Idaho Department of Environmental Quality
Final Section 401 Water Quality Certification

July 16, 2024

Project Name: Rainey Creek Trail Crossing Improvements, NWW-2024-00262

Permit Name and Number: Nationwide Permit 14 - Linear Transportation Projects

Applicant/Authorized Agent: Louis Wasniewski, USFS Caribou-Targhee National Forest

Project Location: The proposed project is located approximately 5 miles northeast of Swan Valley, Idaho, on the Rainey Creek trail (43.476671°, -111.224570°).

Receiving Waterbodies: Rainey Creek (ID17040104SK028_04) and South Fork Rainey Creek ID17040104SK028_03)

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); 40 C.F.R § 124; 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 or licenses and issue water quality certification decisions.

In accordance with federal regulations at 40 C.F.R. § 121.4, all project proponents must submit a request for a prefiling meeting at least thirty days in advance of submitting a certification request. A prefiling meeting request was received by DEQ on 6/6/2024. The prefiling meeting was waived for this project, given that the information regarding this proposed project was presented at the Caribou-Targhee National Forest 2024 Annual Stream Channel Protection MOU Meeting on March 27, 2024.

Based upon review of the federal permit application, readily available water quality related materials, and certification request in accordance with 40 C.F.R. §§ 121.5 (b) and (c) and 121.7 (c), received on, 6/7/2024, 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.

Pursuant to Clean Water Act § 401 (a)(1) and 40 C.F.R. § 121.7 (c); and IDAPA 58.01.02.052.08, DEQ issued a 21-day public notice to solicit comments on the draft certification on 6/18/2024

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through 7/9/2024. 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 objective of the proposed project is to replace 5 ford type stream crossings in the Rainey Creek watershed with ATV trail bridges. The proposed activities include, but not limited to, the following:

- Bridge installation
    - 5 timber bridges will be placed on rock filled gabion baskets with timber sills and abutments. All bridge features will be placed outside of the ordinary high-water mark.
    - The proposed bridges will have the following lengths: Bridge 1 – 50ft, Bridge 2 – 45ft, Bridge 3 – 45ft, Bridge 4 – 40ft, Bridge 5 – 40ft.

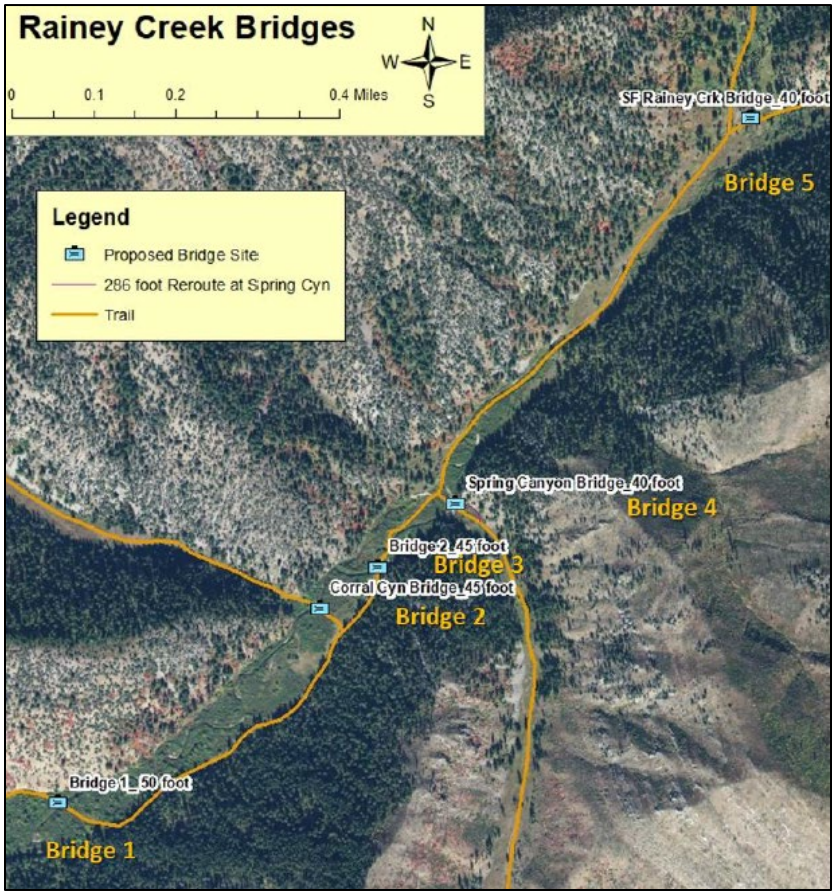


Figure 1. Locations of proposed ATV trail bridges in the Rainey Creek project area. Map derived from project application materials.

- Trail rerouting for approximately 546ft.
- Streambank restoration and restoration of existing ford crossings.

In total, the proposed activities will result in 135.9 cubic yards of material to be discharged and 3,941 square feet of stream and wetland impacts.

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).

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 sedimentation.

2.2 Receiving Water Body Level of Protection

This project overlaps two assessment units (AUs): the 4th order mainstem of Rainey Creek (ID17040104SK028_04) and the 3rd order segment that includes the mainstem and South Fork Rainey Creek (ID17040104SK028_03). Cold water aquatic life (CWAL) and salmonid spawning (SS) are existing uses and secondary contact recreation (SCR) is a presumed use in ID17040104SK028_04. There are EPA-approved total maximum daily loads (TMDLs) for temperature and Escherichia coli (E.coli) impairments in the 4th order segment of Rainey Creek. Despite the existing impairments, DEQ biological metric data show support for aquatic

beneficial uses (see BURP sites from 2021, 2019, 2016, 2013, and 2008). CWAL is a presumed use in the 3rd order segment and this AU is unassessed in the most recent *DEQ Integrated Report*. DEQ will therefore provide Tier I protection for the aquatic life uses in ID17040104SK028_04 and Tier II protection for CWAL in ID17040104SK028_03.

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.

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)

Water bodies identified in the *Integrated Report* as not assessed are provided an appropriate level of protection on a case-by-case basis using information available at the time of a proposal for a new or reissued permit or license. As previously noted, the 3rd order segment of Rainey Creek is unassessed in the most recent *Integrated Report*. Based on data collected by DEQ in a downstream reach in 2021, Rainey Creek appears to be attaining CWAL and SS uses (despite the associated impairments, see BURP site 2021SIDFA026). Given that the upstream AU presumably has fewer anthropogenic stressors, DEQ will presume these waters to be high quality. The CWAL 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 CWAL and SS uses of this section of the Salmon River (IDAPA 58.01.02.052.06). As mentioned above, the main pollutant of concern is sediment. The proposed project activities that could impact beneficial uses include the following: discharge of sediment into the water column, machinery disturbance within the existing ford footprints, and off-target clearing of riparian vegetation. The sedimentation from these actions is expected to be short-term in nature. Given that this project will replace ford type stream crossings, the anticipated long-term improvements to sedimentation in these waters will be greater than the short-term impacts of construction.

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. To maintain the ambient water quality conditions, permanent erosion and sediment controls must 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 to Rainey Creek will not occur. If these provisions are followed, DEQ concludes that this project will comply with the Tier II provisions of Idaho's water quality standards (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 the proposed project activities comply with Idaho's water quality standards and other appropriate water quality requirements of state law applicable to Rainey Creek.

3.1 General Conditions

This certification is based on review of the federal permit application, readily available water quality related materials, and certification request 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, these conditions ensure 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 this certification in accordance with the 40 C.F.R. § 121.10 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.
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 C.F.R. § 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 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 must 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.

5. If this project disturbs more than 1-acre and there is potential for discharge of storm water to waters of the United States, then coverage under the IPDES Construction General Permit Program may be required.

   This condition ensures that work authorized under the federal permit complies with water quality requirements prohibiting unauthorized storm water 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.

3.2 Fill Material

The following conditions 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.

1. Fill material subject to suspension will be free of easily suspended fine material. Only clean material may be placed as fill. If dredged material is proposed for use as fill material and there is a possibility the material may be contaminated, then the permittee must assess and characterize sediment to determine the suitability of dredge material for unconfined-aquatic placement; determine the suitability of post-dredge surfaces; and predict the effect on water quality during dredging. Sediment assessment and characterization following the procedures in the *Sediment Evaluation Framework for the Pacific Northwest* (RSET 2018) satisfies this requirement. A different assessment and characterization methodology may be used if the DEQ approves the methodology in writing.
2. 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 United States.

3.3 Erosion and Sediment Control

The following conditions 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.

1. BMPs for sediment and erosion control suitable to prevent exceedances of Idaho's water quality standards and consistency with 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.
2. 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 United States.
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 the project.
4. Structural fill or bank protection will consist of materials that are placed and maintained to withstand predictable high flows in the waters of the United States.
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 replaced or augmented if they are not effective.
6. All construction debris, scraps, particles, and other associated materials will be captured and properly disposed of so they cannot enter waters of the United States or cause water quality degradation.
7. Disturbed areas suitable for vegetation will be seeded or revegetated to prevent subsequent soil erosion (EPA 2000).
8. Maximum fill slopes will be material that is structurally stable once placed and does not slough into the stream channel during construction, during periods before revegetation, or after vegetation is established.
9. Sediment from disturbed areas or sediment that can be tracked by vehicles onto pavement must not leave the site in amounts reasonably expected to enter waters of the United States. 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 to prevent track-out.

3.4 Turbidity

The following conditions 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.

1. Sediment resulting from this activity must be mitigated to prevent violations of the turbidity standards stipulated in Idaho's water quality standards. Any violation of this standard must be reported to the DEQ regional office immediately.
2. 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. 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.
3. All practical BMPs on disturbed banks and within the waters of the United States must be implemented to minimize turbidity. Visual observation is acceptable to determine whether BMPs are functioning properly.
4. If the project continues to have a visual sediment plume after BMPs have been inspected and modified, contact the Idaho Falls regional DEQ office for turbidity monitoring requirements.

3.5 In-Water Work

The following conditions 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.

1. Work in open water must be kept to a minimum and only when necessary. Equipment shall work from an upland site to minimize disturbance of waters of the United States. If this is not practicable, take appropriate measures to ensure disturbance to the waters of the United States is minimized.
2. Construction affecting the bed or banks shall occur only during periods of low flow and/or corresponding with appropriate in-water work periods for aquatic life.
3. Fording the channel is not permitted. Build temporary bridges or other structures if crossings are necessary.
4. Temporary crossings shall 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.
5. Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.
6. In-water activities in spawning areas shall be avoided to the maximum extent practicable during spawning and incubation periods.
7. Work in waters of the United States shall be restricted to areas specified in the application.
8. Measures shall be taken to prevent wet concrete from entering waters of the United States when placed in forms and/or from truck washing.
9. To minimize sediment transport, stream channel or streambank stabilization must be completed before returning water to a dewatered segment.

3.6 Vegetation Protection and Restoration

The following conditions 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.

1. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
2. Fencing and other protective barriers should be used to mark the construction areas.
3. Where possible, alternative equipment should be used (e.g., spider hoe or crane).
4. If authorized work results in unavoidable vegetative disturbance, native riparian and 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 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.

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 United States. Adequate measures and controls must ensure that those materials will not enter waters of the United States because of high water, precipitation runoff, wind, storage facility failure, accidents, or unauthorized third-party activities.
2. Secondary containment is required for chemical materials.
3. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
4. Daily inspections of all fluid systems on equipment to be used in or near waters of the United States 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.
5. Equipment and machinery shall be removed from the vicinity of the waters of the United States before refueling, repair, and/or maintenance.
6. 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 United States. Any wastewater or wash water must not enter waters of the United States.
7. Emergency spill response procedures shall be in place and include a spill response kit (e.g., oil absorbent booms or other equipment).
8. If an unauthorized release of hazardous material to waters of the United States or to land occurs and there is a likelihood it will enter waters of the United States, 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 so it will not reach surface or ground waters of the United States.
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 Idaho Falls Regional Office: (208) 528-2650.

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

3.8 Treated Wood

The following condition meets Idaho 's water quality standards, including without limitation IDAPA 58.01.02.200 and IDAPA 58.01.02.210.

This condition ensures that toxic chemicals are not introduced into waters of the United States. The *Guidance for the Use of Wood Preservatives and Preserved Wood Products In or Around Aquatic Environments* (DEQ 2008) must be considered when using treated wood materials in the aquatic environment. The DEQ guidance references the *Best Management Practices for the Use of Treated Wood in Aquatic and Wetland Environments (*Western Wood Preservers Institute et al. 2011). This BMP document provides recommended guidelines for producing and installing treated wood products for use in sensitive environments.

3.9 Dredge Material Management

Upland disposal of dredged material must prevent the material from reentering waters of the United States. This condition ensures that there is no unauthorized discharge from upland disposal sites according to 33 U.S.C. § 1311(a) and Idaho's water quality requirements, including without limitation Idaho Code § 39-108, IDAPA 58.01.02.080, and IDAPA 58.01.02.400

3.10 Pollutants/Toxins

In conformance with IDAPA 58.01.02.200, the use of chemicals such as sterilants, growth inhibitors, fertilizers, and deicing salts during construction 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 United States.

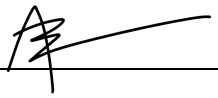
4 Required Notification

The permittee must notify the Idaho Falls Regional Office when authorized work begins and if the applicant or organization is transferred or changes.

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 Alex Bell (office phone number: 208-528-2679, email address: alex.bell@deq.idaho.gov)



Alex Bell
Regional Water Quality Manager
Idaho Falls Regional Office

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