parties, including onsite contractors, are aware of and comply with this water quality certification and other applicable water quality requirements, including without limitation Idaho Code § 39-108, IDAPA 58.01.02.080, and IDAPA 58.01.02.400.

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 federal permit.

This condition is necessary to ensure all responsible parties, including onsite contractors, comply with this water quality certification and applicable water quality requirements, including without limitation Idaho Code § 39-108, IDAPA 58.01.02.080, and IDAPA 58.01.02.400.

If this project disturbs more than 1 acre and there is potential for discharge of stormwater to waters of the state, coverage under the Idaho Pollutant Discharge Elimination System Construction General Permit is required.

This condition is necessary to ensure that work authorized under the federal permit complies with water quality requirements prohibiting unauthorized stormwater discharges, including without limitation 33 U.S.C. § 1311(a), 33 U.S.C. § 1342(p), IDAPA 58.01.02.080, and IDAPA 58.01.02.400.

5. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation and be replaced or augmented if they are not effective. BMPs shall be replaced or augmented if they are not effective.

This condition is necessary for the protection of beneficial uses in accordance with Idaho water quality requirements including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200.08, IDAPA 58.01.02.250.02.e, IDAPA 58.01.02.253, IDAPA 58.01.02.400.

3.2 Fill Material

The following conditions 1-3 are necessary for the protection of beneficial uses in accordance with Idaho water quality requirements including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.210, IDAPA 58.01.02.250, IDAPA 58.01.02.251, IDAPA 58.01.02.252, IDAPA 58.01.02.253, IDAPA 58.01.02.400.

1. Fill material subject to suspension will be free of easily suspended fine material. Only clean material may be placed as fill.
2. All temporary fills will be removed in their entirety on or before construction completion.
3. 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.

3.3 Erosion and Sediment Control

The following conditions 1-6 are necessary for the protection of beneficial uses in accordance with Idaho water quality requirements including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.253, IDAPA 58.01.02.400.

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 Practices¹. Other resources may also be used for selecting appropriate BMPs.
2. Permanent erosion and sediment control measures will 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. Permanent erosion and sediment control measures will be installed at the earliest practicable time consistent with good construction practices and will be maintained as necessary throughout project operation.
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 and be replaced or augmented if they are not effective.
5. Disturbed areas suitable for vegetation will be seeded or revegetated to prevent subsequent soil erosion (2020 Catalog of Storm Water BMPs 3.5.1.4).
6. Sediment from disturbed areas or sediment 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.

¹ [Idaho Catalog of Storm Water Best Management Practices, Prepared by the State of Idaho Department of Environmental Quality, April 2020.](#)

3.4 Vegetation Protection and Restoration

The following conditions 1-3 are necessary for the protection of beneficial uses in accordance with Idaho water quality requirements including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.253, IDAPA 58.01.02.400.

1. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
2. Fencing and other barriers should be used to mark the construction areas.
3. 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.

3.5 Management of Hazardous or Deleterious Materials

The following conditions 1-7 are necessary for the protection of beneficial uses in accordance with Idaho water quality requirements including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.080, IDAPA 58.01.02.200, IDAPA 58.01.02.400, IDAPA 58.01.02.800, IDAPA 58.01.02.850.

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 logbook 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 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).
 - d. Contact Coeur d'Alene Regional Office: (208) 769-1422
7. Collect, remove, and dispose of the spilled material in a manner approved by DEQ.

3.6 Pollutants/Toxins

In conformance with IDAPA 58.01.02.200, 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.

4 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 Chantilly Higbee, Coeur d'Alene Regional Office at 208-666-4605 or via email at Chantilly.Higbee@deq.idaho.gov.



Dan McCracken
Regional Administrator
Coeur d'Alene Regional Office