



## Idaho Department of Environmental Quality Final Section 401 Water Quality Certification

September 11, 2024

**For the American Falls Hydroelectric Project**

**(FERC Project No. P-2736-046)**

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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); 40 CFR 121 and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has authority to review activities licensed by the Federal Energy Regulatory Commission (FERC) and issue water quality certification decisions.

This certification is in response to the Final License Application (Application) submitted to FERC by the Idaho Power Company (Company) on February 14, 2023. In accordance with federal regulations at 40 CFR §§ 121.4, all project proponents must submit a request for a prefilming meeting at least thirty days in advance of submitting a certification request. A prefilming meeting request was received by DEQ on 7/20/2023. To facilitate early engagement and project coordination, DEQ accepted an opportunity to host a prefilming meeting which was conducted on 8/30/2023, to seek clarification as well as to discuss the project and potential information needs. In accordance with 40 CFR §§ 121.5 (b) and (c) and 121.7 (c), DEQ received a water quality certification request on 9/12/2023, which is required for the issuance of a new FERC license authorizing the American Falls Hydroelectric Project (FERC Project No. P-2736-046, hereafter "Project"). The Project is located on the mainstem of the Snake River, approximately 1 mile west of the City of American Falls at river mile 714.1.

On July 8, 1983, the Company and DEQ's predecessor-in-interest entered into a Stipulation and Amended Consent Order (Consent Order) to define requirements for meeting dissolved oxygen (DO) criteria (IBHW 1983). The Consent Order also clarified the Company's duties and responsibility requirements for monitoring and complying with DO water quality standards and included definitions of deficiency and violation. The Consent Order will remain effective unless modified by the provisions of the Water Quality Monitoring Plan (WQMP) required as part of the certification conditions (Section 3.1).

Based upon review of the above-referenced Application and other relevant information, DEQ certifies that if the Company complies with the terms and conditions imposed by the FERC license and the conditions set forth in this § 401 water quality certification, then it is reasonable for DEQ to conclude that the Project will comply with water quality requirements, including

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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 121.7 (d); and IDAPA 58.01.02.052.08, DEQ issued a 30-day public notice on September 18, 2023, to provide notification of certification request receipt and to establish the reasonable period of time for certification. On June 27, 2024, through August 12, 2024, DEQ issued a 45-day public notice to solicit comments on the draft certification. Several comments were received and considered by DEQ to inform the certification decision and conditions (Appendix A).

This certification is specifically for activities related to the FERC license for P-2736-046 and 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 licensee from the obligation to obtain any other necessary approvals, authorizations, or permits.

## 1 Project Facility and Operation

The current American Falls Dam (Dam) is located at river mile 714.1 on the Snake River and was constructed during 1976–1978; it replaced and expanded the original dam constructed during 1925–1927. The Bureau of Reclamation (Reclamation) owns and operates the Dam and controls releases from the 1,672,590-acre-foot American Falls Reservoir (Reservoir); the State of Idaho administers the associated water rights.

The Project operates in a run-of-release mode, which means it only uses flows released to the Project by Reclamation for power generation. More specifically, power generation is incidental to the release of irrigation flow deliveries set by Reclamation and varies seasonally as irrigation demand fluctuates.

The Company's infrastructure responsibilities start in the 18-foot-diameter penstocks at a coupling pit located 60' downstream of the intakes contained within the Dam and continue downstream 240' to the center of three 22.5-megawatt (MW) Kaplan turbine-generator units. The Project includes a reinforced concrete powerhouse with associated switch yard. The authorized installed capacity is 67.5 MW and water used for generation is discharged from the powerhouse directly to the Snake River.

The minimum flow required to operate a unit is 750 cubic feet per second (cfs) and the maximum project hydraulic capacity is 16,500 cfs. Flows between this range can be used by the Company to generate power and generally flow through the powerhouse unless prevented by an outage, maintenance, or the Company needing to utilize spill to maintain compliance with dissolved oxygen (DO) standards found at IDAPA 58.01.02.276.04.

Under the current license, the Company is required to use an atmospheric air (oxygen) injection system to mitigate low DO water that it receives from the Reservoir. This system consists of three atmospheric blowers where one or two blowers are used and the third serves as backup. If the blowers cannot mitigate DO levels alone, the Company can choose to divert a portion of

flow over the Reclamation spillway. If DO compliance is still unattainable, the Company can divert all flow over the Reclamation spillway.

Although there is no official minimum or conservation pool, Reclamation attempts to avoid drafting the Reservoir below 50,000 acre-feet when feasible. Sediment mobilization becomes a concern when the reservoir drafts below 100,000 acre-feet of storage. However, certification conditions are limited to the Company's run-of-release activities.

Greater details of the proposed Project development and operations are provided by the Company in the license Application. In accordance with applicable law, the Company shall notify DEQ if FERC authorizes modification to these operations so as to allow DEQ to determine whether such changes may affect compliance with Idaho's water quality standards.

## 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 pollutants of concern for this Project are DO and total dissolved gases (TDG). 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 these pollutants.

## 2.2 Project Area and Receiving Water Body Level of Protection

This Project is located on the mainstem of the Snake River at river mile 714.1, on the border between assessment unit (AU) ID17040209SK011\_07 Snake River - American Falls Reservoir Dam to Rock Creek downstream of the Dam, and AU ID17040206SK001L\_0L American Falls Reservoir above the Dam. The Snake River below the dam (ID17040209SK011\_07) is designated for cold water aquatic life, primary contact recreation, and domestic drinking water supply beneficial uses (DEQ 2022). The 2022 *Integrated Report* lists AU ID17040209SK011\_07 as assessed for not supporting for cold water aquatic life and fully supporting for primary contact recreation. In addition to these uses, all waters within the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

Given this information, DEQ will provide Tier I protection for the domestic water supply and for cold water aquatic life beneficial uses and Tier II protection for primary contact recreation beneficial uses on the affected AU (ID17040209SK011\_07) (IDAPA 58.01.02.051.01; 58.01.02.052.05.b).

## 2.3 Protection and Maintenance of Existing Uses (Tier I Protection)

A Tier I antidegradation review is performed for all new licenses applicable to 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).

The pollutants of concern in the project area are DO and total dissolved gas (TDG). It has been documented that operation of the Project can affect the state's numeric criteria related to DO (IPC 2023). As part of the conditions of this certification, the Company will develop and follow a FERC approved Water Quality Management Plan (WQMP) that will include mitigation for low DO it receives from the reservoir, and monitoring of DO at the river compliance location as defined in IDAPA 58.01.02.276.05 and the operating penstocks. The plan will also include monitoring TDG and evaluating TDG relative to project operations. These provisions provide reasonable assurance of compliance with the applicable DO and TDG criteria.

If the Project is conducted according to the provisions of the FERC license 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 water quality 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 conditions in this certification ensure 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)**

This reach of the Snake River is considered high quality for primary recreation but is not supporting its beneficial uses for cold water aquatic life due to flow regime modification. The water quality relevant to these uses 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 license issuance will affect water quality for each pollutant that is relevant to the aquatic life (Tier I) and recreation uses (Tier II) of the Snake River (IDAPA 58.01.02.052.06). The Company has presented data in the Application indicating substantial compliance with respect to the site-specific DO criteria.

Total dissolved gas levels are required to remain below 110% of saturation (IDAPA 58.01.02.250 (b)). Due to the lack of available data at the time of certification, it is unclear whether the Project will have a significant effect on beneficial uses in the Snake River. Given this uncertainty regarding potential water quality effects from the Project, this certification requires the study of DO and TDG. Additionally, the Company shall continue to mitigate for low DO it receives from the reservoir and continue to monitor DO at the river compliance location as defined in IDAPA 58.01.02.276.05 and the operating penstocks. The Company, in consultation with DEQ, shall develop a WQMP. The Company shall implement, install, maintain, monitor, and adaptively manage permanent best management practices (BMPs) as outlined in the WQMP.

The provisions in the FERC license and the conditions of this certification ensure that degradation to the Snake River will not occur. If these conditions are followed, then it is reasonable for DEQ to conclude that this Project complies with the Tier I and Tier II provisions of IDAPA 58.01.02.051.01, 58.01.02.052.06, 58.01.02.052.07, 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**

Upon FERC's issuance of a license to the Company for the Project, the Company shall comply with the § 401 water quality certification conditions outlined below.

### 3.1 Water Quality Monitoring Plan

**3.1.1 Required Actions.** Within 6 months of the issuance of the FERC license, the Company, in consultation with DEQ, shall develop and have approved a project Water Quality Monitoring Plan (WQMP). The following conditions outline the required components of the WQMP.

**3.1.2 Total Dissolved Gases Monitoring Plan.** The Company shall develop, in coordination with DEQ, a Total Dissolved Gas (TDG) Monitoring Plan as a condition of approval of the application for certification under § 401 of the Clean Water Act. At DEQ's discretion, the TDG Monitoring Plan may be discontinued after 5 consecutive years of data have been collected and reported to DEQ.

1. The Company shall submit a final TDG Monitoring Plan to FERC, with a copy to DEQ's Pocatello Regional Office, no later than 6 months after FERC issues the license order.
2. The Company shall implement the TDG Monitoring Plan upon FERC's approval.

The TDG Monitoring Plan, at a minimum, shall include the following:

1. TDG monitoring at the location outlined in IDAPA 58.01.02.276.05.
2. Proposed data collection procedures including description of equipment and methods, as performed according to manufacturer specifications.

**3.1.3 Dissolved Oxygen Monitoring and Management Plan.** Within 6 months of the issuance of the FERC license for the Project, the Company shall submit for DEQ's approval, a Dissolved Oxygen (DO) Monitoring Plan as part of the WQMP. Once this Plan is approved by DEQ, the Company shall implement the DO Monitoring Plan for the duration of the license. The Company shall implement, install, maintain, monitor, and adaptively manage temporary and permanent DO BMPs directed toward reducing exceedances of the DO criteria to ensure protection of aquatic life and water quality standards. The DO Monitoring Plan, at a minimum, shall include the following:

1. At a minimum, the Company shall monitor DO and temperature at the location outlined in IDAPA 58.01.02.276.05 in addition to each of the 3 operating penstocks.
2. DO monitoring shall be recorded in 10-minute intervals.
3. Proposed data collection procedures including description of equipment, and methods used for monitoring.

**3.1.4 Quality Assurance Project Plan.** As part of the WQMP, the Company shall submit, in consultation with DEQ, a proposal for a comprehensive Quality Assurance Project Plan (QAPP) within 6 months of the issuance of the FERC license.

### 3.2 Reporting

Upon FERC's issuance of a license to the Company for the Project, the Company shall provide the following reports to DEQ.

**3.2.1 Monthly Reporting.** Submit monthly reports to DEQ via electronic data transmission of maximum daily temp, daily DO instantaneous minimum, DO 7-day mean minimum, DO 30-day mean, TDG data along with any deviations from the applicable water quality standards.

**3.2.2 Annual Water Quality Report.** At the end of each calendar year following the issuance of the license for the Project, the Company shall provide an Annual Water Quality Report that includes, but is not limited to, the following from the WQMP:

1. A report of the daily maximum in-stream temperatures, daily DO instantaneous minimum, DO 7-day mean minimum, DO 30-day mean, and TDG data.
2. The Company may include a request for DEQ to consider approval of alternative or additional measures related to monitoring. DEQ will review the request based on the following:
  - i. The basis or reasons why the Company considers alternative measures to be necessary or appropriate.
  - ii. A detailed description of the proposed alternative measures.
  - iii. A statement of whether the proposed alternative measures will cause or contribute to a violation of applicable water quality standards.

## 4 General Conditions

Upon FERC's issuance of a license to the Company for the Project, the Company shall comply with the § 401 water quality certification general conditions outlined below.

**4.1 Document Submittal and Review Process.** Except as otherwise provided in this certification, the Company shall follow the submittal and review process set forth in this section with respect to all documents required by this certification to be submitted to DEQ for approval, and this process shall be followed until the document is approved by DEQ or the document review time frame has expired.

1. After the Company submits a document, DEQ will (a) notify the Company in writing that the document is approved; or (b) notify the Company in writing of any deficiencies in the document and request revisions.
2. If DEQ notifies the Company of deficiencies in the document, the Company shall submit a document revised to resolve those deficiencies within 30 calendar days of receipt of the notice.
3. The submittal process shall be repeated until DEQ notifies the Company that the document is approved. However, the Company's documents shall meet the requirements of this certification no later than 90 days, to be extended at DEQ's discretion, from DEQ's notification of deficiencies and the Company's failure to develop a DEQ approved document within such time frame will be considered a violation of this condition of this certification.

**4.2 Certification Compliance Schedules.** If any event occurs that is beyond the Company's reasonable control and that causes or may cause a delay or deviation in compliance with schedules contained in this certification, the Company shall immediately submit a written notification to DEQ that shall include, but is not limited to, the following information:

1. The cause of delay or deviation and its anticipated duration;
2. The measures that have been or will be taken to prevent or minimize the delay or deviation; and
3. The timetable by which the Company proposes to carry out such measures.

In addition, it is the Company's responsibility as part of the written notification to demonstrate that the delay or deviation has been or will be caused by circumstances beyond their control and despite the due diligence of the Company. If the Company so demonstrates, DEQ shall extend the period of performance-related activities under this condition, as appropriate. Circumstances or events beyond the Company's control include, but are not limited to, acts of nature, unforeseen strikes, work stoppages, fires, explosions, riots, sabotage, war, or reservoir and Dam operations by the Bureau of Reclamation. The Company may also consider other circumstances or events as beyond the Company's control. These other circumstances or events may include, but not be limited to, changes in state statutes; delays in the receipt of necessary approvals for construction design or permits; or delays that DEQ agrees the Company would not have been expected to anticipate. These other circumstances or events will only be considered if they are not due to the actions or inactions of the Company. Increased cost of performance or consultant's failure to provide timely reports may not be considered circumstances beyond the Company's control.

**4.3 § 401 Certification Modification.** DEQ may modify this certification in agreement with FERC to add, delete, or alter the certification conditions as necessary and feasible if:

1. Changes in conditions regarding operation of the Project from those described in the Application will affect or might affect compliance with water quality standards and requirements;
2. There are changes to water quality standards, applicable federal laws, other appropriate requirements of state law, or a development of a total maximum daily load (TMDL) for this reach of the Snake River; or
3. Modifications that are otherwise authorized under state law.

**4.4 Project Changes.** The Company shall notify DEQ of any change in ownership, scope, or operation of the Project related to the new FERC license that affects or is likely to affect water quality. The Company shall consult with DEQ regarding whether water quality certification is needed before undertaking any change to the Project that may result in a discharge from a point source into waters of the United States, including but not limited to changes to Project



structures, construction, operations, and flows, and if such water quality certification is needed, obtain DEQ's review and approval.

**4.5 Project Repair or Maintenance.** The Company shall obtain DEQ's review and approval before undertaking Project repair or maintenance activities that might significantly affect water quality. DEQ may, at the Company's request, approve specified repair and maintenance activities on a periodic or ongoing basis.

**4.6 Project Inspection.** The Company shall allow DEQ such access as necessary to inspect the Project area and Project records required by this certification at reasonable times as necessary to monitor compliance with certification conditions and applicable water quality standards.

**4.7 Posting of § 401 Certification.** The Company shall post a copy of these certification conditions in a prominent location at the Project powerhouse.

**4.8 Water Quality Standards Compliance.** Notwithstanding the conditions of this certification, no waste shall be discharged, and no activities shall be conducted which will violate state water quality standards. If water quality standards for DO or TDG are exceeded as a result of Project operations at the designated point of compliance in the river identified in the approved monitoring plan, the Company shall implement Best Available Technology (BAT) that is technically feasible to address the issue to bring the water quality back into compliance.

## 5 Required Notification

Consistent with Section 4.4 Project Changes, above, the Company shall notify the Pocatello Regional Office if there is a change in ownership, scope, or operation or if the project is undertaking any repair or maintenance activities if the change may significantly affect water quality by contacting Jennifer Cornell at (208) 239-5021 or by email at [jennifer.cornell@deq.idaho.gov](mailto:jennifer.cornell@deq.idaho.gov).

## 6 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 the Pocatello Regional Office (208) 236-6160.



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Katy Bergholm

Regional Administrator  
Pocatello Regional Office

## References

- DEQ (Department of Environmental Quality) 2016. *Water Body Assessment Guidance*. 3rd Edition. Boise, ID: DEQ.  
<https://www2.deq.idaho.gov/admin/LEIA/api/document/download/14844>
- DEQ (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 (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>
- EPA (US Environmental Protection Agency). 2000. *National Menu of Best Management Practices (BMPs) for Stormwater*. <https://www.epa.gov/npdes/national-menu-best-management-practices-bmps-stormwater>
- IBHW (Idaho Board of Health and Welfare). 1983. *Stipulation and Amended Consent Order*. Docket No. 79-9. Jerome, ID: Idaho Board of Health and Welfare.
- IDFG (Idaho Department of Fish and Game). 2019. *Fisheries Management Plan*. 2019 – 2024. Boise, ID.
- IPC (Idaho Power Company). 2023. *American Falls Project FERC No. 2736 Final License Application*.

## Appendix A. Response to Comments

1	Mike Larkin, <a href="mailto:mlarkinaowski@gmail.com">mlarkinaowski@gmail.com</a>
2	H Bud Smalley, <a href="mailto:hbsmalley@aol.com">hbsmalley@aol.com</a>
3	Matt Schenk, <a href="mailto:schematt@isu.edu">schematt@isu.edu</a>
4	Idaho Power Company (Idaho Power), Andrea Courtney, <a href="mailto:acourtney@idahopower.com">acourtney@idahopower.com</a>
5	Idaho Conservation League, Will Tiedemann, <a href="mailto:wtiedemann@idahoconservation.org">wtiedemann@idahoconservation.org</a>

Comment Number	Section Title	Commenter	Comment Summary	Response
1	General comment	1	I see no mention of monitoring or dealing with the increasing amount of sediment in the upper end of American Falls Reservoir. Sediment deposition in the reservoir largely determines the water quality in the reservoir and downstream of the reservoir. Idaho Power and the Bureau of Reclamation should be involved in helping to deal with this increasing sediment loading and should be held accountable for dealing with watershed issues that trigger this sediment loading.	The Bureau of Reclamation (BOR) and the Idaho Department of Environmental Quality (DEQ) collaborate to monitor and work toward meeting the American Falls TMDL. As Idaho Power Company (IPC) does not have any ownership or management rights to the reservoir, IPC has no control to affect change of this issue. The American Falls Project does not include the reservoir and IPC's responsibility begins at the coupling pit located downstream of the intakes contained within the Dam. The reservoir and the intakes are owned by BOR. However, BOR and DEQ are aware

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Comment Number	Section Title	Commenter	Comment Summary	Response
				of the issue and current efforts are aimed at addressing it.
2	General comment	2	Operation of the American Falls Dam is at the mercy of the irrigation stakeholders being served by the Bureau of Reclamation. In low water years when the pool is drawn down to about 7% of capacity water quality in the river below the Dam is adversely affected as evidenced by past fish kills during those times. At that low water level sediment from the lake bottom is sucked through the Dam and turns the river into a mud stream. The Bureau of Reclamation holds water upstream in Jackson Lake and Palisades at the detriment to water quality in the Snake River below American Falls Dam. Somehow this policy must change. Idaho Power, the operator of the AF Dam has no control over this situation.	Water level in the reservoir is strongly tied to the water year. Idaho Department of Water Resources (IDWR) and BOR manage the water delivery and levels in the reservoirs that serve the Upper Snake River Basin to balance the demands of agriculture, industry and environmental conservation. Many studies of the system have been completed and adaptive management efforts have been applied to improving these operations. This effort will continue.
3	General comment	3	There is no reason to include the language found in the third paragraph of the Draft Cert (pg. 1-2) which takes time to explain the interactions between IPC and IDEQ during development of this Draft Cert. The information found in paragraph three detracts from the document as a whole and does not	This section has been removed from the certification.

<b>Comment Number</b>	<b>Section Title</b>	<b>Commenter</b>	<b>Comment Summary</b>	<b>Response</b>
			change the final decision presented in the Draft Cert. Additionally, that information is part of the official FERC record and can be viewed there if needed. Please consider removing this extraneous information from the Final Cert.	
4	General comment	4	Idaho Power recommends the 401 Certification include a reference to the Stipulation and Amended Consent Order (Consent Order), entered into on July 8, 1983, by DEQ's predecessor-in-interest and Idaho Power. Idaho Power suggests DEQ include language that specifies Idaho Power's duties and responsibilities and the definitions of deficiency and violation in the Consent Order remain in effect unless modified by the provisions of the Water Quality Monitoring Plan (WQMP).	The Consent Order has been referenced, and the suggested language is included in the certification (page 1).
5	Page 1, Project Number	4	This is FERC Project No. P-2736-046. The project sub-docket number should be corrected in the text of the draft 401 certification and the footer.	Noted and corrected (page 1 and footer).
6	Page 1, Paragraph 2	4	Idaho Power submitted its Final License Application to FERC on February 14, 2023.	Noted and corrected (page 1).

Comment Number	Section Title	Commenter	Comment Summary	Response
7	Page 2, Second full paragraph	4	DEQ issued its draft 401 certification on June 27, 2024.	Noted and corrected (page 2).
8	Page 2, Project Facility and Operation, Paragraph 3	4	DEQ's description of project facilities could be misleading. Idaho Power suggests: The Company's infrastructure responsibilities start in the 18-foot-diameter penstocks at the coupling pit located 60' downstream of the Dam intakes and continue downstream for 240' to the center of three 22.5-megawatt (MW) Kaplan turbine-generator units. The Project includes a reinforced concrete powerhouse with associated switch yard. The authorized installed capacity is 67.5 MW and water used for generation is discharged from the powerhouse directly to the Snake River.	Suggested language has been incorporated into the certification (page 2).
9	Page 4, Paragraph 3	4	1) The American Falls Project does not include the American Falls Reservoir. 2) DEQ states that the Project is split between 2 assessment units (AU): the Snake River from American Falls Reservoir Dam to Rock Creek (ID17040209SK011_07) and American Falls Reservoir ID17040206SK001L_0L). This is incorrect. The Project lies entirely	1) IPC's hydro project does not include the reservoir. However, the water running through the project comes directly from the reservoir. 2) The project lies directly on the border between the two AUs. Acknowledging the reservoir is necessary to explain water quality issues through the project. However,

Comment Number	Section Title	Commenter	Comment Summary	Response
			<p>within AU ID17040209SK011_07 and does not include American Falls Reservoir (ID17040206SK001L_0L). Antidegradation review should focus on the beneficial uses in the Snake River downstream of the Dam only.</p> <p>3) DEQ also states that the Snake River from American Falls Reservoir Dam to Rock Creek (ID17040209SK011_07) is unassessed. This is partially incorrect. It is unassessed for Primary Contact Recreation (PCR); it is however assessed for Cold Water Aquatic Life (COLD). This AU is not supporting COLD and is listed in Category 4C of the 2022 Integrated Report.</p> <p>Idaho Power suggests that this paragraph read: This Project is located on the mainstem of the Snake River at river mile 714.1, assessment unit (AU) ID17040209SK011_07 Snake River - American Falls Reservoir Dam to Rock Creek downstream of the Dam. The Snake River below the Dam (ID17040209SK011_07) is designated for COLD, PCR and domestic drinking water supply (DWS) beneficial uses (DEQ 2022). In addition to these uses, all waters of the state are protected for</p>	<p>the Antidegradation review focuses on the Snake River below the Dam.</p> <p>3) The AU is assessed for both PCR and COLD. This language has been rewritten to reflect the correct assessments (page 4).</p>



Comment Number	Section Title	Commenter	Comment Summary	Response
			<p>agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100). The 2022 Integrated Report lists AU ID17040209SK011_07 as unassessed for PCR and assessed for COLD. It is not supporting its designated beneficial use of COLD and is listed in Category 4C of the 2022 Integrated Report.</p>	
10	Page 4, Paragraph 6	4	<p>1) The Snake River below American Falls Dam (ID17040209SK011_07) should not receive Tier II protection for COLD... American Falls Reservoir (ID17040206SK001L_0L) is outside the project boundary, is outside of Idaho Power’s control and operation, and should not be included in the analysis related to the relicensing.</p> <p>2) The Snake River below the Dam should have Tier I protection applied to COLD and related water quality standards. Idaho Power agrees that Tier II protection should be applied to PCR. Idaho Power suggests that this paragraph read: Given this information, DEQ will provide Tier I protection for cold water aquatic life and DWS designated beneficial uses and Tier II protection for primary contact recreation beneficial use</p>	<p>1) Paragraph has been corrected to reflect comment suggestion.</p> <p>2) Suggested language has been incorporated into the certification (page 5).</p>

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			(IDAPA 58.01.02.051.01; 58.01.02.052.05.b).	
11	Page 5, Paragraph 1	4	<p>1) Idaho Power’s Project does not impact water temperature.</p> <p>2) Idaho Power’s Project is not a source of total suspended solids (TSS) or turbidity.</p> <p>3) Idaho Power’s project operations do not contribute to DO exceedances.</p> <p>Idaho Power suggests that this paragraph read:</p> <p>The pollutants of concern in the project area are DO, temperature and TDG, although the Project has no influence on water temperature. As part of the conditions of this certification, the Company will develop and follow a FERC approved Water Quality Management Plan (WQMP) that will include mitigation for low DO it receives from the reservoir and monitoring of DO and associated temperature at the river compliance location as defined in IDAPA 58.01.02.276.05 and the operating penstocks. The Company will continue to co-report temperature with DO data. The plan will also include monitoring TDG and evaluating TDG relative to project operations. These provisions provide</p>	<p>1) Temperature will be removed as a constituent of impact from the project (page 4).</p> <p>2) Sediment has been removed as a constituent of impact from the project.</p> <p>3) DEQ agrees the project does not contribute to DO exceedances.</p> <p>However, project operations can affect the ability for DO levels in the water to recover before reaching the river below the Dam. If the hydro project was not there, then water would be delivered over the spillway allowing aeration to occur, increasing DO levels.</p> <p>DEQ has incorporated the suggested language into the certification (page 4).</p>

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			reasonable assurance of compliance with the applicable TDG criteria.	
12	Page 5, Paragraph 4	4	It is unclear why DEQ is applying Tier II to COLD for the Snake River from American Falls Reservoir Dam to Rock Creek (ID17040209SK011_07) since it is in Category 4C of the 2022 Integrated Report and does not meet the exemption requirements of IDAPA 58.01.02.052.05.c.i. Application of Tier II protection to a 4C waterbody is inconsistent with DEQ's guidance document <i>Idaho Antidegradation Implementation Procedures</i> (IDEQ 2023).	Tier II protections for high quality fisheries AU have been removed for consistency with DEQ's antidegradation guidance document.
13	Page 5, Paragraph 5	4	1) Aquatic life uses downstream of the Project (ID17040209SK011_07) should not receive Tier II protection. Discussion of COLD should be moved under Tier I because it is listed in Category 4C of the 2022 Integrated Report. Tier II review should be limited to Primary Contact Recreation. 2) DEQ asserts that "[t]he Company has presented data in the Application indicating substantial compliance with respect to the site-specific DO criteria, but also indicates temperature exceedances are a regular occurrence in the summer and early fall (IPC 2023)."	1) Tier I will be the protection applied for COLD (page 4). 2) This statement is correct. The temperature criteria for CWAL as stated in IDAPA 58.01.02.250.02b are ". . . 22 <sup>o</sup> C or less, with a maximum daily average of no greater than 19 <sup>o</sup> C." Temperature data from IPC at SR-1, which is in the river below the Dam, as well as data collected by DEQ at times in the river below the Dam, indicate during the summer months of July through September, water temperatures can and have exceeded these criteria in that AU.

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			<p>This statement is incorrect and incomplete...</p> <p>3) DEQ also failed to acknowledge figures E-10–E-14, which show penstock data compared to downstream river data. This data clearly shows no warming through the Project and also supports the fact that temperature exceedances are due to reservoir temperatures. Idaho Power’s Project does not contribute to elevated temperature downstream of the Project.</p> <p>4) The statement, “These include narrative standards related to floating, suspended, or submerged matter, nutrients concentrations, biological oxygen demand, hydrogen ion concentrations, and turbidity,” is incorrect and should read: “These include narrative standards related to floating, suspended, or submerged matter, nutrients concentrations, and biological oxygen demand, <b>and numeric criteria for</b> hydrogen ion concentrations and turbidity.” (Emphasis added for clarity.) There are no narrative criteria for turbidity or pH.</p> <p>5) The <i>Idaho Antidegradation Implementation Procedures</i> (IDEQ 2023) state that existing activities that propose</p>	<p>3) DEQ acknowledges the project does not increase temperature in the river downstream of the project.</p> <p>4) Language has been modified in the certification. There are numeric criteria for pH and turbidity, narrative for nutrients and sediment.</p> <p>5) Suggested language has been incorporated into the certification (page 5).</p>

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			<p>no expansion, or existing discharges that propose no change in their discharge upon permit or license renewal, will not cause degradation of water quality and that non-degrading activities and discharges are not subject to Tier II antidegradation analysis. "Once DEQ determines an activity would not expand or a discharge would not increase, the antidegradation question that remains is whether Tier I requirements are met." (IDEQ 2023). Idaho Power does not own or operate the American Falls Reservoir or regulate water releases from the Dam. The BOR controls water releases from the reservoir and Idaho Power operates its Project in run-of-release mode. Idaho Power generates power on water called for by the BOR. The hydraulic capacity of the Project is unchanged and therefore the Project is not expanding nor would the discharge increase. The Portneuf River TMDL Revision and Addendum (2010) has successfully reduced the major sources of Total Phosphorous (TP) to American Falls, and with the implementation of the American Falls Reservoir (2012) TMDL, it is reasonable to assume that the water quality of the</p>	

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			<p>reservoir is improving and that future water quality passing through the Project will be non-degrading.</p> <p>Idaho Power suggests that this paragraph read: To determine whether degradation will occur, DEQ must evaluate how the license issuance will affect water quality for each pollutant that is relevant to the aquatic life (Tier I) and recreation uses (Tier II) of the Snake River (IDAPA 58.01.02.052.06). The Company has presented data in the Application indicating substantial compliance with respect to the site-specific DO criteria, but also indicates temperature exceedances are a regular occurrence, which is a result of reservoir temperature as penstock data indicates similar temperature regimes as immediately below the Project (IPC 2023). Moreover, the Application indicates there are other narrative and numeric criteria that have not been measured or reported to DEQ. These include narrative standards related to floating, suspended, or submerged matter, nutrients, and biological oxygen demand, and numeric standards for hydrogen ion concentrations and turbidity. Total dissolved gas levels are</p>	

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			<p>required to remain below 110% of saturation (IDAPA 58.01.02.250 (b)). Due to the lack of available TDG data at the time of certification, it is unclear whether the Project will have a significant effect on beneficial uses in Snake River. COLD will receive Tier I review, and PCR will receive Tier II review.</p>	
14	Page 5, Paragraph 6	4	<p>Idaho Power recommends that the WQMP be limited to pollutants of concern identified in DEQ's Draft 401 certification, page 4, paragraph 2 and not include sediment (turbidity). Idaho Power suggests that this paragraph read: Given the uncertainty regarding TDG related to Idaho Power's DO mitigation, this certification requires the study of TDG in relation to DO mitigation. Additionally, Idaho Power shall continue to mitigate for low DO it receives from the reservoir and continue to monitor DO and associated temperature at the river compliance location as defined in IDAPA 58.01.02.276.05 and the operating penstocks. The Company, in consultation with DEQ, shall develop a WQMP. The Company shall implement, install, maintain, monitor, and adaptively manage permanent best management</p>	<p>DEQ agrees and has incorporated suggested language into the certification (page 5).</p>

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			practices (BMPs) as outlined in the WQMP.	
15	Page 6, I. Total Dissolved Gases Monitoring Plan, bullet I.3	4	TDG data collection requires the TDG probe to equilibrate to ambient water quality conditions. Equilibration can take 20-45 minutes. Not allowing the probe to properly equilibrate leads to inaccurate and biased data. Idaho Power suggests that this paragraph read: TDG monitoring shall be performed according to manufacturer specifications.	The condition intends to use data from the monitoring effort of the constituent. DEQ recognizes monitoring/sampling equipment requires use according to the manufacturer's specifications. The number that is recorded after the probe properly equilibrates should be reported to determine compliance (page 6).
16	Page 7, II. Dissolved Oxygen Monitoring and Management Plan	4	Idaho Power has been monitoring DO and temperature at the Project since 1978 and has a near 100% compliance record with related DO WQS. Idaho Power meets all applicable DO WQS by mitigating for low reservoir DO using blowers and spill. Imposing two additional DO monitoring stations is unnecessarily redundant and will not provide further insight into DO or temperature... There is no benefit of adding additional DO and temperature monitoring locations. As consistent with the Consent Order, Idaho Power proposes to report DO and temperature conditions in each of the 3 operating penstocks in addition to the river	Suggested language has been incorporated into the certification (page 6).



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			<p>compliance monitoring location... Temperature should be required in this section.</p> <p>Idaho Power suggests that this paragraph read: The Company shall monitor DO and temperature at the location outlined in IDAPA 58.01.02.276.05 in addition to each of the 3 operating penstocks.</p>	
17	Page 7, III. Temperature and Sediment Monitoring Plan	4	<p>Currently, Idaho Power collects temperature data because it is necessary for the measurement of DO and submits temperature data with all DO data to DEQ. The Project has no influence on temperature. Idaho Power will continue to co-report temperature data with DO data. Idaho Power's Project has no impact on sediment. DEQ has extant mechanisms to control sediment and protect downstream beneficial uses, which include the American Falls Reservoir TMDL and the 2010 WQMAP. Because Idaho Power is not the source of sediment mobilization, it is inappropriate to impose those requirements on Idaho Power via this 401 Certification. Idaho Power suggests temperature monitoring and reporting be placed in the previous section, II. Dissolved Oxygen Monitoring and Management Plan (on</p>	Suggested changes have been incorporated into the certification.

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			page 6). Idaho Power also suggests section III. Temperature and Sediment Monitoring be deleted.	
18	Page 7, IV. Reporting, bullet IV.1	4	<p>... Monthly reporting requirements should not include a daily mean turbidity as the Project has no impact on turbidity. All reporting should pertain to related WQS. The daily maximum TDG reading should not necessarily be reported. When sampling TDG, the probe is required to equilibrate according to manufacture specifications. The initial reading is high, and as gases permeate the membrane and equilibrium is established with the water column, the TDG reading stabilizes, providing an accurate and precise value that may be lower than the initial readings. Additionally, TDG data can be noisy, and all data must be accepted/rejected using quality assurance methods. Simply reporting the highest maximum daily TDG value will provide data that is inaccurate and not representative of the effect of the Project. Idaho Power should report all valid TDG data describing the effects of DO mitigation on TDG. Idaho Power suggests that this paragraph read: Monthly Reporting. Submit</p>	<p>During the collaboration and development of the water quality monitoring plan, appropriate reporting requirements can be developed to the satisfaction of both parties. For TDG, the spirit of the requirement was to use the reportable numbers from the monitoring effort of the constituent. DEQ recognizes monitoring/sampling equipment requires use according to the manufacturer's specifications. The number that is reported after the probe properly equilibrates should be reported to determine compliance. Suggested language has been incorporated into the certification (page 7).</p>

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			monthly reports to DEQ via electronic data transmission of maximum daily temp, daily DO instantaneous minimum, DO 7-day mean minimum, DO 30-day mean, TDG data, along with deviations from the applicable water quality standards.	
19	Page 8, General Condition A.1	4	<p>It is unclear to what this section is meant to apply. Is it the TDG monitoring plan development process and/or reporting pursuant to it? If the former, then by the terms of this condition, Idaho Power and DEQ would have 90 days to come to a mutually agreeable TDG plan or Idaho Power would be in violation of the certification. That timeframe is not consistent with the settlement agreement resolving Idaho Power's contested case concerning DEQ's initial 401 certification denial, which provides Idaho Power will have six months to submit its DEQ-approved TDG monitoring plan to FERC.</p> <p>Also, it is unclear what DEQ's turnaround time for action is after Idaho Power submits a document.</p> <p>Also, it is unclear what the process is intended to be. If DEQ's options are essentially approval or notification of</p>	<p>These conditions are boiler plate language that are included in all certifications. Language has been modified to reflect the settlement agreement time frame for completing the required tasks.</p> <p>Suggested language has been incorporated into the certification (page 7).</p>

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			deficiencies and request of revisions, then Idaho Power suggests A.1. be revised as follows, "After the Company submits a document, DEQ will (a) notify the Company in writing that the document is approved, or (b) notify the Company in writing of any deficiencies in the document and request revisions."	
20	Page 8, General Condition A.4	4	The latter portion of the paragraph is gratuitous in light of FERC's licensing process. Idaho Power suggests that this paragraph read: Once documents are approved by DEQ, the Company shall submit these documents to FERC for FERC's approval.	DEQ's certification and enforceable conditions do not require FERC's approval. Review of the language of this sentence has been considered.
21	Pages 8-9, General Condition B	4	The Bureau of Reclamation owns and operates the reservoir and Dam at the American Falls hydropower plant. Idaho Power suggests DEQ explicitly include "reservoir and Dam operations by the Bureau of Reclamation" in the list of circumstances beyond Idaho Power's control.	Suggested language has been considered for inclusion in the certification (page 8).
22	Page 9, General Condition D	4	Idaho Power suggests the following addition (in <i>italics</i> ) to the end of the first sentence so the first sentence would read: "The Company shall notify DEQ of any change in ownership, scope, or operation of the Project <i>related to the</i>	Suggested language has been incorporated into the certification (page 9).

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			<i>new FERC license that affects or is likely to affect water quality.</i>	
23	Page 9, General Condition H	4	<p>Idaho Power suggests the following addition (in <i>italics</i>) to the second sentence so the second sentence would read: “If water quality standards for DO or TDG are exceeded <i>as a result of Project operations</i> at the designated point of compliance in the river identified in the approved monitoring plan, the Company shall implement Best Available Technology (BAT) that is technically feasible to address the issue to bring <i>water quality</i> back into compliance.”</p> <p>Further, Idaho Power suggests for clarity the following language that tracks the language in the Stipulation and Amended Consent Order dated July 8, 1983, be added: The Company shall have no responsibility under this certification as to water quality, including but not limited to dissolved oxygen and total dissolved gas, below the American Falls Dam and power plant when water is not being used for generation at the power plant below the American Falls Dam.</p>	Suggested language has been incorporated into the certification (page 9).

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24	Page 5, General Comment	5	<p>Certification without complete analysis...“Due to the lack of available data at the time of certification, it is unclear whether the Project will have a significant effect on how these criteria (floating, suspended, or submerged matter, nutrients concentrations, biological oxygen demand, hydrogen ion concentrations, turbidity and total dissolved gas) are affected in the Snake River.”</p> <p>“Given this uncertainty regarding the potential water quality effects from the Project, this certification requires the study of temperature, DO, TDG, and sediment (turbidity).” Simply stated, DEQ is unable to determine at this time whether the project will comply with Idaho Water Quality Standards and Antidegradation Rules and requires more information to do so.</p> <p>We are concerned that this statement belies the fundamental purpose of 401 Water Quality Certifications. As stated within Section 401 of the Clean Water Act (CWA) itself (33 USC 1341) ... It also belies the directive of IDAPA antidegradation rules, “The Department <b>will</b> evaluate the effect on water quality</p>	<p>Currently, DEQ is reviewing the certification process in consideration of FERC’s licensing process timelines as to when a certification request (application) is considered complete for acceptance and review. Further, DEQ is undergoing an update to its <i>Section 401 Certification Guidance</i> to clarify timelines and outline documents required for certification review. DEQ will work closely with applicants to ensure required documents are submitted in parallel with FERC’s licensing process prior to initiating the reasonable period of time. By providing guidance and process transparency, as well as working closely with applicants, DEQ believes these measures will align agency processes to allow for the completion of environmental studies to be made available for review and consideration in the 401 certification process in advance of initiating the reasonable period of time for certification.</p>

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			<p>for each pollutant. The Department <b>will</b> determine whether an activity or discharge results in an improvement, no change, or degradation of water quality” (IDAPA 58.01.02.052.06). Although this rule doesn't explicitly state <i>when</i> in relation to giving certification approval, that answer should be a foregone conclusion...While 401 Certifications certainly allow for both general and special certification conditions, they typically include best management practice (BMP) type conditions. These conditions are explicitly informed and developed by monitoring data. Data informs and develops a compliant water quality project “scenario”, while 401 Certification conditions limit project activities to ensure the project is carried out according to the scenario. The current draft Certification assumes a compliant water quality scenario and looks to justify such a scenario at a later date with various monitoring plans required by certification conditions. This scenario provides a “blank check” type 401 Certification that provides an extremely troubling precedent.</p>	

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			<p>Under such a precedent, future projects seeking certification could be certified without complete analysis and cause water quality violations and excess degradation until the proper analysis can be completed, and a certification modified. During this time, preventable, but ultimately irreversible or long-lasting effects to water quality or human health could occur.</p> <p>While the specific project in question may be particularly complex with a FERC permitting process playing out at the same time, we strongly encourage DEQ to reevaluate the 401 Certification process for this project.</p>	
25	Receiving Water Tier Classification	5	<p>...Given the guidance within Idaho's Antidegradation Implementation Procedures, the existence of a quality trout fishery within the receiving water, and the historical precedence of streams with similar scenarios, the receiving water body in question should be redesignated as Tier II for Cold Water Aquatic Life (as well as Seasonal Cold and Warm Water Aquatic Life) and re-assessed in accordance with all applicable IDAPA 58.01.02.052 requirements.</p>	<p>DEQ's <i>Idaho Antidegradation Implementation Procedures (2023)</i> and Antidegradation Policy do not allow for the use of biological data to provide Tier II classification for an AU in Category 4C, impairment caused by flow alteration.</p>



