

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

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Brad Little, Governor  
Jess Byrne, Director

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August 21, 2023

By email: [Cityclerk@cityofdoveridaho.org](mailto:Cityclerk@cityofdoveridaho.org)

George Eskridge, Mayor  
City of Dover  
PO Box 115  
Dover, ID 83825

Subject: Final Section 401 Water Quality Certification for the City of Dover 12-inch Water Main Extension – Phase II

Dear Mr. Eskridge:

Enclosed is the Final Section 401 Water Quality Certification for the U.S. Army Corps of Engineers permit. 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](mailto:Chantilly.Higbee@deq.idaho.gov).

Sincerely,

A handwritten signature in blue ink that reads "Daniel J. McCracken".

Dan McCracken  
Regional Administrator, Coeur d'Alene Regional Office

Encl. 1 Final Section 401 Water Quality Certification  
c: Shane Slate, Ardurra, [Sslate@ardurra.com](mailto:Sslate@ardurra.com)  
U.S. Army Corps of Engineers, [CENWW-RD-CDA@usace.army.mil](mailto:CENWW-RD-CDA@usace.army.mil)



# Idaho Department of Environmental Quality

## Final Section 401 Water Quality Certification

August 21, 2023

**Project Name:** City of Dover 12" Watermain Extension - Phase II

**Permit Number:** § 404 Nationwide Permit 58, Utility Line Activities for Water and Other Substances

**Applicant/Authorized Agent:** City of Dover/Shane Slate, Ardurra

**Project Location:** East of the end of Loretta Lane in Dover; 48.252502 N, -116.605278 W

**Receiving Water Body:** Wetlands adjacent to the Pend Oreille 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 federal permits and issue water quality certification decisions.

In accordance with the Clean Water Act §§ 121.4 and 121.5, all project proponents must submit a request for a pre-filing meeting at least thirty days in advance of submitting a certification request. A pre-filing meeting request was received by DEQ on 5/22/2023.

Based upon its review of the certification request in accordance with the Clean Water Act § 121.5 (b) and (c), received on 6/27/2023, 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 the Clean Water Act §§ 301, 302, 303, 306, and 307, Idaho's "Water Quality Standards" (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 proposes to install a 12-inch water main line to support the City of Dover, as a replacement for the existing 8-inch line. The line will be placed in a 600 linear-foot trench, 3-

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feet wide by 6-feet deep. Approximately 400 cubic yards of native fill material will be excavated and discharged. An additional 45 cubic yards of rock will be placed in 0.08 acres of wetlands. To reduce impacts to wetlands, the existing line will be abandoned in place.

## 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 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 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 do not lower 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 [DEQ 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 § 401 water quality certification, DEQ requires the applicant to comply with various conditions to protect water quality and meet Idaho's water quality standards, including the water quality criteria applicable to sediment.

### 2.2 Receiving Water Body Level of Protection

This project affects wetlands adjacent to the Pend Oreille River within the Pend Oreille Lake subbasin assessment unit (AU) ID17010214PN002\_08 *Pend Oreille River - Pend Oreille Lake to Priest River*. This AU is designated for cold water aquatic life, primary contact recreation, and domestic water supply beneficial uses. 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 the most recent federally approved [DEQ Integrated Report](#), this AU is not fully supporting the aquatic life use. Causes of impairment include dissolved gas supersaturation and temperature. 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. 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.c).

*Escherichia coli* (*E. coli*) data is often used to make tiering decisions for recreation when a water body is unassessed. However, DEQ has not collected surface water *E. coli* samples from the Pend Oreille River, so other data sources were considered in the tiering decision for this project.

DEQ is not aware of any wastewater treatment outfalls discharging to the Pend Oreille River, that have recently sampled surface water for *E. coli*, nor any other agencies or municipalities. However, in 2022, the Idaho Conservation League collected surface grab samples from three locations along the river monthly from May through September. All samples were below the Water Quality Standards threshold of 126 counts per 100 mL (see IDAPA 58.01.02.251.02.a). Given this information, DEQ has determined the contact recreation beneficial use is fully supported. As such, DEQ will provide Tier I protection (IDAPA 58.01.02.051.01) for the aquatic life use and Tier II protection (IDAPA 58.01.02.051.02) in addition to Tier I for the contact recreation use (IDAPA 58.01.02.052.05.c).

### **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 water quality standards 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). Before developing the TMDL, the water quality standards require applying the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04).

Throughout the life of the project, the applicant will implement, install, maintain, monitor, and adaptively manage best management practices (BMPs) to reduce erosion and minimize turbidity levels in receiving water bodies downstream of the project. In addition, permanent erosion and sediment controls will be implemented that will minimize or prevent future sediment contributions from the project area.

If the project is conducted according to 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. 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 IDAPA 58.01.02.051.01 and 58.01.02.052.07.

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

The Pend Oreille River is considered high quality for primary contact recreation. The water quality relevant to this use must be maintained and protected, unless lowering water quality is 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 recreation of the Pend Oreille River (IDAPA 58.01.02.052.06). The only pollutant of concern associated with this project is sediment; however, sediment is not relevant to recreational uses because aquatic life is the more sensitive use. Sediment is expected to cause impairments to aquatic life at concentrations well below that necessary to cause recreational use impairment, so it is unnecessary for DEQ to conduct a Tier II analysis (IDAPA 58.01.02.052.08).

To maintain the ambient water quality conditions, permanent erosion and sediment controls shall be implemented to minimize or prevent future sediment contributions from the project area. The provisions in the federal permit and the conditions of this certification ensure that degradation will not occur. DEQ concludes that this project complies with the Tier II provisions of IDAPA 58.01.02.051.02, 58.01.02.052.06, and 58.01.02.052.08.

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

The following conditions ensure this project complies with Idaho's water quality standards and other appropriate water quality requirements of state law applicable to the Pend Oreille River.

### **3.1 General Conditions**

This certification is based on the certification request submitted by the applicant on 6/27/2023 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's water quality standards.

Because DEQ is certifying only the activity described in the certification request, this condition ensures that discharges under circumstances that differ from those described in the certification request will comply with 33 U.S.C. § 1341, 40 CFR 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 water quality standards—there is no longer reasonable assurance of compliance with the water quality standards 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 ensures that discharges from activities not described in the certification request, or where there has been a change in the characteristics of or water quality standards applicable to the receiving water body, will comply with 33 U.S.C. § 1341, 40 CFR 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 the new name.

This condition ensures that, if ownership changes, DEQ has the minimum information to support ongoing compliance with 33 U.S.C. § 1341, 40 CFR 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 shall 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 ensures all responsible parties, including on-site 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 shall ensure the contractors are informed of and follow all the conditions described in this certification and the federal permit.

This condition ensures all responsible parties, including on-site 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.

### 3.2 Fill Material

The following conditions 5-7 are necessary for the protection of beneficial uses according to Idaho's water quality standards, 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, and IDAPA 58.01.02.400.

5. Fill material subject to suspension will be free of easily suspended fine material. Only clean material may be placed as fill.
6. Temporary fills will be removed in their entirety on or before construction completion.
7. Excavated or staged fill material shall 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 8-14 are necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

8. BMPs for sediment and erosion control suitable to prevent exceedances of Idaho's water quality standards and TMDLs shall be selected and installed before starting construction at the site. One resource to evaluate appropriate BMPs is the *Idaho Catalog of Storm Water Best Management Practices* (DEQ 2020). Other resources may also be used for selecting appropriate BMPs.
9. Permanent erosion and sediment control measures will be installed to provide long-term sediment and erosion control and prevent excess sediment from entering waters of the state.
10. 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.
11. A BMP inspection and maintenance plan shall be developed and implemented. At a minimum, BMPs shall be inspected and maintained daily during project implementation and replaced or augmented if they are not effective.
12. All construction debris, scraps, particles, and other associated materials will be captured and properly disposed of so they cannot enter waters of the state or cause water quality degradation.
13. Disturbed areas suitable for vegetation will be seeded or revegetated to prevent subsequent soil erosion.

14. Sediment from disturbed areas or sediment that can be tracked by vehicles onto pavement shall not leave the site in amounts reasonably 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, shall be used when earth-moving equipment will be leaving the site and traveling on paved surfaces to prevent track-out.

### **3.4 Turbidity**

The following conditions 15-16 are necessary for the protection of beneficial uses according to Idaho's water quality standards, 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, and IDAPA 58.01.02.400.

15. Sediment resulting from this activity shall be mitigated to prevent violations of the turbidity standards stipulated in Idaho's water quality standards. Any violation of this standard shall be reported to the DEQ regional office immediately.
16. All practical BMPs on disturbed banks and within the waters of the state shall be implemented to minimize turbidity. Visual observation is acceptable to determine whether BMPs are functioning properly. If a sediment plume is observed, the project may be causing an exceedance of water quality standards, and the permittee shall inspect the condition of the project BMPs. If the BMPs appear to be functioning improperly, then corrective action shall be taken, and the permittee shall modify the activity or implement additional BMPs (this may also include modifying existing BMPs).

### **3.5 In-Water Work**

The following conditions 17-18 are necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

17. Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.
18. Work in waters of the state shall be restricted to areas specified in the application.

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

The following conditions 19-21 are necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

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



21. If authorized work results in unavoidable vegetative disturbance, native wetland vegetation shall be successfully reestablished to benefit water quality at pre-project levels or improved at the completion of authorized work.

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

The following conditions 22-30 are necessary for the protection of beneficial uses according to Idaho's water quality standards, 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, and IDAPA 58.01.02.850.

22. 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 shall ensure that those materials will not enter waters of the state because of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third-party activities.
23. Secondary containment is required for chemical materials.
24. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
25. Daily inspections of all fluid systems on equipment to be used in or near waters of the state shall ensure no leaks or potential leaks exist before equipment use. A logbook of daily equipment inspections shall be kept on site and provided to DEQ upon request.
26. Equipment and machinery shall be removed from the vicinity of the waters of the state before refueling, repair, and/or maintenance.
27. Equipment and machinery shall be steam cleaned of oils and grease in an upland location or staging area with appropriate wastewater controls and treatment capability before entering waters of the state. Any wastewater or wash water shall not enter waters of the state.
28. Emergency spill response procedures shall be in place and include a spill response kit (e.g., oil absorbent booms or other equipment).
29. If an unauthorized release of hazardous material to state waters or to land occurs and there is a likelihood it will enter state waters, the responsible persons in charge shall:
  - a. Make every reasonable effort to abate and stop a continuing spill.
  - b. Make every reasonable effort to contain spilled material so 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.

30. Collect, remove, and properly dispose of spill and cleanup materials in a manner approved by DEQ.

### 3.8 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 Required Notification

The permittee shall notify the Coeur d'Alene Regional Office when authorized work begins.

## 5 Right to Appeal Final Certification

The final § 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](mailto:Chantilly.Higbee@deq.idaho.gov).



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Dan McCracken  
Regional Administrator  
Coeur d'Alene Regional Office

## References

DEQ (Idaho Department of Environmental Quality). 2020. *Idaho Catalog of Storm Water Best Management Practices*. Boise, ID: DEQ. <https://www.deq.idaho.gov/water-quality/wastewater/storm-water/>

DEQ (Idaho Department of Environmental Quality). 2022. *Idaho Department of Environmental Quality 2022 Integrated Report*. Boise, ID: DEQ. <https://www2.deq.idaho.gov/admin/LEIA/api/document/download/16619>