



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

August 20, 2025

**Project Name:** The Idaho Club Marina and Community Development Project

**Permit Name and Number:** US Army Corps of Engineers Section 404 Individual Permit NWW-2007-0012118

**Applicant/Authorized Agent:** William Haberman, Valiant Idaho, LLC, Valliant Idaholl, LLC/Jeremy Grimm, Whiskey Rock Planning and Consulting

**Project Location:** Bonner County parcels RP031740000010A and RP031740000020A near Hope, Idaho. Approximately 48.284113° N, -116.352081° W.

**Receiving Water Bodies:** Pend Oreille Lake, North Fork Trestle Creek, and Trestle Creek

---

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); 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 receiving federal permits or licenses and issue water quality certification decisions. Consistent with DEQ's May 6, 2024, *Scope Directive for 2023 Clean Water Act § 401 Water Quality Certifications for § 404 Permits* (Scope Directive), this review is limited to the water quality-related impacts from the activity subject to the US Army Corps of Engineers (USACE) § 404 permit, including the activity's construction and any integral operational elements directly tied to that activity. DEQ's review does not extend to general project operations or ancillary upland activities that are subject to other federal, state, or local regulatory authorities. Moreover, the US Environmental Protection Agency's (EPA) May 21, 2025, clarification memorandum reiterates that CWA § 401 is limited to considering adverse impacts to water quality, and only insofar as they may prevent compliance with applicable water quality requirements. Conditions or denials may not be based on impacts unrelated to water quality or not within the scope of the federal permit.

In accordance with federal regulations at 40 CFR § 121.4, 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 7/14/2023. To facilitate early engagement and project coordination, DEQ accepted an opportunity to host a pre-filing meeting which was conducted on 7/28/2023, to seek clarification as well as to discuss the project and potential information needs.

---

**Accessibility Services:** The Idaho Department of Environmental Quality will provide reasonable language access services and/or disability services for documents at no charge. To request an accommodation under Title VI of the Civil Rights Act of 1964 or Americans with Disabilities Act, contact DEQ's nondiscrimination coordinator at (208) 373-0271 or [accessibility@deg.idaho.gov](mailto:accessibility@deg.idaho.gov). Para obtener información en español, visite <https://www.deq.idaho.gov/about-us/accessibility/>.

Based on review of the federal joint permit application, readily available water quality related materials, and certification request in accordance with 40 CFR §§ 121.5 (b) and (c) and 121.7 (c), received on 8/27/2024, DEQ, certifies that if the permittee complies with the terms and conditions imposed by the federal 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 finding is based on DEQ's evaluation of the water quality-related impacts from the activity subject to the § 404 permit, consistent with DEQ's May 6, 2024, Scope Directive and EPA's May 21, 2025, clarification. Potential impacts unrelated to the permitted activity, or regulated under other authorities, were not evaluated or conditioned under this certification.

Pursuant to Clean Water Act § 401 (a)(1) and 40 CFR § 121.7 (d); and IDAPA 58.01.02.052.08, DEQ issued a 21-day public notice to solicit comments on the draft certification on 7/24/2025 through 8/13/2025. Public comments received during the 21-day comment period were considered by DEQ in making the final certification decision and establishing conditions (Appendix A).

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 purpose of the project is to reconstruct an existing dilapidated marina and convert an old recreation vehicle park into seven private homesites. The project will involve the following elements:

- Excavate and contour the existing basin
- Stabilize 3,830 feet of shoreline
- Remove an existing boat launch
- Construct a commercial dock system consisting of 88 fixed pier docks, breakwater, boat bilge pump out station, and seven private residential fixed elevation pier docks
- Construct a 70 ft by 6 ft pedestrian bridge
- Construct seven residential home sites
- Develop road, parking, and boat storage areas
- Redirect the North Branch of Trestle Creek to historic alignment, away from the marina

## 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 (POCs) for this project are sediment, nutrients that are bound to sediment, and construction-related hazardous materials (e.g., fuels). Nutrients, particularly phosphorus, can adhere to fine sediment particles and be released into the water column when sediments are disturbed.

The project may result in short-term increases in suspended sediment during in-water construction activities. These sediment effects are evaluated in the context of the § 404 activity footprint and immediate downstream effects. Longer-term sediment and nutrient contributions from general marina use, boat wake, or upland erosion that are not caused by or integral to the permitted construction activity fall under the jurisdiction of other regulatory programs (e.g., Idaho Department of Lands marina regulations, local shoreline ordinances, etc.) and are not conditioned in this certification.

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 Receiving Water Body Level of Protection

This project is located on Pend Oreille Lake within the Pend Oreille Lake subbasin assessment unit (AU) 17010214PN018L\_0L (Pend Oreille Lake). This AU has the following designated beneficial uses: cold water aquatic life, salmonid spawning, primary contact recreation, and domestic water supply (IDAPA 58.01.02.110.05). According to DEQ's most recent federally approved [Integrated Report](#), this AU is not fully supporting its cold water aquatic life, salmonid spawning, and recreation uses. Causes of impairment include flow regime modification, mercury, and total phosphorus. As such, DEQ will provide Tier I protection for the aquatic life and recreation uses on Pend Oreille Lake (IDAPA 58.01.02.051.01).

Additionally, this project is located on Trestle Creek within the Pend Oreille Lake subbasin AU 17010214PN030\_02 (Trestle Creek – source to mouth). This AU is designated for cold water aquatic life, salmonid spawning, and secondary contact recreation (IDAPA 58.01.02.110.05). According to DEQ's most recent federally approved [Integrated Report](#), this AU is not fully supporting its cold water aquatic life and salmonid spawning uses due to excess temperature. As such, DEQ will provide Tier I protection for the aquatic life use in Trestle Creek (IDAPA 58.01.02.051.01).

The contact recreation use for Trestle Creek is unassessed. DEQ must provide an appropriate level of protection for the contact recreation use using information available at the time of certification, or the applicant can assume the affected water body is high quality. The applicant has elected to assume that the water body is high quality. As such, DEQ will provide Tier II protection (IDAPA 58.01.02.051.02 and 58.01.02.052.05b), in addition to Tier I protection for the recreation use in Trestle Creek (IDAPA 58.01.02.051.01).

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).

## 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).

The following EPA-approved TMDLs have been developed for the affected AUs: *Total Maximum Daily Load (TMDL) for Nutrients for the Nearshore Waters of Pend Oreille Lake, Idaho* (DEQ

2002) and *Pend Oreille Lake Tributaries Temperature Total Maximum Daily Loads: Addendum to the Pend Oreille Lake Subbasin Assessment and TMDL* (DEQ 2007). Goals of these TMDLs are to reduce phosphorus in the nearshore waters of Pend Oreille Lake, and reduce temperature in Trestle Creek, respectively.

During the construction phase, 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. In addition, temporary and permanent erosion and sediment controls will be implemented that will minimize or prevent future sediment contributions from the project area. The project's joint permit application and supporting documents describe the applicant's proposed use of numerous construction BMPs to minimize impacts to surface waters, along with implementation of a project-specific Water Quality Management Plan. **DEQ's certification of the activity requires the implementation of measures outlined in the Water Quality Management Plan in addition to conditions listed in Section 3 of this § 401 water quality certification.**

By minimizing erosion and sedimentation, the project will also minimize the mobilization of nutrients. Nutrient sources directly related to the § 404 activity (e.g., disturbance of soils during construction) are addressed through BMPs and timing restrictions in this certification. Because Idaho's nutrient criteria are narrative (IDAPA 58.01.02.200.06), measures that prevent or minimize sediment disturbance also ensure the project meets nutrient criteria by controlling sediment-bound nutrient inputs. Other potential nutrient sources associated with upland septic systems or vessel wastewater handling are regulated by other programs, the Panhandle Health District, and Idaho State Department of Agriculture. These are outside the scope of § 401 review.

The project will not remove shade trees from the Trestle Creek riparian area, therefore thermal loads to Trestle Creek are not expected to increase as a result of the project. In addition, no measurable temperature impacts are anticipated from the in-water work as proposed. Activities under the § 404 permit are not expected to measurably alter riparian shading. Any broader project elements involving riparian vegetation management or restoration outside the § 404 work area may be addressed under separate authorizations and are outside this certification's scope.

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 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)

Trestle Creek is considered high quality for secondary 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 activities subject to the federal permit issuance will affect water quality for each pollutant relevant to the recreation use of Trestle Creek (IDAPA 58.01.02.052.06). The POCs for the project are sediment, nutrients, and construction-related hazardous materials. These POCs are not relevant to the recreation use of Trestle Creek because aquatic life is the more sensitive use. These POCs would be expected to cause impairments to aquatic life at concentrations well below that necessary to cause a recreation use impairment.

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 Trestle Creek 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 Idaho Club Marina and Community Development Project complies with Idaho's water quality standards and other appropriate water quality requirements of state law applicable to Pend Oreille Lake and Trestle Creek.

### 3.1 General Conditions

This certification is based on review of the federal joint permit application, readily available water quality related materials, and certification request submitted by the project applicant on 8/27/2024, 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.

The following conditions apply solely to the activity subject to the § 404 permit. They are necessary to assure compliance with applicable water quality requirements as required by 40 CFR 121.3. Conditions do not extend to aspects of general project operation or unrelated upland activities regulated under other programs.

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 this certification in accordance with 40 CFR § 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.

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 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.

6. Project areas must be clearly identified in the field prior to the initiation of land-disturbing activities to ensure avoidance of impacts to Pend Oreille Lake and Trestle Creek beyond project footprints.
7. The applicant shall provide access to the project site upon request to DEQ personnel for site inspection, monitoring, and to ensure that conditions of this certification are being met.

### 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. Except for the Trestle Creek restoration work described in the application supplemental *April 2024 River Design Group Design Report*, excavated or dredged material may not be used as fill without characterization and prior approval from DEQ.
2. All fill material subject to suspension will be free of easily suspended fine material. Only clean material may be placed as fill where it may interact with surface water.
3. Temporary fills will be removed in their entirety on or before construction completion.
4. 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. Temporary 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. Stockpiled materials will be placed at least 100 feet away from surface water. Silt fencing or other barriers will be placed around stockpiles to prevent runoff from entering surface water.
3. Vehicle and equipment movement will be limited to designated paths and work areas.
4. 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.
5. Permanent erosion and sediment control measures will be installed at the earliest practicable time consistent with good construction practices and will be maintained.
6. Structural fill and bank protection will consist of materials that are placed and maintained to withstand predictable high flows and wave action in the waters of the United States.
7. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during construction and replaced or augmented if they are not effective.
8. Disturbed areas suitable for vegetation will be seeded or revegetated to prevent subsequent soil erosion (EPA 2000).
9. Maximum fill slopes will be material that is structurally stable once placed and does not slough into the stream channel or lake during construction, during periods before revegetation, or after vegetation is established.
10. 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.
2. Containment measures such as silt curtains, geotextile fabrics, and silt fences must be implemented and properly maintained according to manufacturer instructions to minimize 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. If a sediment plume is observed, the project may be causing an exceedance of water quality standards, and the permittee must inspect the condition of the project BMPs. If the BMPs appear to be functioning

- improperly, then corrective action must be taken, and the permittee must modify the activity or implement additional BMPs (this may also include modifying existing BMPs).
4. If the project continues to have a visual sediment plume after BMPs have been inspected and modified, turbidity monitoring consistent with Table 1 is required.
    - a. A properly and regularly calibrated turbidimeter is required for sample collection measurements to be analyzed in the field. The turbidimeter should be calibrated before each use or according to the manufacturer's recommendations. The calibration log should be maintained and made available to DEQ upon request. Instantaneous grab samples may be collected for field analysis and taken to a laboratory for analysis as needed. When turbidity monitoring is required, a grab sample must be collected at an undisturbed area immediately upstream from the in-water disturbance or discharge to establish background turbidity levels. Background turbidity, latitude/longitude, date, and time must be recorded before monitoring downstream. A sample must be collected immediately downstream from the in-water disturbance or point of discharge and within the visible sediment plume. The turbidity, latitude/longitude, date, and time must be recorded for each sample. The downstream sample must be taken immediately following the upstream sample to obtain meaningful and representative results.
    - b. Results from the downstream sampling location must be compared to the upstream sample location or background turbidity to determine whether project activities are causing an exceedance of Idaho's water quality standards. If the downstream turbidity is 50 nephelometric turbidity units (NTUs) or greater than the upstream turbidity, then the project is causing an exceedance of the water quality standards. Any exceedance of the turbidity standard must be reported to the appropriate DEQ regional office within 24-hours of the sample event.
    - c. Earth-disturbing activities may continue once turbidity readings return to within 50 NTU over background instantaneously, or if turbidity has exceeded 25 NTU over background for more than 10 consecutive days, once turbidity readings have no longer exceeded 25 NTU over background for at least 24 consecutive hours.
    - d. Copies of daily logs for turbidity monitoring must be available to DEQ upon request. The report must describe all exceedances and subsequent corrective actions taken, including the effectiveness of the action.

**Table 1. Turbidimeter monitoring and sampling when a plume is observed.**

Turbidity Above Background <sup>a</sup>	Monitoring/Sampling Frequency <sup>a</sup>	Additional Actions Required
0 to 24 NTU	Visual monitoring every 2 hours	None
25 to 49 NTU	Sample every 2 hours	STOP work after 8 hours in every 24-hour period
25 NTU for 10 or more consecutive days	Sample before and after following instructions <sup>b</sup>	STOP work and follow instructions <sup>b</sup> ; notify DEQ regional office
50 NTU or more	Sample before and after following instructions <sup>c</sup>	STOP work and follow instructions <sup>c</sup> ; notify DEQ regional office

- a. Sample and report turbidity three times at each location. Use the maximum value of three samples to determine compliance following Table 1 directions.

- b. Instructions: If BMPs appear to be functioning properly, then the permittee must modify the activity or implement corrective action such as installing additional BMPs (this may include modifying existing BMPs) until additional sampling indicates turbidity standards are met. Sampling can cease when a sediment plume is no longer observed. Work can commence when a sediment plume is no longer observed, and measurements are consecutively below 25 NTU.
- c. Instructions: If BMPs appear to be functioning properly, then the permittee must modify the activity or implement corrective action such as installing additional BMPs (this may include modifying existing BMPs) until additional sampling indicates turbidity standards are met. Sampling can cease when a sediment plume is no longer observed. Work can commence when a sediment plume is no longer observed, and measurements are below 50 NTU.

### **3.5 Work on Lakebed, Streambanks, and in Water**

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 waters of the United States shall be restricted to areas specified in the application and supporting documents.
2. Work on the lakebed and on streambanks must be kept to a minimum and only when necessary. Equipment shall work from an upland area or barge to minimize disturbance of waters of the United States. If this is not practicable, take appropriate measures to ensure disturbance to the lakebed, streambanks, and the waters of the United States is minimized.
3. Turbidity curtains or equivalent containment measures must be used during in-water/barge work that involves sediment disturbance in Pend Oreille Lake.
4. Construction affecting the bed or banks shall occur only during periods of low pool/flow and/or corresponding with appropriate in-water work periods for aquatic life.
5. Fording Trestle Creek is not permitted.
6. Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.
7. Work in/near spawning areas must be avoided.
8. Measures shall be taken to prevent wet concrete from entering waters of the United States when placed in forms and/or from truck/equipment washing.
9. If dewatering is required, notify the DEQ Coeur d'Alene Regional Office prior to the start of dewatering.
10. The pumping of groundwater or surface water during dewatering will be done in a manner that does not cause erosion in the receiving water body.
11. 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.

### **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. 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 DEQ Coeur d'Alene Regional Office: (208) 769-1422.

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

### 3.8 Treated Wood

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.

These conditions ensure that toxic chemicals are not introduced into waters of the United States.

1. 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.
2. All treated wood must be treated in a manner consistent with the pesticide's EPA-approved labeling. As a matter of good industry practice, pressure-treated wood ties are also to be treated in accordance with standards established by the American Wood Protection Association. Additionally, only wood treated with ACQ, ACZA, CA-B, and copper naphthenate may be used. Wood treated with creosote, CCA, pentachlorophenol (Penta), or any other prohibited chemical will not be covered under this water quality certification without a completed individual Endangered Species Act consultation.
3. Adhere to the manufacturer's guidelines for proper storage, handling, and usage.
4. Materials should be stored out of direct soil or standing water, away from drainage conveyances adjacent to waters of the United States and covered until needed for use.
5. Set up a controlled workspace or designated work area with barriers to capture and contain debris to prevent it from spreading.
6. Collect and properly dispose of sawdust and wood scraps in accordance with federal, state, and local regulations. Treated wood waste should not be burned or composted.

### 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

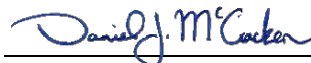
**The permittee must notify the Coeur d'Alene Regional Office when authorized work begins, when work is complete, and if the applicant or organization is transferred or changes.**

The applicant should consult Idaho Department of Fish and Game for appropriate fish protection and handling methods prior to the start of stream realignment work and prior to the start of any work that requires dewatering.

## 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 Dan McCracken, Coeur d'Alene Regional Office at (208) 769-1422 or by email at [Dan.mccracken@deq.idaho.gov](mailto:Dan.mccracken@deq.idaho.gov).



---

Dan McCracken

Regional Administrator

Coeur d'Alene Regional Office

## References

- DEQ (Idaho Department of Environmental Quality). 2002. *Total Maximum Daily Load (TMDL) for Nutrients for the Nearshore Waters of Pend Oreille Lake, Idaho*. Boise, ID: DEQ. <https://www2.deq.idaho.gov/admin/LEIA/api/document/download/12000>
- DEQ (Idaho Department of Environmental Quality). 2007. *Pend Oreille Lake Tributaries Temperature Total Maximum Daily Loads: Addendum to the Pend Oreille Lake Subbasin Assessment and TMDL*. Boise, ID: DEQ. <https://www2.deq.idaho.gov/admin/LEIA/api/document/download/12006>
- DEQ (Idaho Department of Environmental Quality). 2008. *Guidance for the Use of Wood Preservatives and Preserved Wood Products in or Around Aquatic Environments*. Boise, ID: DEQ. <https://www2.deq.idaho.gov/admin/LEIA/api/document/download/4838>
- 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). 2024. *Idaho Department of Environmental Quality 2024 Integrated Report*. Boise, ID: DEQ. <https://www2.deq.idaho.gov/admin/LEIA/api/document/download/23740>
- 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>
- RSET (Northwest Regional Sediment Evaluation Team). 2018. *Sediment Evaluation Framework for the Pacific Northwest*. Prepared by the RSET Agencies. <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll11/id/2548>
- Western Wood Preservers Institute, Wood Preservation Canada, Southern Pressure Treaters' Association, and Southern Forest Products Association. 2011. *Best Management Practices: For the Use of Treated Wood in Aquatic and Wetland Environments*. Vancouver, WA: Western Wood Preservers Institute. [https://preservedwood.org/wp-content/uploads/BMP\\_Specifiers\\_Guide.pdf](https://preservedwood.org/wp-content/uploads/BMP_Specifiers_Guide.pdf)

## Appendix A. Response to Public Comments

Commenter Number	Commenter Information
1	Priscilla Perky Hagadone; electronically received on 8/8/25
2	Will Tiedemann, Idaho Conservation League (ICL); electronically received on 8/13/25

Comment Number / Theme	Commenter Number	Comment Summary	DEQ Response
1 – DEQ’s Mission	1	Requests definition of “quality” and “human health” in DEQ’s mission statement.	In DEQ’s mission, “quality” refers to Idaho’s air, land, and water as defined by state environmental statutes and implementing rules, including numeric and narrative water quality criteria in IDAPA 58.01.02. “Human health” refers to protection from adverse environmental exposures (e.g., pollutants in air, water, or land) that could cause illness, injury, or other health effects.
2 – Environmental Impacts of Development & Alternative	1	Questions how the marina and associated residences (with potential herbicide, pesticide, fertilizer use) align with environmental protection; states marinas pollute regardless of safeguards; recommends a conservation easement instead.	DEQ’s § 401 review is limited to evaluating whether the project, as proposed and conditioned, will comply with state water quality requirements. DEQ’s review included proposed BMPs and a project-specific Water Quality Management Plan. DEQ imposed certification conditions to minimize and prevent pollutant discharges, maintain compliance with water quality criteria, and protect beneficial uses.  Decisions regarding land use, zoning, and the establishment of conservation easements are outside DEQ’s § 401 authority.

**Accessibility Services:** The Idaho Department of Environmental Quality will provide reasonable language access services and/or disability services for documents at no charge. To request an accommodation under Title VI of the Civil Rights Act of 1964 or Americans with Disabilities Act, contact DEQ’s nondiscrimination coordinator at (208) 373-0271 or [accessibility@deq.idaho.gov](mailto:accessibility@deq.idaho.gov). Para obtener información en español, visite <https://www.deq.idaho.gov/about-us/accessibility/>.

<p>3 – Predetermined Decision Concern</p>	<p>1</p>	<p>Suggests language in the draft certification indicates that DEQ made the § 401 decision before considering public comment; cites Idaho Code §74-202 (Open Public Meetings).</p>	<p>The statement that DEQ “certifies that if the permittee complies...” is standard Clean Water Act § 401 template language and does not indicate a final decision. The draft certification was issued for public review and was modified based on comments; the final decision was made after DEQ considered all comments that were received during the public comment period.</p>
<p>4 – Scope: Short-Term vs. Long-Term Pollution Sources / Antidegradation</p>	<p>2</p>	<p>States the certification does not clearly distinguish short-term construction impacts from long-term operational impacts when evaluating water quality and antidegradation. Cites DEQ’s 2024 Antidegradation Implementation Procedures, which allow short-term impacts if BMPs are used but caution against overlooking cumulative or lasting effects. Cites EPA’s 2023 401 Improvement Rule and Q&amp;A, which require review of the “entire activity,” including both construction and operation. Argues this federal rule supersedes DEQ’s scope directive and Idaho rules. Contends the certification omits analysis of long-term</p>	<p>ICL seems to imply that a Tier II analysis is required because the scope of review should include long-term pollution sources. Under DEQ’s May 6, 2024 Scope Directive, consistent with 40 CFR 121.3 and EPA’s 2023 Rule and May 21, 2025 clarification, § 401 review for § 404 permits is limited to water quality-related impacts from the permitted activity itself. DEQ evaluates both short- and long-term effects of the § 404 activity, and can impose conditions where operational elements are integral to that activity and have potential to cause noncompliance with Idaho’s standards. However, broader marina operation (e.g., vessel traffic, upland septic, general development) is regulated by other programs and is outside § 401 scope.</p> <p>Page 1 and section 3.1 have been edited to clarify DEQ’s scope of review. Sections 2.1 and 2.3 have been expanded to address short-term impacts related to potential pollutants of concern.</p> <p>Furthermore, DEQ does not conduct a Tier II analysis on water bodies receiving only Tier I protection. For this activity, the only water body receiving Tier II protection is Trestle Creek, and Tier II protection is only provided for Trestle Creek’s recreation use. Trestle Creek is not anticipated to</p>

		<p>pollution sources such as sewage, stormwater, shading changes, boat wakes/propeller wash, fuel and garbage, and pesticide/herbicide use, and must be updated to address these.</p>	<p>receive pollutants of concern that would affect the recreation use. Thus, a Tier II analysis is not required. Tier I protection is provided in the certification text consistent with 58.01.02.</p>
<p>5 – General: Lack of Quantitative or Detailed Analysis</p>	<p>2</p>	<p>Argues the certification relies on a qualitative, BMP-based approach more suitable for simple projects. State this is inappropriate for a complex marina in a sensitive ESA area. Contends the certification does not link pollutants of concern to specific project activities, nor provide detail on duration, magnitude, or supporting application materials.</p>	<p>DEQ’s review considered the complete Joint Permit Application, supporting technical reports, relevant water quality data, and applicable TMDLs. The pollutants of concern identified are those most likely to result from construction activities. The certification includes enforceable, pollutant-specific conditions such as turbidity limits, in-water work timing restrictions, and materials handling controls. These conditions directly address sediment and nutrient inputs. Reactive triggers (e.g., stop-work provisions) ensure adaptive protection. Given the project’s limited scope and duration, additional quantitative modeling of long-term pollutant inputs was not necessary to ensure compliance with applicable water quality requirements.</p>
<p>Sediment (5a)</p>	<p>2</p>	<p>Says sediment analysis ignores boat wakes/propeller wash.</p>	<p>Boat wake and propeller wash impacts resulting from marina operations are not integral to the § 404 activity and are regulated by other entities.</p>
<p>Nutrients (5b)</p>	<p>2</p>	<p>Says nutrient analysis omits upland septic and boat sewage; calls for nutrient-pathogen assessment.</p>	<p>Upland septic and boat sewage are regulated by other entities or are outside of DEQ’s § 401 scope of review.</p>
<p>Temperature (5c)</p>	<p>2</p>	<p>Argues the certification should list temperature as a</p>	<p>No riparian canopy removal is proposed for Trestle Creek, and the only shading change is from localized dock</p>

		<p>pollutant of concern because project activities may alter riparian shading and affect stream and lake temperatures; notes that TMDLs for temperature were cited but not analyzed, that restoration activities could influence shading, and that under IDAPA offsets cannot be used for Tier I waters like Trestle Creek. Commenter requests that DEQ include a temperature analysis and demonstrate antidegradation compliance.</p>	<p>structures. These changes are not expected to cause temperature exceedances, and no potential for temperature impairment was identified. Accordingly, temperature is not identified as a pollutant of concern for the § 404 activity.</p> <p><i>The Total Maximum Daily Load (TMDL) for Nutrients for the Nearshore Waters of Pend Oreille Lake, Idaho (DEQ 2002) and Pend Oreille Lake Tributaries Temperature Total Maximum Daily Loads: Addendum to the Pend Oreille Lake Subbasin Assessment and TMDL (DEQ 2007) were reviewed. The goals of these TMDLs are to reduce phosphorus in the nearshore waters of Pend Oreille Lake, and reduce temperature in Trestle Creek, respectively.</i></p> <p>Offsets are not proposed or relied upon for this project, consistent with IDAPA 58.01.02 for Tier I waters.</p> <p>See also response to comment 4.</p>
Pesticides/Herbicides (5d)	2	<p>Says cert doesn't address pesticide/herbicide use or runoff. Requests that the certification be updated to evaluate these risks and demonstrate compliance with IDAPA 58.01.02.</p>	<p>Pesticide use is regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Idaho pesticide control laws.</p>
Denial Recommendation (5e)	2	<p>Recommends denial due to deficiencies and timeline.</p>	<p>DEQ is assured that the § 404 activity, as conditioned, will comply with applicable water quality requirements. Conditions are enforceable, pollutant-specific, and based on numeric criteria and narrative standards in IDAPA 58.01.02. Denial is not warranted under the current record.</p>