Idaho Department of Environmental Quality
Final Section 401 Water Quality Certification

November 2, 2026

Project Name: Caldera Flats, NWW-2022-00344

Permit Name and Number: Nationwide Permit #29, Residential Developments

Applicant/Authorized Agent: Kevin Button (DK Land Company), Briana Schultz (Sundog Ecological Inc.)

Project Location: The project is approximately 160 acres located east of US HWY 20 approximately 10.5 miles south of the Idaho-Montana border in Island Park, Fremont County, Idaho; Parcel RP14N43E130001. 44.54324°, -111.32405°.

Receiving Water Body: Henrys Lake Outlet (ID17040202SK025_02 and ID17040202SK025_04)

Pursuant to 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 and certify that any discharge of dredged or fill material into waters of the United States will comply with water quality requirements under state law and the Clean Water Act.

In accordance with federal regulations at 40 CFR § 121.4, all project proponents must submit a request for a prefiling meeting at least thirty days in advance of submitting a certification request. A prefiling meeting request was received by DEQ on 8/17/2026. To facilitate early engagement and project coordination, DEQ accepted an opportunity to host a prefiling meeting which was conducted on 9/1/2026, to seek clarification as well as to discuss the project and potential information needs.

Based upon review of the federal 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, 9/3/2026, 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.

Pursuant to Clean Water Act § 401 (a)(1) and 40 CFR § 121.7 (d); and IDAPA 58.01.02.052.08.e.iii, DEQ issued a 21-day public notice to solicit comments on the draft

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certification on 9/22/2026 through 10/13/2026. DEQ considered comments received during the 21-day public comment period when making its certification decision, developing certification conditions, and providing additional details regarding its review. In addition, a public meeting was held on 10/28/26, to provide an additional opportunity for further discussion of the project. DEQ's responses to comments are provided in Appendix A.

This certification does not authorize activities by any other state or federal agency or any private individual or entity and does not relieve the permittee of the responsibility to obtain all other required approvals, authorizations, or permits that may be necessary for the project.

1 Project Description

The objectives of the proposed project are to reroute a wetland swale that bisects the property and install culverts to facilitate proposed residential road crossings. The proposed activities will include, but are not limited to, the following:

- Filling approximately 0.170 acres of an existing wetland swale. The swale, which carries season runoff, enters the property boundary from the northwest via a culvert under Idaho State Highway 20. The swale then bisects the property in a southeasterly direction. The wetland swale extends approximately 2,833 linear feet in the project area.
- Excavation of approximately 3,794 linear feet of a new wetland swale. The new swale would parallel Highway 20 southward and then turn southeast near the property boundary before connecting to an existing ditch. The soil excavated for the new swale will be used to fill the existing swale.
- Installation of a 36-inch diameter culvert across a wetland feature located on the eastern side of the property to facilitate a proposed road crossing. This would result in a permanent impact to 0.007 acres of wetland associated with Crooked Creek.
- Compensatory mitigation for the total permanent loss of the wetland features. Mitigation includes establishment of 0.63 acres of wetlands bordering existing Crooked Creek wetlands located in the northeast section of the property. This wetland establishment will compensate for 0.177 acres of total wetland impacts resulting from the proposed project. The new established wetland will be placed under deed restriction, not allowing for further impacts to the established wetland.

Overall, the proposed activities will result in a discharge of approximately 115 cubic yards of gravel or rock for culvert placement and fill of approximately 0.170 acres of jurisdictional wetlands, totaling permanent impacts to approximately 0.177 acres of waters of the United States and establishing 0.63 acres of created wetland through federal compensatory mitigation.

2 Antidegradation Review

Idaho's antidegradation policy only applies to waters subject to the jurisdiction of the Clean Water Act and establishes three tiers of water quality protection (IDAPA 58.01.02.051, 58.01.02.052).

Tier I Protection. The first level of protection applies to all water bodies subject to Clean Water Act jurisdiction and ensures that existing uses of a water body and the level of water quality necessary to protect those existing uses will be maintained and protected (IDAPA 58.01.02.051.01; 58.01.02.052.01). Additionally, a Tier I review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).

Tier II Protection. The second level of protection applies to those water bodies considered high quality and ensures that no lowering of water quality will be allowed unless necessary to accommodate important economic or social development (IDAPA 58.01.02.051.02; 58.01.02.052.08).

Tier III Protection. The third level of protection applies to water bodies that have been designated outstanding resource waters and requires that activities do not lower water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ employs a water-body-by-water-body approach to implementing Idaho's antidegradation policy. This approach means that any water body fully supporting its beneficial uses will be considered high quality (IDAPA 58.01.02.052.05.a). Any water body not fully supporting its beneficial uses will be provided Tier I protection for that use, unless specific circumstances warranting Tier II protection are met (IDAPA 58.01.02.052.05.c). The most recent federally approved *DEQ Integrated Report* and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

2.1 Pollutants of Concern

The pollutant of concern for this project is sediment. As part of the § 401 water quality certification, DEQ requires the applicant to comply with various conditions to protect water quality and ensure compliance with Idaho's water quality standards, including applicable water quality criteria for the identified pollutant.

The project may result in short-term increases in suspended sediment during construction activities. These effects are evaluated in the context of the § 404 activity footprint and immediate downstream waters.

2.2 Receiving Water Body Level of Protection

This project is located within the Upper Henrys subbasin assessment units (AU) ID17040202SK025_04 and ID17040202SK025_02. These AUs have the following designated beneficial uses: cold water aquatic life, salmonid spawning, primary contact recreation, and domestic water supply (IDAPA 58.01.02.150.04). 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).

According to the *DEQ Integrated Report*, the receiving water body AU ID17040202SK025_04 is fully supporting its assessed uses (IDAPA 58.01.02.052.05.a). As such, DEQ will provide Tier II protection in addition to Tier I for this water body (IDAPA 58.01.02.051.02; 58.01.02.051.01).

AU ID17040202SK025_02 is not fully supporting the aquatic life use. The only pollutant of concern associated with this project is sediment. Given that sediment primarily affects aquatic life at concentrations significantly lower than those affecting recreational uses and does not degrade water quality necessary to support contact recreation uses, DEQ focuses its sediment evaluations on aquatic life protections. Consequently, DEQ does not conduct a Tier II antidegradation analysis for contact recreation uses when sediment is the main pollutant of concern, as aquatic life protections inherently address the more sensitive endpoints (IDAPA 58.01.02.052.08).

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 must be maintained and protected (IDAPA 58.1.02.051.01 and 58.01.02.052.07). The numeric and narrative (non-numeric) 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 must 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). An EPA-approved TMDL has not been developed for AU ID17040202SK025_02 as it is composed of several disjunct segments of water bodies (e.g. lower Stephens Creek, lower Meadow Creek, and several unnamed segments); most of which have significant physical alterations to the channel morphology. These segments are located almost entirely on private property, which has impeded the ability of DEQ to collect updated monitoring data. Therefore, ID17040202SK025_02 will receive Tier I protection based on the current impairment status.

Throughout the life of the project, the applicant will implement, install, maintain, monitor, and adaptively manage best management practices (BMPs) to reduce erosion and minimize turbidity levels in receiving water bodies downstream of the project. In addition, equipment will be serviced in upland areas, equipment will not be left in or near water bodies, and disturbed areas will be reseeded with a native seed mix and monitored post construction.

For this project, the principal water-quality concern is sediment. The certification therefore requires erosion and sediment controls before and during construction, inspection and

maintenance, representative turbidity monitoring when indicated, prompt corrective action, and suspension of affected work when needed to prevent further impacts.

The applicant must implement and maintain erosion and sediment controls throughout construction and until disturbed areas are stabilized. Monitoring and inspection results must be used to evaluate BMP effectiveness and identify the need for corrective action. If monitoring, inspections, or site conditions indicate that the project is causing or is likely to cause a violation of applicable water quality standards or degradation of existing uses, the applicant must promptly implement corrective measures and suspend the affected activity when necessary to prevent further impacts.

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.

Construction activities may temporarily increase suspended sediment and turbidity in receiving waters. To protect existing and designated beneficial uses, this certification requires monitoring of turbidity above representative upstream background conditions, defined response thresholds, mandatory work stoppage when specified thresholds are reached, corrective actions, and measurable criteria for resuming work. These requirements are intended to detect and address project-related sediment releases promptly and to prevent sustained or substantial increases in turbidity. Compliance with these conditions does not replace the permittee's obligation to comply with all applicable numeric and narrative water quality criteria under IDAPA 58.01.02.

2.4 High-Quality Waters (Tier II Protection)

As noted above, the ID17040202SK025_04 AU will receive Tier II protection under IDAPA 58.01.02.051.02 and 58.01.02.052. 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 activities subject to the federal permit issuance will affect water quality for each pollutant that is relevant to the beneficial uses of the Henrys Lake Outlet (IDAPA 58.01.02.052.06). Sediment is the pollutant of concern. In evaluating potential effects to high-quality waters, DEQ considered the proposed discharge and associated construction activities, the potential for erosion and sediment delivery to receiving waters, and the erosion and sediment-control measures required by this certification.

To maintain and protect ambient water quality, permanent erosion and sediment controls must be implemented and maintained to minimize or prevent future sediment contributions from the project area, throughout the life of the project. All federally permitted activities must adhere to all conditions of this certification (Section 3). The permittee must comply with applicable water quality standards and the antidegradation requirements for high-quality waters throughout the permitted activity. If monitoring or site conditions demonstrate that the required controls are insufficient to protect high-quality water, the permittee must stop the affected activity, implement additional controls, and consult DEQ before resuming work.

If the project is conducted according to the project plans, provisions in the federal permit and conditions of this certification, then it is reasonable for DEQ to conclude that the project will comply with the state's applicable numeric and narrative criteria and that degradation of Henrys Lake Outlet 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 the Caldera Flats project complies with Idaho's water quality standards and other appropriate water quality requirements of state law applicable to the water bodies in the project area.

3.1 General Conditions

This certification is based on review of the federal permit application, readily available water quality related materials, and certification request submitted by Sundog Ecological Inc. on 9/3/2026, and is conditioned upon the requirement that any modification (e.g., change in work windows, etc.) of the permitted activity must 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.
2. If ownership of the project changes, the certification holder must notify DEQ, in writing, upon transferring this ownership or responsibility for compliance with these conditions to another person or party. The new owner/operator must request, in writing, the transfer of this water quality certification to the new name.
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.
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.
5. The applicant must provide access to the project site upon request by DEQ personnel for site inspections, monitoring, and/or to ensure that conditions of this certification are being met.
6. Projects must be conducted in a manner that complies with numeric and narrative criteria in Idaho's water quality standards, including criteria for sediment, turbidity, temperature, and dissolved oxygen.
7. If this project disturbs more than 1-acre and there is potential for discharge of stormwater to waters of the state, coverage under the DEQ Stormwater Permit Program may be required. This condition is necessary to ensure that work authorized under the federal permit complies with water quality requirements prohibiting unauthorized stormwater discharges, including without limitation 33 U.S.C. § 1311(a), 33 U.S.C. § 1342(p), IDAPA 58.01.02.080, and IDAPA 58.01.02.400.

3.2 Design, Implementation, and Maintenance of Best Management Practices (BMPs)

The following condition is necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.251, IDAPA 58.01.02.252, IDAPA 58.01.02.350, and IDAPA 58.01.02.401.

1. BMPs must be properly designed, implemented, and maintained to protect beneficial uses and minimize pollutant loading to surface waters. Proper installation and operation of BMPs are required to ensure the provisions of IDAPA 58.01.02.052 are met. To ensure that BMPs are operating properly and to demonstrate that degradation has not occurred, the permittee must monitor and evaluate BMP effectiveness daily during project activities to ensure that water quality standards are met.

The permittee must document each inspection, including the date and time, BMPs inspected, observed deficiencies or evidence of erosion or sediment discharge, corrective measures implemented, and the results of those measures. Inspection logs and corrective-action records must be retained through completion of construction and post-construction stabilization, maintained on site or readily accessible to the permittee, and provided to DEQ upon request.

DEQ publishes the *Idaho Catalog of Storm Water Best Management Practices* (DEQ 2020), which identifies approved practices for controlling erosion and sediment during and following construction. Alternative sources of BMPs may be used only where consistent with state water quality standards and the conditions of this certification.

3.3 Fill Material

The following conditions are necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.210, IDAPA 58.01.02.250, IDAPA 58.01.02.251, IDAPA 58.01.02.252, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

1. Fill material subject to suspension will be free of easily suspended fine material. Only clean materials may be placed as fill.
2. If dredged material is proposed for use as fill material and there is a possibility the material may be contaminated, then the permittee must assess and characterize sediment to determine the suitability of dredge material for unconfined-aquatic placement; determine the suitability of post-dredge surfaces; and predict the effect on water quality during dredging. Sediment assessment and characterization following the procedures in the *Sediment Evaluation Framework for the Pacific Northwest* (RSET 2018) satisfies this requirement. A different assessment and characterization methodology may be used if DEQ approves the methodology in writing.
3. When sand is utilized as fill material, appropriate BMPs must be implemented to ensure sand will not be easily dispersed (e.g., filter fabric anchored over the sand or other confinement).
4. Temporary fills must be removed in their entirety on or before construction completion.

3.4 Erosion and Sediment Control

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

1. BMPs for sediment and erosion control suitable to prevent exceedances of Idaho's water quality standards and consistency with TMDLs must be selected and installed before starting construction at the site.

2. Temporary and permanent erosion and sediment control measures must be installed around the perimeter of the project or initial work areas to control and prevent excess sediment from entering waters of the United States.
3. Temporary and permanent erosion and sediment control measures must be installed at the earliest practicable time consistent with good construction practices and must be maintained as necessary throughout the project.
4. Structural fill or bank protection must consist of materials that are placed and maintained to withstand predictable high flows in the waters of the United States.
5. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation and replaced or augmented if they are not effective. BMP inspection logs and documentation of corrective measures (if necessary) must be maintained on site, along with a copy of this certification and provided to DEQ upon request.
6. All excess dredged or fill material generated by the authorized activity must be contained and properly disposed of at an appropriate off-site disposal location.
7. Disturbed areas suitable for vegetation must be seeded or revegetated to stabilize soils and prevent erosion to the maximum extent practicable (EPA 2000).
8. Maximum fill slopes must be material that is structurally stable once placed and does not slough into the stream channel during construction, during periods before revegetation, or after vegetation is established.
9. Sediment from disturbed areas or sediment that can be tracked by vehicles onto pavement must not leave the site in amounts reasonably expected to enter waters of the United States. Placement of clean aggregate at all construction entrances or exits and other BMPs such as truck or wheel washes, if needed, must be used when earth-moving equipment will be leaving the site and traveling on paved surfaces to prevent track-out.

3.5 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. Before beginning earth-disturbing activities that could affect receiving waters, the permittee must identify the upstream/background and downstream turbidity-monitoring locations on a site plan and provide the plan to DEQ. Monitoring locations must be representative of background conditions and project-related effects, respectively, and must be maintained at consistent locations unless DEQ approves a change. If site conditions require a change in monitoring locations, the permittee must document the reason for the change and notify DEQ.
2. Sediment resulting from activities—including BMP failures, construction mishaps, spills, or any unplanned event—must be mitigated to prevent violations of Idaho's water

quality standards. Any violation of this standard must be reported to the DEQ regional office immediately.

3. Throughout the life of the project, the applicant must implement, maintain, monitor, and adaptively manage BMPs—such as silt curtains, geotextile fabrics, and silt fences—to minimize instream sediment suspension, turbidity, and the potential for spills or mishaps to affect surface waters.
4. Visual observation may be used to identify project-related turbidity. If a visible sediment plume is observed, the permittee must immediately inspect the activity area and BMPs, identify the likely cause, and implement corrective measures as necessary. The permittee must modify or stop the activity contributing to the plume when needed to prevent further sediment delivery or protect water quality. A visible plume initiates this response but, by itself, does not establish a violation of Idaho water quality standards. If the plume persists after initial corrective measures, the permittee must conduct turbidity monitoring in accordance with Table 1 and Appendix A.
1. If a visible sediment plume persists after corrective measures have been implemented, turbidity monitoring consistent with **Table** 1 and Appendix A is required.
    a. A properly and regularly calibrated turbidimeter is required for field measurements. The turbidimeter should be calibrated before each use or in accordance with the manufacturer's recommendations. Calibration logs must be maintained and made available to DEQ upon request. Instantaneous grab samples must be collected upstream of the disturbance to determine background turbidity and downstream within the visible plume to evaluate project impacts. Location, date, time, and turbidity values must be recorded for each sample.
    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.

       Any exceedance of the turbidity standard must be reported to the DEQ regional office within 24 hours of the sample event.
    c. When turbidity monitoring identifies a condition requiring work to stop under Table 1, the permittee must stop the affected earth-disturbing activity, inspect the work area and BMPs, and implement corrective measures before resuming the activity.
    d. Work (or earth-disturbing activities) may resume when turbidity readings return to within 50 NTU above background, or if turbidity has exceeded 25 NTU above background for more than 10 consecutive days, once readings have remained below 25 NTU above background for at least 24 consecutive hours.
    e. Daily turbidity monitoring logs must be available to DEQ upon request. Logs must describe all exceedances, the causes (including spills or incidents, if applicable), corrective measures taken, and the effectiveness of those measures.

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

Turbidity Above Background[a]	Monitoring/Sampling Frequency[a]	Additional Actions Required
0 to 24 NTU	Visual monitoring every 2 hours. No sampling required.	None
25 to 49 NTU	Collect samples every 2 hours.	Continue work for up to 8 hours within any 24-hour period, then STOP work until turbidity returns to acceptable levels.
25 NTU for 10 or more consecutive days	Sample before and after implementing corrective actions, following instructions[b]	STOP work, implement corrective actions, and follow instructions[b]; notify DEQ regional office
50 NTU or more	Sample before and after implementing corrective actions, following instructions[c]	STOP work, implement corrective actions, and follow instructions[c]; notify DEQ regional office

a. For any required turbidity sampling, collect and report three measurements at each monitoring location. Use the maximum value of three measurements to determine compliance following Table 1 directions.
b. Instructions: If BMPs appear to be functioning properly, the permittee must modify the activity or implement corrective actions, such as installing additional or modifying existing BMPs, until turbidity measurements indicate turbidity standards are met. Sampling may cease once a sediment plume is no longer observed. Work may resume when the sediment plume is no longer visible and turbidity measurements remain consecutively below 25 NTU.
c. Instructions: If BMPs appear to be functioning properly, the permittee must modify the activity or implement corrective action, such as installing additional or modifying existing BMPs, until turbidity measurements indicate turbidity standards are met. Sampling may cease when the sediment plume is no longer visible. Work may resume when the sediment plume is no longer visible and turbidity measurements remain below 50 NTU.

3.6 In-Water Work

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

1. When practicable, equipment must work from an upland site to minimize disturbance of waters of the United States.
2. Construction affecting the water bodies must generally occur during low-flow periods, and where practicable, coincide with suitable in-water work periods for aquatic life.
3. To the maximum extent practicable, where fill is needed, temporary crossings must be installed perpendicular to the channel and located in areas that will result in the least environmental impact. Temporary crossings must be stabilized with clean gravel or treated with other measures that are equally effective in reducing impacts. All temporary crossings must be removed as soon as possible after project completion or when they are no longer needed.
4. To the maximum extent practicable, heavy equipment operating in wetlands must be placed on mats or suitably designed pads to prevent damage to wetland soil and vegetation. However, during winter conditions, mats or pads may not be required if the ground is adequately frozen and construction activities are expected to result in minimal impacts.
5. In-water activities in spawning areas must be avoided to the maximum extent practicable during spawning and incubation periods.

6. Prior to project commencement, the applicant should consider contacting the Idaho Department of Lands (IDL) and Idaho Department of Fish and Game (IDFG) offices for potential permit applicability.
7. Prior to the start of in-water work, the applicant must contact the local IDFG Regional Office to determine if spawning areas are present in the work area, and if so, the applicant must work with IDFG to determine an appropriate work window so as not to disturb spawning fish, incubating fish eggs, or newly emerged fry.
8. Prior to conducting fish salvage activities, the applicant must obtain all necessary authorizations, permits, and approvals. Fish salvage activities must be conducted by qualified personnel in accordance with a valid IDFG *Scientific Collecting Permit* and any applicable permit conditions. Applications for an IDFG Scientific Collecting Permit must be submitted a minimum of thirty days before fish salvage activities occur, unless otherwise authorized by IDFG. The applicant must comply with conditions specified in the salvage plan outlined in the Scientific Collecting Permit, including approved salvage activities and relocation requirements for salvaged fish. Additional authorizations, permits, or approvals required for the handling of species protected under the Endangered Species Act must also be obtained, as applicable.
9. Wastewater from concrete washout and equipment cleaning must be managed to prevent discharge to waters of the United States. Control measures must be maintained to prevent or minimize the potential for wet concrete, slurry, or wash water from entering waters of the United States.
10. To the maximum extent practicable, equipment operating over water or directly adjacent to the channel must utilize environmentally acceptable lubricants or hydraulic fluids that are less toxic to fish and other aquatic organisms.

3.7 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 practicable, locate staging areas and access points in open, upland areas.
    a. Fencing and other protective barriers should be used to mark the construction areas.
    b. To the maximum extent practicable, minimize disturbance of native vegetation to reduce soil erosion, sediment delivery of sediment to waterways, and impacts to aquatic biota.
2. Existing riparian vegetation within the project area must remain undisturbed to the maximum extent practicable. Where disturbance is unavoidable, implement BMPs to minimize impacts and replant disturbed areas with native riparian species that provide equivalent or improved shading, bank stability, and habitat functions within the current or next appropriate planting season.

3. Where project activities unavoidably remove native riparian or wetland vegetation, successfully reestablish native species within the current or next appropriate planting season to the maximum extent practicable. Restoration must achieve, at minimum, pre-project levels of water quality benefit or result in an overall ecosystem improvement.

3.8 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 must 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 must be provided for all chemical materials stored or used on-site to prevent spills, leaks, or releases to soil or waters of the United States. Containment systems must be designed and maintained in accordance with applicable industry standards and manufacturer recommendations.
3. Daily inspections of all fluid systems on equipment to be used in or near waters of the United States must ensure no leaks or potential leaks exist before equipment use. A logbook of daily equipment inspections must be kept on site and provided to DEQ upon request.
4. Equipment and machinery must not be refueled, repaired, or serviced within waters of the United States.
5. Equipment and machinery must 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.
6. Emergency spill response procedures must be in place and include a spill response kit (e.g., oil absorbent booms or other equipment).
7. 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 waters of the United States.
    c. Call 911 if immediate assistance is required to control, contain, or clean up the spill. If no assistance is needed in cleaning up the spill, contact the appropriate DEQ regional office during normal working hours or Idaho State Communications Center after normal working hours (1-800-632-8000). If the spilled volume is

above federal reportable quantities, contact the National Response Center (1-800-424-8802).

d. Contact Idaho Falls Regional Office: (208) 528-2650.

8. Collect, remove, and properly dispose of spill and cleanup materials in accordance with all federal, state, and local regulations.

3.9 Culverts

The following conditions to control erosion, sediment, and turbidity are necessary for the protection of beneficial uses according to Idaho's water quality standards, including without limitation IDAPA 58.01.02.200 and IDAPA 58.01.02.250.

1. To prevent road surface and culvert bedding material from entering a stream, culvert crossings must include BMPs to retain road base and culvert bedding material. For perennial waters, the permittee should consider Idaho's "Stream Channel Alterations Rules" (IDAPA 37.03.07). Another source of BMPs for culvert installation are found in the "Rules Pertaining to the Idaho Forest Practices Act" (IDAPA 20.02.01). Examples of BMPs include, but are not limited to: parapets, wing walls, inlet and outlet rock armoring, compaction, suitable bedding material, anti-seep barriers such as bentonite clay, or other acceptable roadway retention systems.
2. Culverts must be sized appropriately to maintain the natural drainage patterns.
3. Culverts must not constrict the stream channel or direct flow toward the streambank. Adequate grade control must be installed to prevent channel erosion or sediment buildup.
4. Culverts for fish-bearing waterways must be installed so they do not impede fish passage.
5. The culvert outflow must be armored with riprap to provide erosion control. This riprap will be clean, angular, dense rock that is free of fines and resistant to aquatic decomposition.

3.10 Dredge Material Management

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.

1. Upland disposal of dredged material must prevent the material from reentering waters of the United States.

3.11 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 must be taken to avoid excess application and introduction of chemicals into waters of the United States.

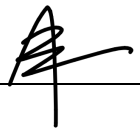
4 Required Notification

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

5 Right to Appeal Final Certification

The final § 401 Water Quality Certification may be appealed by submitting a petition to initiate a contested case, pursuant to Idaho Code § 39-107(5) and the "Rules of Administrative Procedure before the Board of Environmental Quality" (IDAPA 58.01.23), within 35-days of the date of the final certification.

Questions or comments regarding the actions taken in this certification should be directed to Destiny Locke, 208-528-2650, destiny.locke@deq.idaho.gov.



Alex Bell
Surface Water Manager
Idaho Falls Regional Office

References

DEQ (Idaho Department of Environmental Quality). 2020. *Idaho Catalog of Storm Water Best Management Practices*. Boise, ID. 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. 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/utils/getfile/collection/p16021coll11/id/2548

Response to Public Comments

After the draft certification was issued for public comment, DEQ received comments from numerous parties. Changes were made to the certification to provide clarity and ensure water quality protection. A public meeting was held on October 28, 2026, in Island Park to provide an additional opportunity for further discussion of the project. DEQ's responses to comments are as follows:

1. Comment (Julie Livsey)

I am writing to strongly oppose the proposed alteration and rerouting of the wetlands and waterways associated with the Caldera Flats Project.

These wetlands and natural waterways have existed for generations and provide important habitat, water, food, and refuge for the wildlife that call Island Park home. Changing the natural flow of water and installing roads and culverts through this habitat could have impacts that extend well beyond the stated 0.17 acres of direct disturbance.

Island Park has experienced significant growth, and with that growth, wildlife has already lost increasing amounts of natural habitat to roads, homes, and development. There is a point where we need to recognize what remains and protect it. These wetlands are not simply undeveloped land waiting to be built on—they are functioning natural habitat that wildlife has relied upon for generations.

I am particularly concerned about rerouting the wetland swale and changing the natural movement of water through this area. Altering the hydrology could affect surrounding wetlands, vegetation, wildlife habitat, sediment and erosion, and downstream water quality.

I respectfully ask DEQ to carefully consider the long-term and indirect effects of these changes, not just the immediate construction footprint. I also ask that alternatives be considered that would avoid or substantially reduce impacts to these wetlands and waterways.

Island Park's natural environment is one of the reasons people value this community. As development continues, I believe it is increasingly important to preserve the remaining natural lands and waterways for the wildlife that depend on them.

Thank you for considering my concerns and for your responsibility to protect Idaho's water resources.

DEQ Response:

Under Clean Water Act (CWA) § 404, the US Army Corps of Engineers (USACE) authorizes discharges of dredged or fill material within waters of the United States. The proposed activities from the Caldera Flats project will be authorized by USACE Nationwide Permit (NWP) 29, which includes conditions and requirements to minimize the impacts to waters of the United States, as they relate to residential development projects. In addition to federal authority of USACE, the regulatory authority for oversight of this and any development project is divided among any other applicable federal, state, and local government and/or agency.

The Idaho Department of Environmental Quality's (DEQ's) role in this process is to evaluate whether or not the federally permitted activities and related permit conditions comply with state water quality standards and any other water quality requirements under state law. The water quality certification is therefore strictly limited to the scope of the activities authorized in the USACE permit. This certification does not authorize activities by any other state or federal agency or any private individual or entity and does not relieve the permittee of the responsibility to obtain all other required approvals, authorizations, or permits that may be necessary for the project.

Many of the general conditions of the water quality certification address the concerns raised in this comment (i.e., long-term impacts, vegetation, erosion, sedimentation, and water quality; see Section 3). In response to this comment, DEQ has added textual detail in Sections 2.3 and 2.4 to better explain how the conditions in the water quality certification address short- and long-term impacts and how best management practices will specifically protect beneficial uses in the project area.

DEQ agrees that wetland habitats provide important services and all potential impacts from federally permitted activities should be closely scrutinized. Compensatory mitigation is one strategy to offset permanent losses of wetland resources. As part of the USACE permit authorization, the project will require the creation of 0.63 acres of new wetland habitat to compensate for the permanent loss of 0.177 acres of wetland habitat. DEQ has added textual details to Section 1 to describe required compensatory mitigation that was not included in the original 401 draft.

Under CWA§ 404, USACE holds the primary responsibility for regulating and permitting activities in jurisdictional wetlands, with oversight from the U.S. Environmental Protection Agency (EPA) (33 CFR Parts 320-334). As mentioned in the certification, per CWA § 401 and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., DEQ has authority to review and certify that any discharge of dredged or fill material into waters of the United States will comply with water quality requirements under state law and the CWA. The review is limited to the water quality-related impacts from the activity subject to the USACE § 404 permit, including the activity's construction and any integral operational elements directly tied to that activity. The review does not extend to aspects of general project operation or ancillary upland activities that are subject to other federal, state, or local regulatory authorities, as DEQ does not have this state regulated authority. Furthermore, this certification does not relieve the permittee of the responsibility to obtain all other required approvals, authorizations, or permits that may be necessary for the project.

Additionally, alternative analyses are reviewed, and compensatory mitigation is scrutinized and administered by USACE under the federal mitigation rule, with EPA oversight (33 CFR Parts 325 and 332). The long-term and indirect effects of the proposed changes have been evaluated and are not deemed to exceed state water quality standards so long as the applicant adheres to the § 404 federal permit with the § 401 water quality certification. The permanent loss of 0.177 acres of jurisdictional wetlands for the proposed project is fully being mitigated for, monitored, and held to performance standards according to federal requirements of the § 404 permit.

2. Comment (Katie Cook)

I understand private property rights, and I'm not against development. Growth happens, communities change, and I understand that people have a right to use their land. But there are certain places where what is lost can never be replaced, and the Island Park flats are one of those places.

For generations, that open land has remained largely untouched. It's wildlife habitat, it's part of the trail system and recreation people love, but more than anything, that wide-open landscape is part of the identity of Island Park. It's one of the first things you picture when you think about this place.

A development of this size doesn't just add houses. It permanently changes the landscape, wildlife movement, traffic, infrastructure, recreation, views, and eventually the size and character of the entire community. Once roads are cut, utilities are installed, homes are built and that open space is divided up, there is no going back. We can never decide 20 years from now that we made a mistake and restore what was there.

That's what makes this so heartbreaking. Island Park can grow without sacrificing the very places that make people love it in the first place. To me, developing the flats feels like allowing a subdivision inside Yellowstone or the Grand Canyon. Some landscapes are bigger than their property lines. Once they're gone, they're gone—and Island Park will never be quite the same.

DEQ Response:

Please see response to Comment 1.

3. Comment (Lisa Nichols)

Please leave the flats the way they are now!

It is one of the most beautiful places in Island Park. You add subdivisions and you ruin it, not to mention the wildlife and the eco system!!

DEQ Response:

Please see response to Comment 1. The purpose of the water quality certification is to ensure federally permitted projects comply with Idaho state water quality standards and any other water quality requirements under state law. DEQ determination is therefore exclusively focused on water quality requirements under state law and the Clean Water Act. This certification does not authorize activities by any other federal or state agency or any private individual or entity and does not relieve the permittee of the responsibility to obtain all other required approvals, authorizations, or permits that may be necessary for the project. DEQ has no authority to deny a private landowner their ability to develop their property so long as they comply with the water quality certification.

4. Comment (Mike Simi)

I am writing to you this evening from my cabin near the McCrea Bridge. It is on land set up by George McCrea.

I ask you to please reconsider opening up the flats to housing and here are my reasons.

The property was zoned AG and the buyers knew that. Why should we change that? I agree they can do what they want with their land, WITHIN the original use and zoning. I would not expect my 1 acre residential lot to be changed so I could open a McDonald's.

The flats look sensitive and there is not much elevation to provide for septic and utilities before leaching into Henry's Lake outlet and then to a renown fishing location, Henry's Fork. Why risk it?

I enjoy driving by that area and the views it provides.

I agree with others that there should be some considerations for affordable housing for locals. There are a few tiny house/cabin developments along Hwy 20 all dedicated to rental. Why not identify an area and allow small lots and tiny / medium homes for primary residence only?

Thank you for your consideration.

DEQ Response:

Local government ruling, including zoning rules and regulations, is not within the scope of the water quality certification. The water quality certification ensures the project complies with state water quality standards and any other water quality requirements under state law.

Any proposed septic system or other subsurface sewage disposal system associated with future development of this property must adhere to the standards for the design, construction, siting, and use of onsite wastewater systems (IDAPA 58.01.03). Eastern Idaho Public Health (EIPH) administers these rules in Eastern Idaho under a memorandum of understanding (MOU) with DEQ. EIPH conducts site evaluations, issues septic system permits, inspects installations, and assists with property-specific questions about permitting, existing systems, and permit records.

5. Comment (Kasey DeMarco)

My family homesteaded property in Island Park many moons ago. Every time we visit we drive through the flats to get to our families land and that portion of island park makes my heart skip a beat every time. My last trip a couple weeks ago I was fortunate enough to see a fox on the hunt and a herd of pronghorn.

Over the years Island Park has lost much of its rustic charm it has had for so long as development keeps popping up all over. The flats are truly the last stretch that feels untouched and hasn't changed in my lifetime.

To see it lost to development would be a crime. Not every inch of land needs to be taken for homes, airports or other such things. There are plenty of places in Island Park that are being developed as we speak, why take all of what makes the place so special. Please reconsider developing this special area, that is home to so many wonderful animals and makes Island Park so special.

DEQ Response:

Please see responses to Comments 1 and 3.

6. Comment (Susan Marcia Homer)

I'm not a conservation specialist but I value the Caldera Flats of Fremont County, the ecosystem and wetlands that provide habitat for the fowl and animals. Yesterday, there was a large herd of pronghorn grazing in this area. This is an important migration path for pronghorn, elk, even bears who often walk the willows by the stream. It should remain a protected area free of human development for the benefit of the fowl and animals.

DEQ Response:

Please see response to Comment 1.

7. Comment (Cortni Levitz)

Please see Appendix B. Comment 7.

DEQ Response:

DEQ's review under § 401 is limited to the water-quality-related impacts of the activity subject to the USACE § 404 permit, including construction and integral operational elements directly related to that activity.

1. Contrary to being treated as an obstacle, the swale and all other waters jurisdictional to CWA regulatory authority is the trigger for additional permit requirements and certification from DEQ. DEQ evaluated the proposed swale reroute in the context of applicable Idaho water quality standards, including the requirement to maintain and protect existing beneficial uses and, where applicable, high-quality waters.
2. The certification identifies sediment as the pollutant of concern and includes conditions addressing erosion and sediment control, turbidity, and culvert installation. These conditions are included in the certification to minimize the impacts of sedimentation within and adjacent to the project area. DEQ has included additional details regarding

best management practices (BMP) management to Sections 2.3 and 3.2. DEQ does not require public reporting and independent verification requirements as part of certification conditions, but should turbidity exceedances be reported, the public may request records for review and evaluation.

3. The conditions related to turbidity in the certification are based on Idaho's water quality standards (IDAPA 58.01.02). Project-specific details (i.e., sampling locations) are not included in the certification, as these details are subject to change due to numerous factors. Water quality standards are created through the negotiated rulemaking process, including recommendations from EPA and public involvement throughout the rule development. Visit DEQ's rulemaking web page to learn more about this process.
4. DEQ's conditions in the draft certification are general in nature and require the permittee to design, implement, maintain, and evaluate BMPs during project activities. Overly prescriptive conditions would not allow for flexibility for conditions that are often dynamic. DEQ has added additional textual detail related to BMPs in Section 2.3 and 2.4.
5. NWP 29 provides provisions to protect aquatic life passage (see NWP-29 Condition 2).
6. DEQ has added additional project details in Section 1. The summary in DEQ's water quality certification is not intended to be all inclusive. All federally permitted activities are subject to the provisions and conditions of the water quality certification.
7. DEQ posts draft § 401 water quality certifications for public review and comment per IDAPA 58.01.02.052.08. The public notice and the availability of supporting technical documents are separate considerations, and applicable public notice requirements do not necessarily require all application materials to be attached to the notice. DEQ's standard practice does not include posting the underlying federal permit application or all supporting application materials with the draft certification. Additional permitting documents can be requested by submitting a Freedom of Information Act (FOIA) request to the USACE. All documents submitted to DEQ with the Request for Certification can be requested by submitting a public records request on DEQ's website.
8. Idaho's antidegradation policy determines the required protection level for waters in the project area.
9. The draft certification identifies the public comment period as September 22 through October 13, 2026. This discrepancy resulted from a clerical error. DEQ became aware of the error on October 9, 2026, and corrected the public-facing notice to reflect the October 13, 2026, comment deadline.
10. The commenter's request to deny or postpone certification is acknowledged. DEQ's decision is based on the applicable statutory and regulatory requirements, the project record, and whether the activity can be certified with conditions that provide reasonable assurance of compliance with applicable water quality requirements.

8. Comment (Stacy Gerhards)

Please see Appendix B. Comment 8.

DEQ Response:

Please see response to Comment 7.

The USACE is the permitting authority for § 404 permits. DEQ's standard practice does not include posting the underlying federal permit application or all supporting application materials with the draft certification. Additional permitting documents can be requested by submitting a Freedom of Information Act (FOIA) request to the USACE. All documents submitted to DEQ with the Request for Certification can be requested by submitting a Public Records Request on DEQ's website.

For projects with permanent loss of waters of the United States, USACE may require mitigation. As part of the USACE permit authorization for this project, the applicant will be required to create 0.63 acres of new wetland habitat to compensate for the permanent loss of 0.177 acres of wetland habitat. DEQ has added textual details to Section 1 to describe required compensatory mitigation. DEQ's certification conditions are required to ensure Idaho water quality standards are not exceeded for the life of the project.

The level of required protection for waters in the project area is determined by Idaho's antidegradation policy (58.01.02.051). Primary pollutant of concern is sediment, which applies to all waters in the project area. The required conditions provided in DEQ's certification will ensure that the potential sedimentation impacts from sedimentation are minimized to the extent that Tier I and Tier II antidegradation goals are satisfied. These certification conditions are based on Idaho's narrative and numeric criteria. The permanent impacts will be addressed by the required compensatory mitigation from the USACE permit.

9. Comment (Paul Kern)

I own ten acres immediately adjacent to the property in question owned by the Buttons. (Sec 13 TWP 14 RGE 43)

On my acreage there are two ponds that have supplied water to horses, cattle, sandhill cranes and to a herd of 20 antelope.

I am concerned that any diversion and disruption of ground water flow will dry out my ponds and negatively impact both livestock and wildlife that have depended on this water for the twenty plus years I have owned this property.

I trust that in your evaluation and studies you will take my concern into consideration.

Since the Buttons are basing their project on property rights, it would stand to reason that impacted neighboring property rights should be taken into consideration as well.

DEQ Response:

Please see response to Comment 1.

10. Comment (Neal Wickham)

I grew up in Ashton and my family lived in West Yellowstone for several years. We owned land off the Meadow Creek road for several year on east side of the Flats. The Flats are both scenic and wildlife rich. The wetlands are the greater part of their beauty and destroying any part will be detrimental to all of Fremont County. Fremont County commissioned scenic mapping in 2007 and the County Visual Sensitivity Assessment, completed in March 2008. The overlay maps were later incorporated in GIS. Any who saw them on GIS thought they were part of the development code and believed the Flats were safe from destruction. That was not the case, however. Despite the overlay maps being available in GIS, it was later revealed that the overlay maps and associated plan was never adopted by the county.

There are also wetland maps on the County GIS and rules about setback from wetlands. The Buttons are now challenging those. So the protection that the county indicated were in place are falling by the wayside and or being ignored do the detriment of the of the county. The decision made by P&Z was the correct decision and the commissioner's actions and reasons for overturning that decision is suspect. If there is legal action against the county, I intend to support it.

DEQ Response:

Please see responses to Comments 1 and 4.

11. Comment (Cathy Koon)

Please see Appendix B. Comment 11.

DEQ Response:

As mentioned above, if the applicant meets the requirements set forth by the federal permit and the additional water quality conditions in the certification, based on the review explained in Section 2 of the certification, the applicant will meet the state's water quality standards. If the applicant fails to meet requirements of the permit or associated certification, USACE and DEQ will coordinate on the appropriate response. See DEQ's responses to Comment 1 and Comment 8. Water rights and private wells are administered by Idaho Water Resources (Idaho Code § 42-201 and § 42-235) and do not pertain to the water quality certification.

12. Comment (Leanne Yancey)

Please see Appendix B. Comment 12.

DEQ Response:

Please see responses to Comment 4 and 1. USACE determines if the application is a single and complete project under the § 404 permit. The applicant is held federally accountable for the due diligence of the submitted materials.

13. Comment (Glade Mason)

Please see Appendix B. Comment 13.

DEQ Response:

Please see response to Comment 1. The applicant is accountable for the due diligence of the submitted materials as part of the § 404 permitting process. DEQ's standard practice does not include posting the underlying application or all supporting application materials with the draft certification. Although joint applications submitted to the USACE generally include project maps or figures, these materials are not routinely reposted by DEQ as part of the public comment notice. Compensatory wetland mitigation for this project is a federal requirement. DEQ has added this language to the project description.

Additional permitting documents can be requested by submitting a Freedom of Information Act (FOIA) request to the USACE. All documents submitted to DEQ with the Request for Certification can be requested by submitting a public records request on DEQ's website.

Water quality certifications ensure projects comply with state water quality standards and any other water quality requirements under state law. The ID17040202SK025_02 AU is composed of several disjunct segments of water bodies (e.g., lower Stephens Creek, lower Meadow Creek, and several unnamed segments); most of which have significant physical alterations to the channel morphology. These segments are located almost entirely on private property, which has impeded the ability of DEQ to collect updated monitoring data. In the draft water quality certification, DEQ determined ID17040202SK025_02 would receive Tier I protection based on the current impairment status.

To ensure the existing instream water uses and the level of water quality necessary to protect the existing uses are maintained and protected, DEQ included several conditions and provisions in the draft water quality certification. These conditions largely focus on BMPs to reduce sedimentation in the water bodies within the project area. Additional textual details have been added to Sections 1, 2.3, and 2.4 to address comment concerns related to project descriptions, sedimentation, and tiering.

Water rights and groundwater management are administered by Idaho Water Resources (Idaho Code § 42-201 and § 42-233) and do not pertain to the water quality certification. Please see response to Comment 7 regarding oversight.

14. Comment (Bruce P. Ellin)

I wish to vehemently protest the proposed housing project for the Caldera Flats area by Henry's Lake. This a pristine area for wildlife movement and the worst thing that could happen is to mess with their migration area's in the whole of the Caldera Flats region. That area is growing enough without putting a bunch of houses on that side of highway 20. Let's just say that if that project is allowed it will be one of the stupidest ideas allowed of too many stupid land use debacle's ever contrived. Thank you for your time.

DEQ Response:

Please see response to Comment 1.

15. Comment (Anthony Gerhards)

Please see Appendix B. Comment 15.

DEQ Response:

Please see Comment 7. Additionally, all of DEQ's monitoring and assessment information related to the ID17040202SK025_02 AU can be publicly accessed on DEQ's website. This AU is listed as Category 5 based on bioassessment data collected in 1994. Waters with identified impairments that require the development of total maximum daily loads are categorized as Category 5. All of the bioassessment data are publicly available on DEQ's Integrated Report interactive mapper. 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). Additional text has been added to Section 1, 2.3, and 2.4 to explain DEQ's evaluation of specific project activities, tiering, and corrective action. DEQ has included a condition in section 3.9 of the draft water quality certification to install culverts in a manner that does not impede fish passage.

16. Comment (Leanne Yancey)

Please see Appendix B. Comment 16.

DEQ Response:

Please see responses to Comment 1 and 7.

17. Comment (Ron & Heidi Cervi)

As Island Park property owners with a family background in engineering and construction, we strongly oppose the proposed Caldera Flats subdivision.

From a common sense construction standpoint, developing sensitive wetlands, altering natural drainage, and increasing runoff pose serious risks to Henry's Lake and its ecosystem.

Just because land can be developed does not mean it should be. The community has voiced its opposition, and the Planning and Zoning Commission voted to deny the subdivision. These concerns deserve to be respected.

We respectfully request that Idaho DEQ withhold water-quality certification until the environmental impacts are thoroughly evaluated and adequate protections demonstrated.

Please confirm receipt of our comments and include them in the official public record for the Caldera Flats water-quality certification. Thank you for your consideration.

DEQ Response:

Please see response to Comment 1, as this certification does not relieve the permittee of the responsibility to obtain all other required approvals, authorizations, or permits that may be necessary for the project.

18. Comment (JoAnn and Mike Farrell, Ron and Jane Peterson)

Please see Appendix B. Comment 18.

DEQ Response:

Water quality certifications ensure projects comply with state water quality standards and any other water quality requirements under state law. The ID17040202SK025_02 AU is composed

of several disjunct segments of water bodies (e.g., lower Stephens Creek, lower Meadow Creek, and several unnamed segments); most of which have significant physical alterations to the channel morphology. These segments are located almost entirely on private property, which has impeded the ability of DEQ to collect updated monitoring data. In the draft water quality certification, DEQ determined ID17040202SK025_02 would receive Tier I protection based on the current impairment status. The referenced AU realignment from the 2021 TMDL (DEQ 2021) did not meaningfully alter the support status of any water bodies within the project area. Consequently, DEQ's tiering review would have the same outcome, irrespective of the AU alignment results from 2021.

To ensure the existing instream water uses and the level of water quality necessary to protect the existing uses are maintained and protected, DEQ included several conditions and provisions in the draft water quality certification. These conditions largely focus on BMPs to reduce sedimentation in the water bodies within the project area. Additional textual details have been added to Sections 1, 2.3 and 2.4 to address comment concerns related to project descriptions, sedimentation, and tiering.

Additional permitting documents can be requested by submitting a Freedom of Information Act (FOIA) request to the USACE. All documents submitted to DEQ with the Request for Certification can be requested by submitting a public records request on DEQ's website.

19. Comment (Terry Thomas)

Please see Appendix B. Comment 19.

DEQ Response:

Many of the concerns outlined in this comment will be addressed by the compensatory mitigation required by USACE. DEQ has included additional language in the draft certification to describe the details of the mitigation plan. These details were not in the original draft of the certification.

20. Comment (Brandon Hoffner and Matt Hively, Henry's Fork Foundation)

Please see Appendix B. Comment 20.

DEQ Response:

Please see responses to Comment 1 and 7.

The USACE permit for this project authorizes activities that will result in the permanent loss of wetlands. The applicant will be required to complete compensatory wetland mitigation, and the details were not in the original draft of the certification. The applicant's mitigation plan addresses many of the concerns raised in this comment. DEQ's conditions in this certification address the both temporary and permanent impacts from these activities, as they relate to applicable water quality standards.

The condition to dispose of excess dredged material at an appropriate off-site disposal location was added to Section 3.4. DEQ's standard practice does not include posting the underlying application or all supporting application materials with the draft certification.

The USACE determines application completeness for the 404 permit, and DEQ then makes a determination of completeness for the Request for Certification. Additional permitting documents can be requested by submitting a Freedom of Information Act (FOIA) request to the USACE. All documents submitted to DEQ with the Request for Certification can be requested by submitting a public records request on DEQ's website.

If any additional development is proposed in the project area, additional scrutiny from DEQ and USACE will likely be required. The cumulative impacts will be evaluated for any subsequent permit application.

21. Comment (Alison Brown and Jean Bjerke, Henrys Fork Wildlife Alliance)

Please see Appendix B. Comment 21.

DEQ Response:

Please see response to Comment 1. Under CWA § 404, the USACE authorizes discharges of dredged or fill material within waters of the United States. The federal process determines what is a single and complete project as well as alternative analyses. As noted in the comment, the existing conditions of the NWP do not authorize activities with impacts to waters of the United States totaling over 0.5 acres. Any impact larger than 0.5 acres would be considered unauthorized and potentially subject to compliance and enforcement actions. The summary of project details in DEQ's certification is not intended to be all inclusive. DEQ added additional details in Section 1 to provide a more comprehensive, but not all inclusive, description of the proposed activities. Sawtelle Creek is not within, nor does it connect to drainage within the proposed project activity.

The replacement ditch does not preserve the functions of the existing swale. Therefore, compensatory mitigation is required by the USACE. DEQ included several conditions and provisions in the draft water quality certification for Tier I protection of the replacement ditch to ensure the existing instream water uses and the level of water quality necessary to protect the existing uses are maintained and protected.

22. Comment (Anna Trentadue, Trentadue Law Office)

Please see Appendix B. Comment 22.

DEQ Response:

Issue 1.

DEQ agrees that the scope of the water quality certification is narrow. CWA § 404 requires authorization from the USACE for activities resulting in the discharge of dredged or fill material into waters of the United States, including wetlands. USACE authorizes discharge activities by issuing permits. CWA § 401 requires state certification for any permit or license issued by a federal agency for an activity that may result in a discharge into waters of the United States. Water quality certifications ensure federally permitted activities comply with state water quality standards and any other water quality requirements under state law.

Given that the purpose of the certification is to evaluate the compliance of federally authorized activities with state water quality standards, DEQ's review of the activities and associated permit conditions are restricted to that specific and narrow purview.

Prior to authorizing discharge activities, USACE determines if jurisdictional waters are present within the project area. If present, the USACE regulates those waters and makes a determination of permitting requirements. USACE authorization is not required for the activities that do not impact waters of the United States. DEQ's certification specifically addresses those activities authorized by the USACE in the NWP, as required by CWA § 401.

DEQ disagrees with the comment's assertion of the scope of DEQ's certification. DEQ is unable to initiate the certification process if there are no federally authorized activities to certify. If the permittee plans future development, the permittee would need to apply for additional CWA § 404 authorization, which would only be required if the USACE identifies impacts to waters of the United States in the proposed project area. USACE may then consider cumulative impacts, but this will depend on the size, scope, location, and existing resources in the proposed project area. Due to the fact that the future development referenced in the comment was not included in the § 404 permit application, it is impossible for DEQ to make an informed determination of permitting or certification requirements at this time. DEQ's certification does not relieve the permittee of the responsibility to obtain all other required approvals, authorizations, or permits that may be necessary for the project.

The impacts related to the permanent loss of waters of the United States will be addressed by the required mitigation from the USACE permit. DEQ has added descriptive language regarding the compensatory mitigation plan to the certification that was not in the original draft. These details address many of the concerns raised in this comment. Please see response to Comment 1 regarding federal mitigation.

DEQ has added additional textual detail to Section 2.3 and 2.4 to better outline DEQ's review of potential project impacts and how the conditions of the NWP and DEQ's certification will minimize those impacts.

Issue 2.

DEQ uses all available information to implement DEQ's antidegradation policy. All documents submitted to DEQ with the Request for Certification can be requested by submitting a public records request on DEQ's website. After determining the level of protection needed for the waters, DEQ provides conditions in the certification to minimize the potential impacts from project activities as they relate to beneficial uses and associated water quality standards.

Given sedimentation is the pollutant of concern, this certification requires erosion and sediment controls before and during construction, inspection and maintenance, turbidity monitoring, prompt corrective action, and suspension of affected work when needed to prevent further impacts. If all certification conditions and the provisions of the USACE permit are followed, DEQ is assured that the activities will comply with applicable water quality standards and state law. Idaho's antidegradation policy does not require DEQ to assemble a prescriptive type or quantity of data to make this determination.

For example, any future development may be subject to additional regulatory oversight from DEQ though an Idaho Pollutant Discharge Elimination System (IPDES) permit, depending on the size and nature of proposed development. Owners and operators of construction projects that disturb one or more acres (or are part of a common plan of development that disturbs one or more acres) and discharge stormwater, must obtain coverage under the Stormwater Construction General Permit (CGP). The CGP requires best management practices (BMPs) to reduce the sediment and other pollutants discharged in stormwater. The CGP requires periodic inspection of construction projects by persons knowledgeable about erosion and sediment control and pollution prevention. CGP permit information can be found on DEQ's website. IPDES stormwater permit language has been added to Section 3.1.

Issue 3.

Pursuant to CWA § 401 (a)(1), 40 CFR § 121.7 (d), and IDAPA 58.01.02.052.08, the 21-day public comment period is part of the reasonable period of time agreed upon by the federal agency and DEQ. In response to this comment, DEQ scheduled a public meeting in Island Park on October 28, 2026. DEQ posts draft § 401 water quality certifications for public review and comment in accordance with IDAPA 58.01.02.052.08, which includes the project location information. After reviewing all comments submitted, DEQ has not identified a compelling issue to justify extending the public comment period.

The permitting authority for 404 dredge and fill permits is the USACE, who will provide project maps, figures, wetland delineations, engineering documents, and other project related materials if requested through a Freedom of Information Act (FOIA) request. As mentioned earlier, DEQ records can also be requested.

Issue 4.

Section 3.6 condition 7 requires the applicant to contact Idaho Department of Fish and Game concerning strict salmonid spawning work windows. Other concerns raised here have been addressed earlier in this response.

23. Comment (Jean Bjerke)

Please see Appendix B. Comment 23.

DEQ Response:

Please see responses to Comment 7 and 21.

24. Comment (David OLeary)

I own property at the outlet of Henrys Lake and am very concerned about the impact of this project on the fishery and spawning fish. The fishery is already very stressed due to lower water levels and additional sediment, obstructed flow and disruption of habitat will very likely make the situation worse and be very difficult to recover from. I oppose the approval of this applied for permit.

DEQ Response:

Please see response to Comment 7.

25. Comment (Erika Meadows)

Please see Appendix B. Comment 25.

DEQ Response:

Please see response to Comment 13.

26. Comment (Joseph Gerhards)

Please see Appendix B. Comment 26.

DEQ Response:

Please see response to Comment 18.

27. Comment (Gary S. Ellis)

I am in opposition to the Caldera Flats proposed Development due to the fact that the property is an important part of the downstream Henry's Lake drainage which includes critical nesting wet land habitat and the Henry's Lake Outlet which terminates at the Henry's Fork of the Snake near Big Springs. It's a very important fishery and spawning route and a summer home to many important waterfowl including but not limited the long billed curlew which I have viewed nesting on numerous occasions. Please vote no to permanent development, roads, houses, and motorized travel in this historical and crucial landscape.

DEQ Response:

Please see response to Comment 1. Federal compensatory mitigation language has been added to the project description.

28. Comment (Cynthia Riegel)

Please see Appendix B. Comment 28.

DEQ Response:

Please see responses to Comments 1, 7, and 21.

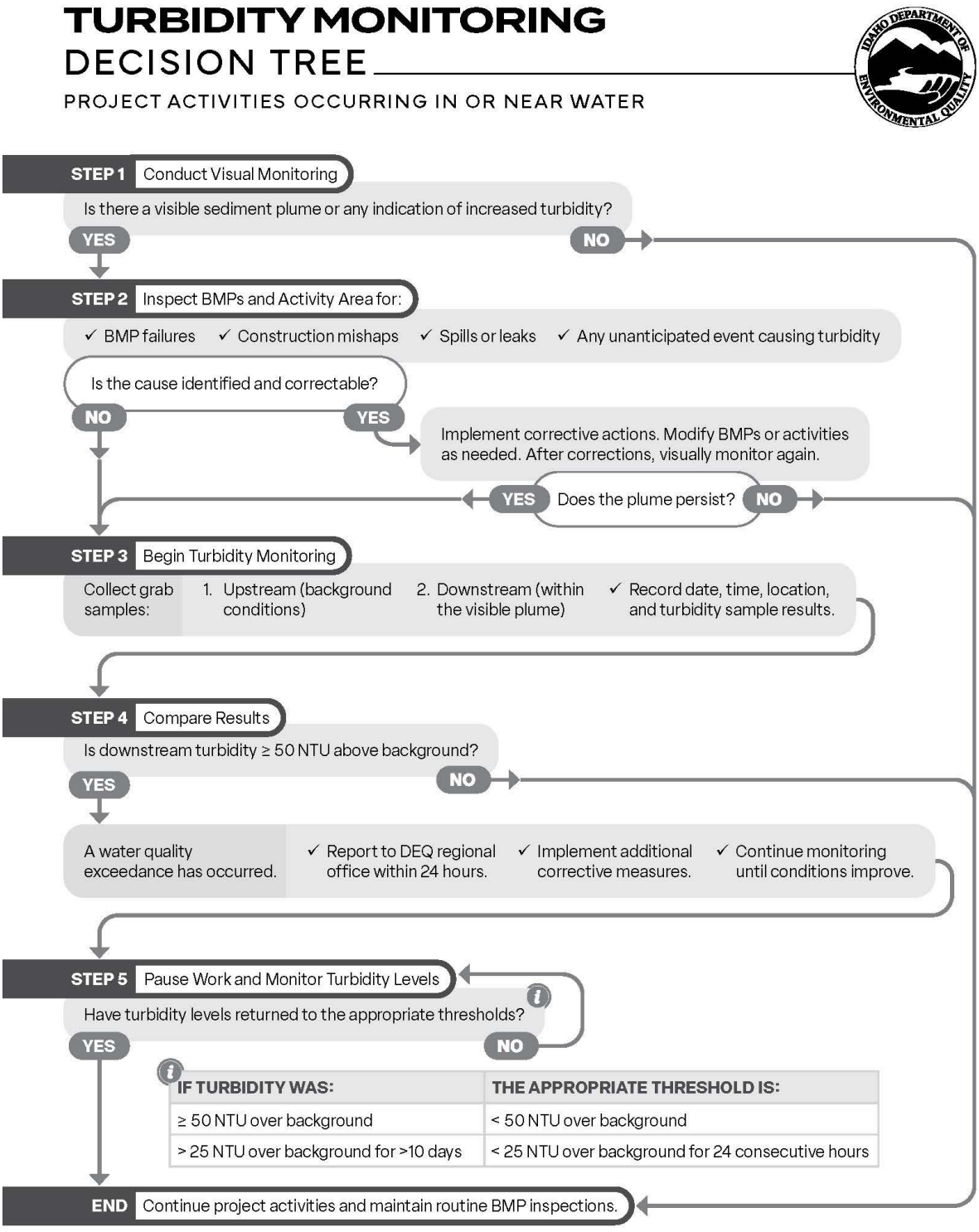
29. Comment (Matt Pieron, Idaho Department of Fish and Game)

Please see Appendix B. Comment 29.

DEQ Response:

Thank you for the comment. Many of the concerns outlined in this comment will be addressed by the compensatory mitigation required by the USACE. DEQ has included additional language in the draft certification to describe the details of the mitigation plan. These details were not in the original draft of the certification.

Appendix A. Turbidity Monitoring Overview



Appendix B. Public Comments

Comment 1

Destiny Locke

From: Tara Kleffner
Sent: Wednesday, October 7, 2026 8:55 AM
To: Destiny Locke
Subject: FW: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Follow Up Flag: Follow up
Flag Status: Completed

From: Webmaster@deq.idaho.gov <Webmaster@deq.idaho.gov>
Sent: Tuesday, October 6, 2026 1:32 PM
To: Webmaster <Webmaster1@deq.idaho.gov>
Subject: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Name

Julie Livsey

Email

rugmoo@gmail.com

Comments

Dear Ms. Locke and Idaho Department of Environmental Quality,

I am writing to strongly oppose the proposed alteration and rerouting of the wetlands and waterways associated with the Caldera Flats Project.

These wetlands and natural waterways have existed for generations and provide important habitat, water, food, and refuge for the wildlife that call Island Park home. Changing the natural flow of water and installing roads and culverts through this habitat could have impacts that extend well beyond the stated 0.17 acres of direct disturbance.

Island Park has experienced significant growth, and with that growth, wildlife has already lost increasing amounts of natural habitat to roads, homes, and development. There is a point where we need to recognize what remains and protect it. These wetlands are not simply undeveloped land waiting to be built on—they are functioning natural habitat that wildlife has relied upon for generations.

I am particularly concerned about rerouting the wetland swale and changing the natural movement of water through this area. Altering the hydrology could affect surrounding wetlands, vegetation, wildlife habitat, sediment and erosion, and downstream water quality.

I respectfully ask DEQ to carefully consider the long-term and indirect effects of these changes, not just the immediate construction footprint. I also ask that alternatives be considered that would avoid or substantially reduce impacts to these wetlands and waterways.

Island Park's natural environment is one of the reasons people value this community. As development continues, I believe it is increasingly important to preserve the remaining natural lands and waterways for the wildlife that depend on them.

Thank you for considering my concerns and for your responsibility to protect Idaho’s water resources

Sincerely,
Julie Livsey

Comment 2

Destiny Locke

From: Tara Kleffner
Sent: Wednesday, October 7, 2026 8:55 AM
To: Destiny Locke
Subject: FW: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Follow Up Flag: Follow up
Flag Status: Completed

From: Webmaster@deq.idaho.gov <Webmaster@deq.idaho.gov>
Sent: Tuesday, October 6, 2026 2:14 PM
To: Webmaster <Webmaster1@deq.idaho.gov>
Subject: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Name

Katie Cook

Email

katiecarpenter@yahoo.com

Affiliation

Former resident. Current winter and summer tourist

Comments

I understand private property rights, and I'm not against development. Growth happens, communities change, and I understand that people have a right to use their land. But there are certain places where what is lost can never be replaced, and the Island Park flats are one of those places.

For generations, that open land has remained largely untouched. It's wildlife habitat, it's part of the trail system and recreation people love, but more than anything, that wide-open landscape is part of the identity of Island Park. It's one of the first things you picture when you think about this place.

A development of this size doesn't just add houses. It permanently changes the landscape, wildlife movement, traffic, infrastructure, recreation, views, and eventually the size and character of the entire community. Once roads are cut, utilities are installed, homes are built and that open space is divided up, there is no going back. We can never decide 20 years from now that we made a mistake and restore what was there.

That's what makes this so heartbreaking. Island Park can grow without sacrificing the very places that make people love it in the first place. To me, developing the flats feels like allowing a subdivision inside Yellowstone or the Grand Canyon. Some landscapes are bigger than their property lines. Once they're gone, they're gone—and Island Park will never be quite the same.

Comment 3

Destiny Locke

From: Tara Kleffner
Sent: Wednesday, October 7, 2026 8:55 AM
To: Destiny Locke
Subject: FW: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Follow Up Flag: Follow up
Flag Status: Completed

From: Webmaster@deq.idaho.gov <Webmaster@deq.idaho.gov>
Sent: Tuesday, October 6, 2026 7:12 PM
To: Webmaster <Webmaster1@deq.idaho.gov>
Subject: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Name

Lisa Nichols

Email

lisanichols_5@hotmail.com

Affiliation

Owner

Comments

Please leave the flats the way they are now!
it is one of the most beautiful places in Island Park. You add subdivisions and you ruin it, not to mention the wildlife and the eco system!!

Comment 4

Destiny Locke

From: Tara Kleffner
Sent: Wednesday, October 7, 2026 8:55 AM
To: Destiny Locke
Subject: FW: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Follow Up Flag: Follow up
Flag Status: Completed

From: Webmaster@deq.idaho.gov <Webmaster@deq.idaho.gov>
Sent: Tuesday, October 6, 2026 10:03 PM
To: Webmaster <Webmaster1@deq.idaho.gov>
Subject: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Name

Mike Simi

Email

michael.simi@gmail.com

Affiliation

Resident

Comments

I am writing to you this evening from my cabin near the McCrea Bridge. It is on land set up by George McCrea.

I ask you to please reconsider opening up the flats to housing and here are my reasons.

The property was zoned AG amd the buyers knew that. Why should we change that? I agree they can do what they want with their land, WITHIN the original use and zoning. I would not expect my 1 acre residential lot to be changed so I could open a McDonald's.

The flats look sensitive and there is not much elevation to provide for septic and utilities before leaching into Henry's Lake outlet and then to a renown fishing location, Henry's Fork. Why risk it?

I enjoy driving by that area and the views it provides.

I agree with others that there should be some considerations for affordable housing for locals. There are a few tiny house / cabin developments along Hwy 20 all dedicated to rental. Why not identify an area and allow small lots and tiny / medium homes for primary residence only?

Thank you for your consideration.

Mike Simi

Comment 5

Destiny Locke

From: Tara Kleffner
Sent: Wednesday, October 7, 2026 8:56 AM
To: Destiny Locke
Subject: FW: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Follow Up Flag: Follow up
Flag Status: Completed

From: Webmaster@deq.idaho.gov <Webmaster@deq.idaho.gov>
Sent: Wednesday, October 7, 2026 6:57 AM
To: Webmaster <Webmaster1@deq.idaho.gov>
Subject: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Name

Kasey DeMarco

Email

kasedemarco@gmail.com

Comments

My family homesteaded property in Island Park many moons ago. Every time we visit we drive through the flats to get to our families land and that portion of island park makes my heart skip a beat every time. My last trip a couple weeks ago I was fortunate enough to see a fox on the hunt and a herd of pronghorn.
Over the years Island Park has lost much of its rustic charm it has had for so long as development keeps popping up all over. The flats are truly the last stretch that feels untouched and hasn't changed in my lifetime.
To see it lost to development would be a crime. Not every inch of land needs to be taken for homes, airports or other such things. There are plenty of places in Island Park that are being developed as we speak, why take all of what makes the place so special. Please reconsider developing this special area, that is home to so many wonderful animals and makes Island Park so special.

Comment 6

Destiny Locke

From: Marci Homer <homermarci1@gmail.com>
Sent: Wednesday, October 7, 2026 9:51 AM
To: Destiny Locke
Subject: Caldera flats

Follow Up Flag: Follow up
Flag Status: Completed

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

I'm not a conservation specialist but I value the Caldera Flats of Fremont County, the ecosystem and wet lands that provide habitat for the fowl and animals. Yesterday, there was a large herd of pronghorn grazing in this area. This is an important migration path for pronghorn, elk, even bears who often walk the willows by the stream. It should remain a protected area free of human development for the benefit of the fowl and animals.

I am a resident of Fremont County. Address:
4030 Gabe Lane
Island Park ID 83429
208-709-8502

Susan Marcia Homer

Sent from my iPhone

Destiny Locke

From: Cortni Levitz <cortnilevitz@gmail.com>
Sent: Wednesday, October 7, 2026 9:27 AM
To: Destiny Locke
Subject: RE: Caldera Flats — Draft Section 401 Water-Quality Certification Project No. NWW-2022-00344 / Nationwide Permit 29

Follow Up Flag: Follow up
Flag Status: Completed

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Dear Idaho Department of Environmental Quality,

I am writing to formally **oppose issuance of the proposed Section 401 water-quality certification for the Caldera Flats project in its current form**.

The proposed project would fill approximately 0.17 acre of waters of the United States, reroute an approximately 2,833-foot wetland swale, excavate approximately 3,794 feet of replacement ditch, and install two 36-inch road culverts in an area hydrologically connected to Henrys Lake Outlet. Given the ecological sensitivity of the area and the documented water-quality concerns identified in the draft certification, I do not believe the current record provides sufficient reasonable assurance that these activities will protect existing water-quality standards and designated beneficial uses.

1. The existing wetland swale should not be treated simply as an obstacle to residential development

The existing swale is an established wetland and drainage feature that provides hydrologic, sediment-retention, and habitat functions. Replacing a functioning natural feature with an excavated drainage channel is not necessarily an equivalent environmental outcome.

The proposed rerouting would fundamentally alter the location and character of the existing wetland drainage system. Before certification is issued, DEQ should require a detailed demonstration that the proposed replacement channel will provide equivalent or greater hydrologic and water-quality functions, including during high-flow and snowmelt conditions.

If that demonstration has not already been independently verified, certification should be delayed until it is completed and made available for public review.

2. The proposed work could increase sediment delivery to connected waters

The draft itself identifies **sediment as the pollutant of concern**. That is particularly important because the receiving waters are connected to the Henrys Lake Outlet system and because the draft identifies at least one assessed waterbody that is not fully supporting aquatic-life uses.

Construction involving excavation, fill placement, road crossings, ditch construction and wetland disturbance creates a significant opportunity for sediment to enter surface waters.

I am concerned that reliance on BMPs and after-the-fact corrective action does not provide sufficient assurance that sediment impacts will be prevented in the first place.

DEQ should require substantially stronger preconstruction and construction-phase protections, including:

- Clearly identified upstream and downstream monitoring locations;
- Continuous or appropriately frequent turbidity monitoring during in-water and wetland-disturbing work;
- Immediate reporting of turbidity exceedances;
- Public availability of monitoring results;
- A mandatory stop-work requirement for significant or repeated exceedances;
- Independent verification that BMPs are functioning as designed; and
- A requirement that construction cease during conditions when runoff, precipitation, snowmelt, or other circumstances make sediment control unreliable.

3. The 25–49 NTU provision warrants additional scrutiny

The draft certification appears to allow construction to continue under certain turbidity conditions between 25 and 49 NTU above background, subject to specified limitations.

I ask DEQ to explain why allowing continued construction while turbidity remains substantially elevated provides reasonable assurance of protection for aquatic-life uses.

The agency should specifically explain:

1. Why the selected thresholds are protective of the receiving waters;
2. The scientific basis for the thresholds;
3. How background turbidity will be established;
4. Exactly where upstream and downstream measurements will be taken;
5. How rapidly exceedances will be detected;
6. Who will review the measurements;
7. How DEQ will independently verify compliance; and
8. Why work should ever be permitted to continue when construction activity is demonstrably causing elevated turbidity.

4. Daily BMP inspections are not enough without meaningful oversight

The draft requires daily inspections and maintenance of BMPs. However, the effectiveness of that requirement depends upon who performs the inspections, their qualifications, how the records are reviewed, and whether DEQ will actually have timely access to the information.

I request that DEQ require:

- The identity and qualifications of individuals conducting inspections;
- Inspection logs to be maintained throughout construction;
- Immediate reporting of significant BMP failures;
- Documentation of every corrective action;
- Retention of all inspection and turbidity records for a defined period;
- Submission of records to DEQ on a routine schedule rather than only upon request; and
- Public availability of those records, subject to legitimate confidentiality requirements.

A condition that exists only on paper is not sufficient protection for public waters.

5. The culvert design and fish-passage issues should be resolved before certification

The project proposes two 36-inch culverts in wetland and drainage features connected to Henrys Lake Outlet.

I request that DEQ require the complete culvert design, hydraulic calculations, elevations, anticipated flow rates, outlet protection, grade-control measures, and fish-passage analysis to be included in the administrative record before final certification.

The public should not be asked to evaluate whether the proposed crossings adequately protect water quality when critical engineering information has not been made available.

The record should also clearly identify whether either crossing constitutes or could become a barrier to fish passage under seasonal or high-flow conditions.

6. The wetland-impact calculation requires clarification

The draft identifies approximately 0.17 acre of affected waters of the United States.

DEQ should clearly explain:

- How the 0.17-acre figure was calculated;
- How much constitutes permanent impact;
- How much constitutes temporary impact;
- What portions involve fill versus excavation;
- What portions of the existing wetland will remain functional;

- What mitigation is required; and
- Whether any later modification of the project could increase the jurisdictional impact.

If the project design changes in a way that increases wetland or stream impacts, DEQ should require additional review rather than allowing the change to occur solely through an internal modification of the certification.

7. The complete technical record should be available before a final decision

I respectfully request that DEQ make the following materials available for public review before issuing a final certification:

- Complete Section 404 application materials;
- Wetland delineation;
- Jurisdictional determination;
- Wetland-impact calculations;
- Existing and proposed drainage maps;
- Existing and proposed swale profiles;
- Hydraulic and drainage calculations;
- Complete culvert plans;
- Alternatives analysis;
- Compensatory-mitigation determination and documentation;
- Construction sequencing and work-window information;
- Fish-passage analysis;
- Idaho Fish and Game recommendations concerning spawning and fish passage;
- Turbidity-monitoring locations and procedures; and
- Any modeling or technical analysis relied upon by DEQ in reaching its reasonable-assurance determination.

The public should have an opportunity to evaluate the information upon which the agency bases its certification.

8. The relationship to Henrys Lake Outlet warrants heightened protection

The proposed work is not occurring in an isolated area with no downstream connection. The draft identifies receiving waters associated with Henrys Lake Outlet and recognizes beneficial uses including cold-water aquatic life, salmonid spawning, primary-contact recreation, domestic water supply, wildlife habitat and aesthetics.

Those uses warrant a precautionary approach.

Where a project proposes to alter a functioning wetland drainage system and introduce substantial excavation, fill, roads and culverts into a connected watershed, DEQ should require convincing evidence that the proposed work will not degrade existing uses.

9. The conflicting comment deadlines should be corrected

The public-facing DEQ information reportedly identifies **5 p.m. Mountain Time on October 12** as the comment deadline, while the draft certification reportedly references October 13.

This discrepancy should be immediately corrected.

At a minimum, DEQ should honor comments submitted in reasonable reliance upon either date and publicly clarify the controlling deadline.

10. I request that DEQ deny or postpone certification

For the reasons above, I respectfully request that DEQ **deny the proposed Section 401 certification in its current form or postpone issuance until the outstanding technical, hydrologic, wetland, culvert, fish-passage, mitigation, monitoring and public-record questions have been fully resolved.**

If DEQ ultimately determines that certification is appropriate, I request that the final certification contain enforceable conditions that provide substantially greater transparency and protection, including mandatory monitoring, clearly defined stop-work thresholds, prompt reporting of exceedances, independent compliance verification, preservation of all inspection and monitoring records, and public access to those records.

The purpose of Section 401 certification is to ensure that federally authorized activities provide reasonable assurance of compliance with applicable state water-quality requirements. Given the scale and nature of the proposed wetland alteration and the connection to Henrys Lake Outlet, I do not believe that assurance has yet been adequately demonstrated.

Please include this comment in the administrative record and address the substantive issues raised here in the agency's response to comments and final certification decision.

Thank you for considering these concerns.

Sincerely,

Mrs. Cortni Levitz

Island Park, Idaho

Comment 8

Destiny Locke

From: Tara Kleffner
Sent: Wednesday, October 7, 2026 2:43 PM
To: Destiny Locke
Subject: FW: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

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From: Webmaster@deq.idaho.gov <Webmaster@deq.idaho.gov>
Sent: Wednesday, October 7, 2026 10:59 AM
To: Webmaster <Webmaster1@deq.idaho.gov>
Subject: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Name

Stacy Gerhards

Email

stacygerhards@msn.com

Affiliation

Downstream year-round resident

Comments

Destiny Locke
Idaho Department of Environmental Quality
Idaho Falls Regional Office
900 N. Skyline Drive, Suite B
Idaho Falls, ID 83402

Re: Public Comment on Draft Section 401 Water Quality Certification — Caldera Flats (NWW-2022-00344)

Dear Ms. Locke:

I am a downstream resident of Island Park who regularly fishes the Henrys Fork and Henrys Lake Outlet. I have a strong interest in protecting the water quality and aquatic resources that support this highly valued fishery. I respectfully submit these comments on DEQ's draft Section 401 Water Quality Certification for the Caldera Flats project.

DEQ identifies the project as Nationwide Permit No. 29, NWW-2022-00344, on an approximately 160-acre parcel east of U.S. Highway 20 in Island Park, with Henrys Lake Outlet identified as the receiving water body. DEQ's public notice states that the project would reroute a wetland swale, install two culverts, discharge approximately 115 cubic yards of gravel or rock, and impact approximately 0.17 acre of waters of the United States, including wetlands.

DEQ's draft concludes that compliance with the federal permit and certification conditions would provide a reasonable basis to conclude that the activity will comply with applicable water-quality requirements. My concern is that the public record does not appear to provide enough technical information to evaluate the water-quality consequences of permanently relocating the wetland drainage feature and therefore to test that conclusion.

Adequacy of the technical record

The publicly available certification materials identify the project location and general scope but do not appear to include detailed engineering plans showing the existing swale, proposed ditch alignment, ditch profiles and invert elevations, culvert locations and elevations, cross-sections, groundwater conditions, or hydraulic analyses. These details are important to determining whether the authorized activity could alter groundwater interception, flow paths, flow timing, sediment transport, or other water-quality functions associated with the existing wetland drainage feature.

I therefore request that DEQ place in the administrative record, to the extent they were submitted with or considered as part of the certification request, the relevant Corps permit drawings, grading and drainage plans, hydraulic information, groundwater information, wetland assessments, and other technical materials bearing on the water-quality effects of the authorized activity. If information needed to evaluate those effects was not submitted, DEQ should obtain the information necessary to support its final determination.

Permanent hydrologic effects within the scope of Section 401 review

The draft appropriately addresses construction-related erosion and sediment controls. Those controls are important, but the activity also includes permanent physical changes to aquatic resources. A relocated drainage feature may affect water quality after construction if its configuration changes groundwater interception, flow concentration, sediment movement, or pollutant transport.

I recognize that DEQ's Section 401 review is limited to water-quality impacts from the activity subject to the federal permit, including construction and integral operational elements directly tied to that activity, and does not extend to unrelated upland development. My request is correspondingly limited: DEQ should evaluate post-construction water-quality effects to the extent they are caused by, directly tied to, or inseparable from the authorized discharge and the resulting drainage configuration.

Based on the materials available for public review, it is not clear how DEQ evaluated these potential effects. Before final certification, the record should explain the technical basis for concluding that the authorized activity, including the resulting drainage configuration insofar as it is within the scope of the federal permit, will comply with Idaho Water Quality Standards.

Tier I and Tier II antidegradation

Idaho's antidegradation policy requires maintenance and protection of existing uses and the water quality necessary to protect those uses. Idaho's rules also provide Tier II protection for qualifying high-quality waters and establish additional review requirements where significant degradation may occur.

The draft relies substantially on construction practices and permit conditions in addressing degradation. Those measures may adequately control short-term construction impacts, but the record should also explain whether the permanent aquatic-resource modifications within the scope of the federal permit could produce a lowering of water quality after construction.

If DEQ determines that the proposed discharge would result in significant degradation of a water receiving Tier II protection, DEQ should clearly document how the applicable requirements of IDAPA 58.01.02.052.08 are satisfied, including whether significant degradation can be minimized or avoided through less-degrading alternatives and, if it cannot reasonably be avoided, any applicable socioeconomic justification. Conversely, if DEQ concludes that the discharge is insignificant or otherwise does not trigger those Tier II requirements, the record should identify the technical basis for that conclusion.

In that context, I ask DEQ to address whether avoiding or further minimizing alteration of the existing swale is a practicable, less-degrading alternative. I do not assume that a formal alternatives analysis is automatically required merely because the modification is permanent; rather, the scope of the alternatives review should follow the applicable antidegradation requirements and DEQ's determination concerning degradation potential.

Existing uses and downstream water quality

Tier I protection applies to all water bodies subject to Clean Water Act jurisdiction and protects existing uses and the level of water quality necessary to maintain those uses. Henrys Lake Outlet and the Henrys Fork also support important aquatic-life and recreational uses. Idaho's Henrys Fork Basin comprehensive water plan recognizes the exceptional recreational and fishing resources of the basin and provides recreational protection to the lower two miles of Henrys Lake Outlet.

The existing wetland drainage feature may provide functions relevant to water quality, including sediment retention, nutrient processing, flow attenuation, or groundwater exchange. Whether, and to what degree, this particular feature performs those functions is a site-specific technical question. The certification record should therefore evaluate those functions rather than assume either that relocation will harm them or that the engineered configuration will reproduce them without material change.

Likewise, the record should explain how the certification's turbidity and sediment conditions relate to the applicable Idaho

water-quality criteria and how those conditions will protect existing aquatic-life uses during authorized construction.

Monitoring, mitigation, and enforceable conditions

If DEQ concludes that certification can be issued, I request conditions reasonably necessary to assure compliance with applicable water-quality requirements. Depending on the technical findings, those conditions could include appropriately tailored post-construction monitoring of relevant parameters such as flow, sediment, channel stability, or groundwater response where those effects are directly tied to the authorized activity.

If the record demonstrates an unavoidable loss of aquatic-resource function that affects compliance with applicable water-quality requirements, DEQ should consider mitigation or other permit conditions necessary to provide the required assurance of compliance. I am not suggesting that Section 401 automatically requires compensatory mitigation for every loss of aquatic-resource function; any mitigation requirement should be tied to DEQ's water-quality findings and authority and coordinated, as appropriate, with the Corps' Section 404 permitting requirements.

Requested action

For these reasons, I respectfully request that DEQ not finalize the certification until it has sufficient information to support, and adequately documents, its determination that the activity subject to the federal permit will comply with applicable Idaho water-quality requirements.

At a minimum, I ask DEQ to:

1. Place in the administrative record the engineering, grading, drainage, hydraulic, groundwater, wetland, and other relevant technical materials submitted with or considered in the certification request.
2. Evaluate potential post-construction hydrologic and water-quality effects that are caused by, directly tied to, or inseparable from the authorized discharge and resulting drainage configuration.
3. Explain the basis for DEQ's Tier I and Tier II antidegradation conclusions, including whether the activity could cause significant degradation and, if so, how the requirements of IDAPA 58.01.02.052.08 are satisfied.
4. Address avoidance or further minimization of impacts to the existing swale to the extent required by the applicable antidegradation review and federal permit process.
5. Explain how sediment and turbidity conditions in the certification relate to applicable water-quality criteria and protect existing uses.
6. If certification is issued, impose monitoring, mitigation, corrective-action, or other conditions to the extent the technical record shows they are necessary to assure compliance with applicable water-quality requirements.

I request that you send, either to the email listed below or via USPS to the address below, a receipt of confirmation.

Thank you for the opportunity to comment and for maintaining a complete and transparent administrative record.

Respectfully submitted,

Stacy Gerhards
stacygerhards@msn.com
4233 Grandview Rd
Island Park, Idaho 83429
(720) 635-7723

Comment 9

Destiny Locke

From: Tara Kleffner
Sent: Wednesday, October 7, 2026 2:43 PM
To: Destiny Locke
Subject: FW: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

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From: Webmaster@deq.idaho.gov <Webmaster@deq.idaho.gov>
Sent: Wednesday, October 7, 2026 11:07 AM
To: Webmaster <Webmaster1@deq.idaho.gov>
Subject: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Name

Paul Kern

Email

kernpr@gmail.com

Affiliation

Private individual and neighbor to the property under consideration

Comments

I own ten acres immediately adjacent to the property in question owned by the Buttons. (Sec 13 TWP 14 RGE 43)

On my acreage there are two ponds that have supplied water to horses, cattle, sandhill cranes and to a herd of 20 antelope.

I am concerned that any diversion and disruption of ground water flow will dry out my ponds and negatively impact both livestock and wildlife that have depended on this water for the twenty plus years I have owned this property.

I trust that in your evaluation and studies you will take my concern into consideration.

Since the Buttons are basing their project on property rights, it would stand to reason that impacted neighboring property rights should be taken into consideration as well.

Respectfully

Paul Kern

Comment 10

Destiny Locke

From: Tara Kleffner
Sent: Wednesday, October 7, 2026 2:43 PM
To: Destiny Locke
Subject: FW: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

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From: Webmaster@deq.idaho.gov <Webmaster@deq.idaho.gov>
Sent: Wednesday, October 7, 2026 12:23 PM
To: Webmaster <Webmaster1@deq.idaho.gov>
Subject: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Name

Neal Wickham

Email

metrodyne@hotmail.com

Affiliation

None

Comments

I grew up in Ashton and my family lived in West Yellowstone for several years. We owned land off the Meadow Creek road for several year on east side of the Flats. The Flats are both scenic and wildlife rich. The wetlands are the greater part of their beauty and destroying any part will be detrimental to all of Fremont County. Fremont County commissioned scenic mapping in 2007 and the County Visual Sensitivity Assessment, completed in March 2008. The overlay maps were later incorporated in GIS. Any who saw them on GIS thought they were part of the development code and believed the Flats were safe from destruction. That was not the case, however. Despite the overlay maps being available in GIS, it was later revealed that the overlay maps and associated plan was never adopted by the county.

There are also wetland maps on the County GIS and rules about setback from wet lands. The Buttons are now now challenging those. So the protection that the county indicated were in place are falling by the wayside and or being ignored do the detriment of the of the county. The decision made by P&Z was the correct decision and the commissioner's actions and reasons for overturning that decision is suspect. If there is legal action against the county, I intend to support it.

Comment 11

Destiny Locke

From: Tara Kleffner
Sent: Wednesday, October 7, 2026 2:43 PM
To: Destiny Locke
Subject: FW: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

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From: Webmaster@deq.idaho.gov <Webmaster@deq.idaho.gov>
Sent: Wednesday, October 7, 2026 12:53 PM
To: Webmaster <Webmaster1@deq.idaho.gov>
Subject: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Name

Cathy Koon

Email

cathykoon1952@gmail.com

Affiliation

Fremont County Government Overwatch Coalition, lifelong resident of Fremont County, Idaho

Comments

My comments on draft Section 401 Water Quality Certification for the Caldera Flats Project in Fremont County, Idaho.
The Fremont County Planning and Zoning Commission denied the initial application for Caldera Flats based on potential long-term impacts to wetlands on the Henry's Lake Flat. The initial testing was done early in the spring and late fall, traditionally the driest periods on the Flat. Relocating the drainage features, digging foundations and building roads will change groundwater flows, sediment transport, flow timing and wetland functions. Any disturbance on the Buttons property will impact not only adjacent properties but existing aquatic life, recreational uses and fisheries in the Henry's Lake Outlet and the Henry's Fork watershed. The river is less than a half mile from the Buttons property.
I question the wisdom of certifying that Buttons will comply with water quality requirement that IF he complies with the terms and conditions imposed by the federal permit and the conditions set forth in this water quality certification. Mr. Buttons has made it abundantly clear that his experts have proven that his property does not contain wetlands. What makes DEQ think he will comply? Where is the oversight? Who will watchdog the project to make sure it complies? ? I fear that will be the Fremont County Planning and Building Department through its building permit process, which will not be adequate to meet stringent water and federal requirements.
The engineering and hydraulic documentation available for public record is insufficient to make a clear determination. Consultants have questioned whether the Tier I and Tier II antidegradation requirements were properly evaluated. The historical record is also lacking. Wetlands ebb during dry years and thrive in wet ones. That doesn't mean the wetland no longer exists. Anyone familiar with the Flat knows that. Mr. Buttons' expert denies that. Lifelong residents and the water experts know it.
I would ask that DEQ add relevant engineering, drainage, groundwater, hydraulic, wetland and technical materials – going back to the wet years -- to the administrative record. Further evaluate what effects construction could have on water quality and hydrology in the long term and consider alternatives that avoid or further minimize impacts to the existing swale. Any and all excavation for homes and roads will destroy existing native plants, microbes, beneficial insects and other features needed for the wetland to survive.
DEQ should implement and continue monitoring the ground. How will new water regulations governing use of personal wells

impact this project? Why allow the project to continue if property owners' water usage will be limited to culinary use or may be curtailed if this drought continues. Require monitoring, mitigation, corrective actions or other permit conditions to ensure compliance with requirements. Constant on-site monitoring is needed, starting now.
Please provide documentation of your Tier I and Tier II antidegradation conclusions and explain how sediment and turbidity controls satisfy applicable water quality standards.
And lastly, how can you guarantee this project won't interfere with the water rights and actual water use of the neighboring Orme Ranch, which has been owned and operated by the Orme family since the late 19th century. Any ground disturbance or alteration of groundwater on Caldera Flats will directly impact the Ormes' ability to irrigation their land. The proposed culverts won't do the job to sustain flows to the Orme land. Farmers and ranchers throughout Idaho can testify to that.
Does this certification include the future development planned by the applicant, or does he have to go through the same scrutiny each time?

Destiny Locke
Idaho Department of Environmental Quality
Idaho Falls Regional Office
900 N. Skyline Drive, Suite B
Idaho Falls, ID 83402

Re: Public Comment on Draft Section 401 Water Quality Certification — Caldera Flats (NWW-2022-00344)

Dear Ms. Locke:

Please accept these comments in strong opposition to the issuance of a Section 401 Water Quality Certification for the proposed Caldera Flats subdivision in Island Park. The development of a 32-lot, two-phase residential subdivision across 160 acres of the ecologically invaluable Henry's Lake Flats poses severe, irreversible risks to regional water quality, critical wetlands, and down-flow hydrology.

Historically, the Henry's Lake Flats has been deliberately protected from large-scale, high-density development. It remains a deeply interconnected wetland ecosystem characterized by massive, open-space working ranches. The developers (DK Land, LLC / DK Button) are out-of-state entities who purchased this land with full knowledge of its highly restrictive, protected landscape status. Their proposal threatens to permanently shatter the rural and ecological character of a valley defined by multiple generational, local private ranching families who neighbor this property and oppose this development, as well as the renowned Flat Ranch immediately adjacent, which is meticulously steered by The Nature Conservancy.

This is the second high-density development scheme these out-of-state developers have attempted on this exact property. Their initial proposal targeted a luxury airpark community featuring high-end second homes equipped with private "air garages" for personal aircraft. That premiere, high-density airpark concept was soundly denied. When they pivoted to the current dense residential layout, it was also denied by our Planning and Zoning Commission. Unfortunately, the Fremont County Commissioners chose to reverse that decision on appeal, defiantly ignoring local land-use planning ordinances and comprehensive policies specifically designed to shield our county's most sensitive natural resources. For over four years, the Island Park community has stood shoulder-to-shoulder in multiple public hearings, turning out in the hundreds, to fight these successive, incompatible large-scale development proposals, and we look to the IDEQ to uphold environmental integrity where the local county commissioners-3 men have failed their constituents and local land use planning ordinances and policies.

As identified under Nationwide Permit No. 29 (NWW-2022-00344), this initial development phase focuses on a 160-acre portion directly east of U.S. Highway 20. However, the true ecological threat is obscured by the developer's broader land maneuvers. The developer controls a larger 460-acre property on the Flats and has already executed a lot split across this acreage. They have fundamentally failed to articulate or disclose their long-term intentions for the remaining larger acreage. By reviewing the current 160-acre footprint in isolation, DEQ is evaluating a piecemeal proposal that completely ignores the cumulative water quality impacts of future development across the rest of this vulnerable, split parcel.

According to DEQ's public notice, the immediate project will directly disrupt this sensitive ecosystem by rerouting an existing wetland swale, installing two permanent culverts, and discharging roughly 115 cubic yards of rock or gravel fill. These actions claim to permanently impact and degrade approximately 0.17 acre of protected waters of the United States. I strongly question the validity of this miniscule 0.17-acre degradation estimate. The site

mapping reveals a layout of 32 concentrated individual building envelopes positioned directly over the most saturated wetland portions of the property. Expecting that individual parcel owners will successfully adhere to piecemeal, self-regulated assurances to prevent degradation across this delicate landscape is a major regulatory oversight.

Furthermore, the developer proposes drilling 32 independent domestic wells directly into the headwater source basin of the Henry's Fork Sub-basin. Where is the moratorium curtailment being applied to this developer? 32 wells in a highly shallow water table!!! This basin serves as a critical, foundational recharge zone for the Eastern Snake River Plain Aquifer—a vital water source that is already facing a profound crisis and historically low volumes. The Idaho Department of Water Resources (IDWR) has long recognized the vulnerability of this over-appropriated system, placing the broader basin under a strict water rights moratorium. Introducing 32 individual domestic straws into a critical recharge zone during an era of systemic groundwater depletion risks dropping water tables, disrupting subsurface flows, and permanently degrading the contiguous wetlands that feed the Henrys Fork watershed.

Concentrating these systems, development of land, construction of 32 homes and roads and installation of necessary infrastructure land disturbance to the surface hydrology within a critical source basin risks introducing nitrates, phosphorus, and other household contaminants directly into the groundwater. Because of the rapid subsurface hydrologic connectivity in this region, any effluent can easily breach shallow aquifers, bypass natural filtration, and degrade the contiguous wetlands that surface-feed the Henrys Fork.

The developer's proposal to manage these Clean Water Act Section 404 jurisdictional waters and sensitive wetland channels through engineering reroutes, culvert infrastructure, and state-certified water management is fundamentally flawed. Artificial manipulation and the dumping of fill material into natural hydrology cannot replace the complex, irreplaceable functions of an intact wetland system.

Of paramount concern are the Section 404 jurisdictional waters on this specific property, including Crooked Creek, which maintains a direct, contiguous connection to Henry's Lake. These waters, alongside both jurisdictional and non-jurisdictional wetlands on the site, dictate the downstream hydrology of the region. Because Henry's Lake is a foundational source of the Henrys Fork of the Snake River, any degradation of water quality or disruption of flow at the Caldera Flats site will directly jeopardize the ecological health of the entire Henrys Fork watershed. No analysis or study of this potential adverse impact has been conducted.

Furthermore, the review process for this project has heavily depended upon a highly restricted study—the Kagel Study (2023–2024)—which lacks the rigorous, multi-season scope necessary for such a sensitive landscape. A critical flaw of this analysis is that it was delineated strictly for Section 404 waters, neglecting the broader environmental context of the land. Furthermore, the timeline of the fieldwork raises serious concerns; a late-season evaluation conducted in November 2023 cannot accurately capture the true vegetative and hydrological baseline of the area. The study's underlying premise that the 2024 spring moisture levels were "anomalous" incorrectly minimizes normal seasonal fluctuations characteristic of the Henry's Lake Flats ecosystem.

Crucially, the Kagel Study failed to analyze the three main creeks that supply the vital surface hydrology to this property. Independent analysis of the long-term hydrological impacts of this development remains critically lacking. The property is explicitly identified on the National Wetlands Inventory, and even the Kagel Study itself acknowledges that the site contains extensive water features beyond just isolated 404 waters. Specifically, the study identified nine Palustrine Emergent (PEM) wetlands, three ponds classified as Palustrine Unconsolidated

Bottom (PUBHx) wetlands, Crooked Creek (a 404 jurisdictional creek), and five irrigation ditches classified as Riverine (RIV) wetlands.

The natural reality of this landscape is further validated by Fremont County's official wetland overlay mapping, which identifies freshwater emergent wetlands extending across almost the entire property. Both Sawtelle Creek and Bootjack Creek provide direct surface flow onto this site, feeding into a delicate network of interconnected waters that the developer seeks to alter. The Idaho Department of Environmental Quality must not issue a 401 Certification based on narrow, developer-funded data while ignoring the broader, unstudied risks to downstream waters—especially given the hidden scope of the developer's full 460-acre holding and the severe threats to the underlying aquifer footprint.

The integrity of the Henrys Fork watershed hinges on protecting the intricate hydrological networks of the Henry's Lake Flats. Allowing invasive engineering interventions, wetland reroutings, and concentrated septic contamination based on incomplete and developer-funded data would violate the core tenets of water quality protection. Therefore, I strongly urge the IDEQ to exercise its regulatory authority to safeguard this irreplaceable ecosystem and deny the Section 401 Water Quality Certification for the Caldera Flats project.

Thank you for your time, your diligence, and your commitment to protecting Idaho's invaluable water resources.

Sincerely,

Leanne Yancey
PO Box 58 Chester 83421
5174 Shawna Island Park
Fremont County Idaho
tlyancey@myidahomail.com
208-313-4632

Comment 13

Destiny Locke

From: Tara Kleffner
Sent: Thursday, October 8, 2026 8:05 AM
To: Destiny Locke
Subject: FW: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

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From: Webmaster@deq.idaho.gov <Webmaster@deq.idaho.gov>
Sent: Thursday, October 8, 2026 7:53 AM
To: Webmaster <Webmaster1@deq.idaho.gov>
Subject: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Name

Glade Mason

Email

gladermason@gmail.com

Affiliation

Fremont County Government Overwatch Coalition

Comments

Please accept these formal comments regarding the draft Section 401 Water Quality Certification for the Caldera Flats project (NWW-2022-00344). As a local citizen, I urge DEQ to deny or heavily condition this certification. The Fremont County Planning and Zoning Commission initially denied this application precisely because of the long-term, irreversible risks it poses to the Henry's Lake Flat wetlands. The current draft fails to provide reasonable assurance that Idaho's water quality standards will be maintained.

1. Flawed Hydrological Baseline and Deficient Seasonal Testing
The technical data used to justify this draft certification is fundamentally flawed because the applicant's wetland and groundwater testing was conducted during the driest part of the year in an exceptionally dry year. Evaluating a dynamic wetland system solely during a seasonal low and a drought cycle creates a completely inaccurate baseline.
Wetlands naturally recede during dry periods and expand dramatically during wet and plentiful water years. A temporary lack of surface water during a drought does not mean the wetland has ceased to exist or function. By failing to evaluate the site during a peak water year, the applicant has completely underestimated the project's true hydrological footprint and contamination risks.
Action Required: DEQ must reject these dry-year baselines. The applicant must be required to supplement the administrative record with engineering, drainage, groundwater, and wetland data captured during a wet, high-water year and during peak spring runoff. The final certification and sediment controls must be modeled to withstand high-water conditions, not drought conditions, to prevent catastrophic downstream failures.

2. Destruction of Wetland Functions and Contamination Risks
The proposal to fill 0.17 acre of a 2,833-foot wetland swale and excavate a 3,794-foot replacement ditch along property boundaries will severely disrupt local hydrology. Excavation, road construction, and foundation digging will permanently alter groundwater flows, sediment transport, and flow timing.

Ecological Degradation: Stripping the existing swale will destroy native plants, microbes, and beneficial insects crucial to the wetland's natural filtration and survival.
Downstream Watershed Impacts: The project sits less than a half-mile from the Henry's Lake Outlet. Any contamination or sediment discharge on the Buttons property will directly impair aquatic life, recreational uses, and salmonid spawning fisheries in both the Outlet and the broader Henry's Fork watershed.
3. Unresolved Impairments and Antidegradation Compliance
DEQ's own assessment notes that one of the receiving water units, AU ID17040202SK025_02, is already failing to fully support aquatic life and completely lacks an EPA-approved Total Maximum Daily Load (TMDL).
Action Required: DEQ must publicly disclose its complete Tier I and Tier II antidegradation conclusions. Relying on the applicant's unverified promises to prevent further degradation of an already impaired water body violates water quality standards.
4. Direct Interference with Neighboring Water Rights
Alteration of the groundwater table and surface flows within Caldera Flats poses a direct threat to the senior water rights of the neighboring Orme Ranch, which has operated continuously since the late 19th century.
Action Required: DEQ must prove how it can guarantee this project will not interfere with the Ormes' ability to irrigate their land. Experienced Idaho agricultural producers know that the two proposed 36-inch culverts are entirely insufficient to sustain natural, historical flows to downstream properties.
5. Lack of Strict Oversight and Watchdog Mechanisms
The applicant has publicly insisted that his experts "proved" the property lacks wetlands, demonstrating a clear adversarial stance toward environmental compliance. DEQ cannot rely on self-policing or the overburdened Fremont County Planning and Building Department to enforce these stringent federal and state requirements.
Action Required: DEQ must implement independent, permanent, on-site monitoring starting immediately. The final certification must explicitly define who will audit the daily BMP logs, where turbidity exceedance records will be publicly posted, and establish strict triggers for corrective actions or immediate permit revocation.
6. Failure to Account for Drought and Cumulative Impacts
Idaho is facing severe, prolonged drought conditions. New water regulations governing personal wells may limit property owners to culinary use or face curtailment. DEQ has failed to evaluate how this project will interact with restricted water availability and whether the proposed 32-lot master layout will cause severe cumulative groundwater depletion.
Thank you for your rigorous review of this comment and for fulfilling your duty to protect Idaho's pristine water resources.

Comment 14

Destiny Locke

From: Buck Rodgers <bellin68@gmail.com>
Sent: Thursday, October 8, 2026 12:03 PM
To: Destiny Locke
Subject: Caldera Flats NNW-2022-00344

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Destiny:

I wish to vehemently protest the proposed housing project for the Caldera Flats area by Henry's Lake.

This a pristine area for wildlife movement and the worst thing that could happen is to mess with their migration area's in the whole of the Caldera Flats region.

That area is growing enough without putting a bunch of houses on that side of highway 20.

Let's just say that if that project is allowed it will be one of the stupidest ideas allowed of too many stupid land use debacle's ever contrived.

Thank you for your time.

Bruce P. Ellin
1111 Swisher Rd
Pocatello

Comment 15

Destiny Locke

From: Tony Gerhards <tonygerhards50@gmail.com>
Sent: Thursday, October 8, 2026 10:10 PM
To: Destiny Locke
Subject: Public comment on Caldera Flats project, NWW-2022-00344

Follow Up Flag: Follow up
Flag Status: Completed

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Dear Ms. Locke:

I am submitting comments opposing DEQ's draft Section 401 certification for the Caldera Flats project, NWW-2022-00344. Based on the public record, DEQ should not finalize the certification until it has a clear, project-specific basis for reasonable assurance that every required condition to protect the Idaho's water resources has been met.

The proposal would reroute a wetland swale, fill about 0.17 acre of waters, excavate a replacement ditch, and install two 36-inch road culverts. The issue is not just how much fill is placed. It is how that new drainage system will function after construction.

The sediment premise needs to be corrected.

Section 2.1 of the draft names sediment as the only pollutant of concern. Section 2.2 says AU ID17040202SK025_02 "is not fully supporting the aquatic life use," limits its review accordingly, and does not apply Tier II to that use. Read together, that can sound as though Henrys Lake Outlet is already established as sediment-impaired and the only remaining question is whether construction BMPs control sediment.

The 2021 *Upper and Lower Henrys Fork Subbasins: Sediment and Bacteria TMDLs* shows a more complicated—and important—history. DEQ corrected a mapping problem that had associated portions of the Twin Creek watershed with the Henrys Lake Outlet assessment unit. Once those waters were put in the proper assessment unit, the sediment TMDL followed Twin Creek, not Henrys Lake Outlet. EPA's 2021 approval likewise approved sediment TMDLs for Twin Creek and Sand Creek and an E. coli TMDL for Timber Creek; it did not approve a sediment allocation for Henrys Lake Outlet.

That distinction matters. Category 5 means the Outlet remained listed; it does not mean EPA approved a sediment TMDL for it. The 2021 review also indicates that the realigned valley-bottom Outlet unit lacked adequate recent representative data to determine use support and recommended reassessment. In

other words, the status was unresolved—not established as a defined sediment impairment with an approved load.

DEQ should say that plainly in the final record. A construction turbidity plan does not fill the underlying data gap.

An unsettled status is something reasonable assurance should resolve, not assume.

Idaho's narrative sediment criterion applies whether or not a TMDL exists: sediment may not be present in quantities that impair designated beneficial uses, and impairment determinations depend on monitoring and surveillance. IDAPA 58.01.02.200. Cold-water aquatic life and salmonid-spawning protections also address the biological endpoint, not simply whether the water looks clear during a short construction window. IDAPA 58.01.02.250. Fine sediment can affect salmonid spawning even when short-term water-column turbidity is acceptable. See Chapman, *Critical Review of Variables Used to Define Effects of Fines in Redds of Large Salmonids*, 117 Trans. Am. Fish. Soc. 1 (1988).

So the absence of a Henrys Lake Outlet sediment TMDL is not a reason to ignore sediment. It is a reason DEQ needs actual baseline information and a project-specific analysis before concluding that the proposed swale fill, new ditch, and culverts will protect aquatic life.

Tier I and Tier II also need a cleaner analysis.

Tier I applies to every covered water and requires protection of existing uses and the water quality needed to maintain them. IDAPA 58.01.02.051.01. The draft gives AU ID17040202SK025_04 Tier II protection but withholds Tier II for aquatic life in AU ID17040202SK025_02 because it is listed as not fully supporting.

That makes the basis for the listing especially important. If the supporting record says the valley-bottom unit remained listed after a mapping correction because representative data were lacking, DEQ should not turn the bare Category 5 label into an assumption that the unit is known to be sediment-impaired. Nor should uncertainty become a shortcut around the protection analysis. DEQ should reconcile the current Integrated Report status with the supporting 2021 record and explain what the available data actually establish.

Antidegradation also cannot be reduced to silt fence, equipment cleaning, revegetation, and culvert armoring. Those are useful construction controls. They do not establish a baseline for the permanent change: filling the existing swale, substituting a new ditch, and installing two culverted crossings. A finding that degradation "will not occur" needs evidence about how that resulting configuration will function.

The public record still needs the technical support to answer that question.

The public materials do not appear to include the profiles, elevations, cross-sections, groundwater information, hydraulic analysis, or site-specific functional comparison needed to evaluate the existing swale against the proposed ditch. Those details matter because the new configuration could affect flow, sediment movement, groundwater interaction, temperature, and other water-quality functions.

DEQ should put the relevant Corps drawings, drainage and grading plans, wetland assessments, hydraulic information, culvert designs, and other technical materials it relied on into the administrative record. If the information needed to evaluate these effects does not yet exist, DEQ should obtain it before issuing a final certification.

Construction controls are not the whole answer.

The draft contains useful erosion, turbidity, spill, and revegetation requirements. But those mainly address construction. They do not show how the rerouted drainage system will perform afterward.

General scientific literature supports looking closely at sediment retention, flow, groundwater exchange, temperature, and related functions, but it does not prove what will happen at Caldera Flats. That is exactly why DEQ needs site-specific evidence rather than assumptions in either direction.

In my view, if the available record does not allow a meaningful comparison between the existing swale and proposed drainage system, DEQ has not yet shown the factual basis for reasonable assurance.

Fish passage and monitoring should also be addressed directly.

The draft recognizes cold-water aquatic-life and salmonid-spawning uses and provides that culverts on fish-bearing waters may not block passage. Whether the proposed 36-inch culverts are passable depends on final slope, embedment, depth, velocity, substrate, and hydraulics. Where fish passage applies, the final designs should demonstrate it rather than assume it.

If DEQ issues certification, monitoring should match the actual risks identified in its technical review. That could include sediment or turbidity, temperature, dissolved oxygen, channel stability, flow, or groundwater response where directly tied to the permitted activity, with clear locations, frequency, duration, reporting, and corrective-action requirements.

Keep the Section 401 review focused—but complete.

I recognize that this proceeding is not county land-use review and does not cover every effect of the broader 32-lot subdivision. My request is limited to water-quality effects caused by, directly tied to, or inseparable from the federally permitted discharge and resulting aquatic-resource configuration.

Within that scope, DEQ should evaluate the post-construction consequences of the swale reroute and road crossings, not just the short-term effects of construction.

Requested action

I ask DEQ not to finalize the certification until the record provides a clear, project-specific basis for reasonable assurance that the permitted activity will comply with Idaho water-quality requirements.

At a minimum, DEQ should:

- Correctly explain the history and current status of AU ID17040202SK025_02, including the Twin Creek mapping correction and the absence of an EPA-approved sediment TMDL for Henrys Lake Outlet.
- Identify the actual data supporting the unit's current beneficial-use status rather than treating the Category 5 label as proof of a defined sediment impairment.
- Explain its Tier I and Tier II conclusions in light of that supporting record.
- Establish an adequate baseline for evaluating degradation from the swale fill, replacement ditch, and culvert crossings.
- Put the key engineering, drainage, wetland, hydraulic, and groundwater information in the record.
- Evaluate the existing swale and proposed drainage configuration on a site-specific basis.
- Demonstrate fish passage where it applies.
- Require meaningful monitoring, reporting, and corrective action where the technical record shows they are needed.
-

The approved sediment TMDLs are not a substitute for this analysis. The central problem here is that Henrys Lake Outlet's status was left unsettled after the assessment-unit correction. DEQ should not use that uncertainty first to characterize the water as impaired and then to conclude that construction BMPs establish no degradation.

-

An unsettled status is what reasonable assurance is supposed to resolve, not assume.

-

Thank you for considering these comments. Please confirm receipt and include them in the administrative record for NWW-2022-00344.

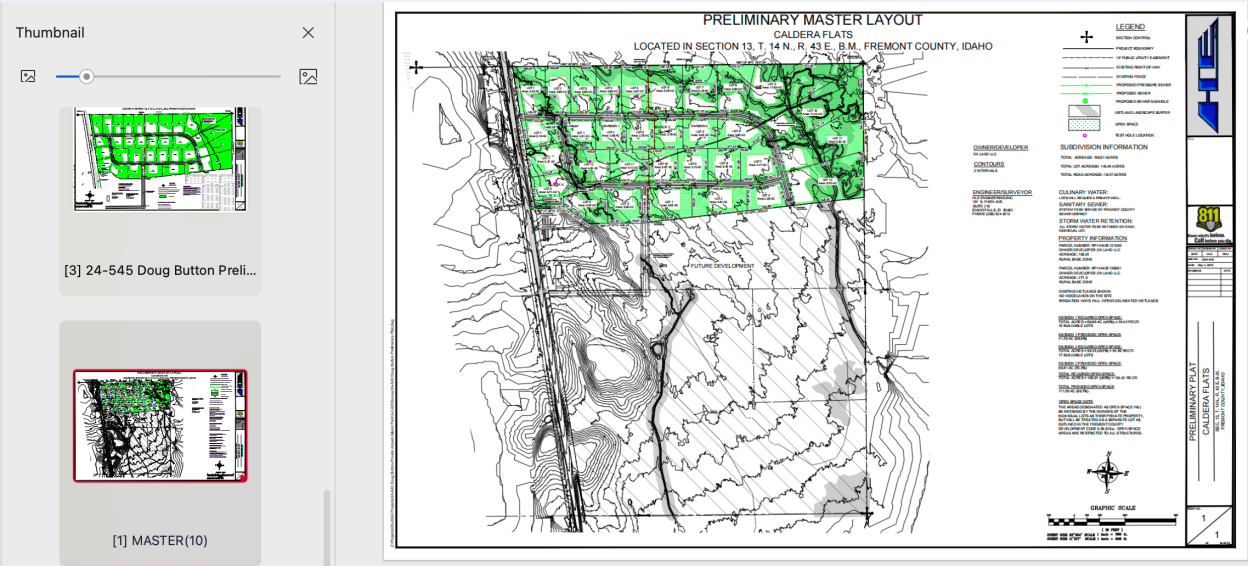
Anthony Gerhards
tonygerhards@msn.com
4233 Grandview Road
Island Park, Idaho 83429
(303) 945-6101

October 9, 2026
Second Yancey Comment
Caldera Flats and NWW-2022-00344

Destiny.Locke@deq.idaho.gov

Ms. Locke,
I appreciate the opportunity to further comment.

I would appreciate it if you would look at this proposed site map submitted by DK Button LLC/Caldera Flats, 32 lot placement and how I can better understand or accept that there will be less than 1/2 acre of water loss.



Based on the provided preliminary master layout for **Caldera Flats** in Fremont County, Idaho, I inquired of he web and asked the same question, the following research and my continued queries have provided me with the body of this comment.

It is highly unlikely that the project could claim less than 1/2 acre of water loss without rigorous verification from a formal wetland delineation.

While a graphic alone cannot provide an exact, legally binding calculation of water loss, multiple severe red flags indicate that water impacts could exceed Nationwide Permit limitations:

1. Significant Direct Overlap with Wetlands
The layout shows the proposed residential lots (highlighted in bright green at the top) superimposed directly over an extensive network of mapped wetlands, stream channels, and swales. The green hatched/shaded zones snake through almost all of the northern lots. Because the layout places access roads, utility corridors, and potential home sites directly on top of these features, the permanent physical footprint of the development appears to cut directly into jurisdictional waters.

2. Stream Rerouting and Culverts
According to public records and environmental reviews for this exact **Caldera Flats Project**, the scope specifically includes **rerouting a wetland swale** that bisects the 160-acre property and **installing two culverts** to facilitate proposed residential road crossings over two water bodies. Rerouting channels, installing large culverts, and placing fill for road crossings represent permanent, direct water losses that accumulate quickly across a large-scale project.

3. The Aggregate Subdivision Rule
Under the U.S. Army Corps of Engineers regulations, you cannot separate the project lot-by-lot to stay under the limit. The **1/2-acre threshold applies to the entire aggregate master plan**—including all shared roadways, individual driveways, house foundations, and utility installations combined. Given that this layout spans dozens of lots across an intensely hydrated flat, the cumulative structural footprint in those green-shaded wetland zones makes a sub-1/2-acre impact very difficult to achieve.
4. Regulatory Scrutiny

Because of these prominent aquatic features, the project has triggered a requirement for a **Section 401 Water Quality Certification** from the Idaho Department of Environmental Quality (DEQ).

This confirms that state and federal regulators are specifically reviewing the exact volume and acreage of discharge and water disruption associated with this layout.

"Program 29" a slight misnomer; is the regulatory mechanism the Caldera Flats developers are utilizing is **Nationwide Permit #29 (NWP 29)**, which is a federal general permit issued by the **U.S. Army Corps of Engineers (USACE)**.

There is a common misconception regarding what this permit allows. Contrary to the premise that it prohibits water diversion or rerouting, **NWP 29 explicitly authorizes discharges of dredged or fill material** into non-tidal waters for the construction or expansion of residential subdivisions, including attendant features like roads, utility lines, and stormwater facilities.
The developers (**DK Land, LLC**) are legally permitted to proceed with their wetland rerouting and culvert installations under NWP 29 because they satisfy its strict environmental thresholds:

- **The 0.5-Acre Threshold:** To qualify for a streamlined NWP 29 authorization, a residential project cannot cause the loss of greater than **0.5 acres** of non-tidal waters of the United States.

- **Caldera Flats' Actual Impact:** According to the Idaho Department of Environmental Quality (DEQ) draft certification, the Caldera Flats project will impact only **0.17 acres** of wetlands and waters. Because 0.17 acres is well below the federal 0.5-acre ceiling, the activity is legally eligible for the nationwide program rather than requiring a much lengthier Individual Permit.

- **State-Level Check and Balances:** Even though the project fits under the federal NWP 29 umbrella, the developers cannot simply divert water automatically. They must secure a state-level **Section 401 Water Quality Certification**. The Idaho DEQ evaluates the draft to ensure that the 115 cubic yards of gravel and rock fill used for the reroute and road crossings will not violate Idaho's water quality standards.

In short, the developers are not circumventing a ban; they are operating within the specific, quantified limits of a federal program designed precisely for low-impact residential infrastructure crossings.

This is proposed to be a 32 lot subdivision. I challenge the term low impact. It also proposes 32 individual wells, roads and power and sewer lines. It is simply impossible to imagine that the total disturbance to this wetland would not exceed the thresholds.

The challenge to the term "low impact" gets straight to the heart of why this development has triggered such intense local pushback. This 32 lot subdivision is being proposed over a complex wetland!!!!

When federal agencies like the **U.S. Army Corps of Engineers** use words like "low impact" or "minimal adverse effects," you are strictly looking at a highly narrow math formula: the raw acreage of physical dirt or gravel being dumped directly into a wetland channel (which, in this case, is **0.17 acres**). It is WRONG to accept minimal thresholds and alloy narrow math formulas is such an ecologically sensitive hydrology area.

IS IDEQ completely bypassing the broader, long-term ecological, hydrological, and community footprint of the inter-connected landscape itself!? This is THE CRITICAL QUESTION.

From a local perspective, a **32-lot residential development** on the environmentally fragile Henry's Lake Flats is anything but minor. Local community groups, have heavily criticized the project precisely because of how these cumulative factors will stress the ecosystem.

The 32 Individual Wells and Water Concerns

The proposal for **32 individual, private culinary wells** tapping into the local aquifer raises several critical red flags that community members have brought to county hearings:

- **Aquifer Stress & Drawdown:** Boring 32 separate 'straws' into a shallow water table on a critical wetland flat threatens the fragile hydrology that feeds from Henry's Lake -Crooked Creek-and beyond to the Henry's Fork. This connectivity is direct and unbroken on the surface and in greater volume sub-surface. Co-mingling of these critical hydrologies is not in question. Even though the Idaho Department of Water Resources (IDWR) generally permits individual domestic wells, the cumulative drawdown from 32 homes has sparked major concern over neighboring irrigation rights and stream levels. Where does the moratorium factor in here?

- **Lack of Agency Vetting:** In public objections, you will find that local conservation leaders have pointed out that the preliminary plat was advanced without sufficient feedback or rigorous performance data from water resource agencies proving that 32 wells wouldn't negatively alter the seasonal high-water table.

- **The Stormwater Cross-Contamination Risk:** Because the subdivision has no centralized stormwater management infrastructure, the county is requiring **every individual lot to handle it's own stormwater retention** on-site. Critics note that pairing 32 private wells with 32 separate lot-level runoff

pools on a wetland boundary significantly increases the risk of localized water contamination.

- **The property's natural hydrology—and the timing of the environmental assessments**—is exactly why the technical validity of the Kagel Environmental report became one of the most fiercely debated aspects of this entire development.
- A core argument highlights a classic conflict in environmental law: the difference between legal compliance formulas and actual independent and neutral field ecology evaluation.

- **Why the Methodology Faces Local Mistrust**
  The specific timing of the Kagel analysis and conditions when they conducted their field assessments in late autumn when seasonal surface waters naturally recede, combined with an altered summer flow (the natural water supply to this property was curtailed the previous year in order to allow Kagels to delineate)—is why community members and conservation groups argue the report does not reflect reality. Historically there is standing water on much of this property every spring.
    - **The Late-Autumn Evaluation:** In the high-altitude ecosystem of **Island Park**, wetlands are highly seasonal and dependent on spring snowmelt and early summer high-water tables. A delineation in middle November captures the landscape at its absolute driest. Critics argue that relying heavily on late-season fieldwork artificially minimizes the visible, active surface footprint of the **Crooked Creek** and **Bootjack Creek** confluence.
    - **The "Artificially Cut-Off" Flow:** In agricultural areas like Henry's Lake Flats, historically modified irrigation ditches, head-gates, and pasture management

frequently alter how water flows across a property. If upstream head-gates were closed or natural water channels were diverted during the study, the localized soil saturation levels and active vegetation would not reflect the true natural hydrology of a combined creek system bisecting the acreage.

- The paradox of the Caldera Flats approval is that, while the public and the **Fremont County Planning and Zoning Commission** found these study conditions highly questionable, federal regulatory frameworks are structured to accept them.

- The **U.S. Army Corps of Engineers (USACE)** wetland delineation manuals do not require a property to be actively flooded or preserved under natural conditions to be legally classified. Instead, they rely on a strict three-part test: **hydrophytic vegetation**, **hydric soils**, and **evidence of wetland hydrology** (which can include subterranean water tables dug 12 inches down). In the Kagel Study many of the test sites had standing water at a much shallower level than 12 inches. You can see standing water in their tire tracks. Also at many of the sites, nearly all of them in the northeast corner of the property where this proposed subdivision is located, had the standing water, obvious creek hydrology and ponds.
- **The Precedent Defense:** During the appeals process, proponents defended Kagel Environmental's work by noting that the firm is considered a premier environmental authority. Legally, if a certified scientist follows the letter of the USACE manual—even if the surface flow was altered at the time of the physical visit

—regulatory agencies treat the resulting numbers as the official legal baseline. But is this honest and acceptable?

- Buttons hired Kagels to give them a favorable result, Kagels advertise on their website that they are the experts that can give a developer a favorable result. Considering the highly sensitive waters involved, IDEQ should demand a neutral and comprehensive analysis of its own.
- **The Planning & Zoning Clash:** The Fremont County Planning and Zoning Commission aligned with this line of reasoning and applied it to local land use planning ordinances and policies. They also looked at the broader federal National Wetlands Inventory (NWI) maps, local online county maps, and public testimony, concluding there was a "preponderance of evidence" that the property was heavily impacted by wetlands beyond what the developer's plat claimed. They explicitly used this data mismatch to **deny the project**.
- **The Commissioners' Overrule:** When the developers appealed, the **Fremont County Commissioners voted 2-1 to overturn the denial**. The majority ruled that under current county ordinances, the county must defer to the specific engineering and environmental reports submitted by the applicant's certified professionals over general agency maps, community observations, other credible science…the Kagel Study was the minimum and sole source. They relied exclusively on the Kagel Study, they failed to apply local land use planning ordinances and policies, and instead based their reversal on the simple fact that the developer had filed the proper paperwork.

    - I also challenge the impact water acreage. I stress again, both Crooked Creek and Bootjack Creek have a nexus at the northeast location on this property. Natural flow of those combined waters further bisect the entire 460 property beyond the nexus. When Kagel Engineering delineated this property they analyzed twice, one in middle November when all surface hydrology has receded seasonally and then again in the summer of the next year claiming we had unusual rainfall while also verifying in their report that the natural water flow had been cut-off so that they could conduct their study. They also liked solely at Crooked Creek for their delineation. How can this science be trusted when the conditions of study were artificially manipulated, they failed to be comprehensive, and the baseline was evaluated in mid-November?

- Essentially, this incomplete "science" is being trusted by the state and federal permitting agencies not because it perfectly captures the natural, historic flow of Bootjack and Crooked Creek, but because it legally satisfied the exact technical checklist required by federal standards. Is this minimum threshold a standard IDEQ wishes to ground their professional standing upon?

  When developers strictly adhere to technical checklists—even with flawed or manipulated baseline data—federal frameworks like Nationwide Permit 29 (NWP 29) are designed to issue approvals automatically. Is technicality an appropriate standard alone?

Defending this specific piece of the Henry's Lake Flats ecosystem requires moving away from minimum federal compliance arguments, and include evaluating this project on this property through **state water rights law, local county code**

enforcement, and organized community-led land conservation and stewardship efforts too.

While the federal government handles the dirt dumped into wetlands, the **Idaho Department of Water Resources (IDWR)** governs the water pulled out of them. Idaho operates under the "Prior Appropriation Doctrine" (first in time, first in right).

- **The Cumulative Impact Argument:** Idaho law generally allows small "domestic wells" to be drilled without a lengthy water right application process. However, IDWR has the authority to intervene if a concentrated cluster of new domestic wells causes a "critical groundwater depletion" or directly injures senior surface water rights downstream.

- **Protecting Downstream Flows:** If 32 wells draw down the shallow water table, they directly reduce the natural flow of **Crooked Creek** and **Bootjack Creek**. Downstream agricultural water right holders and wildlife managers can file formal complaints with the IDWR, arguing that the cumulative drawdown constitutes an illegal diversion that harms established water rights.

- To my knowledge DK Button has not secured a single water right for this property. Have they?

One of the most vulnerable points for the developer (**DK Land, LLC**) is the county's strict mandate that the subdivision must connect to the **Macks Inn central sewer system**.

- **The Logistics Barrier:** Trenching a central sewer line across high-water-table wetlands and under creek beds is incredibly expensive, engineering-intensive, and requires extensive local easements. How much land disturbance will occur and how much wetland will be destroyed to do this? Power line trenching the same? I have heard mention of

necessary construction of lift stations. The connection to the Macks Inn sewer line is on the west side of US 20, not on the eat where the Button property is located.

- If the developer attempts to switch to individual septic systems due to the high cost of the sewer connection, what then? Individual septic systems on 460 acres of high-water-table flats would create an un-mitigable threat of e-coli and nutrient contamination to sub-surface hydrology.
- I contend, along with the majority of the Island Park Community, that the FC Commissioners ignored overwhelming evidence of environmental harm to favor private interests. The Commissioners acted arbitrarily and failed to follow the comprehensive plan's mandate to protect Island Park's natural resources and direct all development AWAY FROM WETLANDS. IDEQ needs to do the same. The Public relies upon the guarantee, that beyond local ignorance, the state will insure the highest standards.

The 160 acres in this first and second phase of proposed development is exactly where the highest concentration of wetlands on the total 460 acres are located!
The upper northeast corner is the nexus of Crooked Creek and Bootjack, where the shared hydrology that concerns the Orme Ranch.

To develop the **Caldera Flats subdivision** on the environmentally sensitive Henry's Lake Flats, the developers (**DK Land, LLC**) plan to address the Clean Water Act Section 404 jurisdictional waters and wetland channels **through a combination of engineering reroutes, culvert infrastructure, and state-certified water management.** If I read the Program 29 qualifications right....they can't do this under Program 29.

According to regulatory filings with the Idaho Department of Environmental Quality (DEQ), their strategy consists of two primary actions:

- **Rerouting the Wetland Swale:** The developer intends to completely **reroute a wetland swale** that currently bisects the 160-acre property.

- **Installing Culverts:** They plan to **install two major culverts** over two distinct water bodies (unnamed water bodies of the Henrys Lake Outlet / Crooked Creek system) to facilitate the construction of proposed residential road crossings like Crooked Creek Drive.

Because these activities result in a direct discharge into protected waters, the developer has had to seek a **Section 401 Water Quality Certification** from the Idaho DEQ, running parallel to their federal Clean Water Act Section 404 permitting requirements.

Local planning documents also specify that individual lots will be required to handle their own stormwater retention to minimize further impacts on the local aquifer and creek systems.

Go to page 20.
"This NWP does not authorize the construction of new dikes, roads, water control structures, or similar features associated with the management areas. The activity must not result in a net loss of aquatic resource functions and
services. This NWP does not authorize the conversion of wetlands to uplands, impoundments, or other open water bodies. (Authority: Section 404)"

Addendum (more research points and concerns):

Caldera Flats, the proposed residential project would reroute a wetland swale and install two road culverts near waters connected to Henrys Lake Outlet.

Under the preliminary plat notes, culinary water for each lot will be sourced via **individual private wells**. Because the Island Park area sits within the Upper Henrys sub-basin, it is impacted by stringent groundwater protections and broader regional moratorium rules. Navigating these requirements involves:

- **Exempt Domestic Well Limits (SB 1222 & SB 1083a):** Because this is a new residential subdivision application, the individual private wells drilled for each lot will face strict limitations under updated Idaho domestic well statutes. Homeowners will legally be allowed to use their exempt wells for **indoor culinary use only**.
- **Mitigation for Outdoor Water:** If the lots require water for outdoor irrigation or landscaping, the developer or individual lot owners cannot rely on the exempt wells. They must legally acquire and record a separate surface water or ground water right, or provide an approved mitigation plan to offset the new consumptive water use in the basin.

I fail to understand how DK Button has been exempted from the community well requirement under the moratorium and is being allowed a 32 well application?

3. State Environmental and Wetland Certifications

Because the development directly impacts the ecologically sensitive Henrys Lake Outlet watershed, the project cannot receive a final construction permit without active state and federal environmental clearances:

- **DEQ 401 Water Quality Certification:**
- The developer is seeking permission to reroute a wetland swale bisecting the property and place culverts for residential road crossings, impacting roughly 0.17 acres of jurisdictional waters. This DEQ certification must be finalized to ensure the project meets state water quality standards.
- **Stormwater Mitigation:** The county requires all stormwater retention to be fully managed and engineered to remain strictly on each individual lot to prevent destructive runoff from carrying sediment into the Henry's Fork River. Undeveloped and undetermined future property owners are an assurance?

The Nationwide Permit 29 (NWP 29) is a general permit issued by the U.S. Army Corps of Engineersthat authorizes the discharge of dredged or fill material into non-tidal waters of the United States for residential developments, including single-residences, multi-unit developments, and residential subdivisions.

Key Limits and Rules/Nationwide Permit 29

- **Acreage Limit:** The total loss of non-tidal U.S. waters cannot exceed **1/2-acre** for the project or the aggregate total of a residential subdivision (including individual lots).
- **Pre-Construction Notification (PCN):** Permittees must submit a formal PCN to the district engineer **prior to commencing** any work.

- **Compensatory Mitigation:** Mitigation is typically required at a **1-for-1 ratio** for wetland losses exceeding 1/10-acre and stream bed losses exceeding 3/100-acre that require a PCN.
- **Expiration:** The current Nationwide Permits Program cycle runs from March 15, 2026, through March 15, 2031

Buttons applied for this permit on September 3, 2026, under the Nationwide Permit 29 program. This puts the regulatory decision up to DEQ and USACE to rubber stamp it. Here's a summary of the Nationwide 29 Program:

Nationwide Permit 29 is a regulatory authorization effective from **March 15, 2021, to March 15, 2026**, that allows for the discharge of dredged or fill material into non-tidal waters of the United States for **residential developments**. This includes the construction of single residences, multiple-unit developments, and subdivisions. Key constraints include a maximum loss of **1/2-acre** of non-tidal waters of the United States per project or subdivision aggregate, and the requirement for **pre-construction notification** to the district engineer. The permit explicitly prohibits discharges for stormwater management facilities in streams and wetlands under this specific NWP. This requirement is impossible to meet when this project proposes160 acres of construction, land disbursement/hydrology disruption, construction of 32 homes, construction of roadways, and installing and connecting power and sewer infrastructure.

There are 3 creeks that feed the hydrology on the Button property, Crooked Creek which is a 404 creek, Sawtelle Creek, and Bootjack Creek.

It is important to note, both surface and sub-surface waters mingle. The two attachments to this public comment show

the wetland connectivity and significant concentrated wetland plus the proposed project site map that clearly illustrates the concentrated wetland where they propose building a 32 lot subdivision.

Sawtelle Creek, Bootjack Creek, and Crooked Creek (the 404 surface water stream-direct and contiguous connection to Henrys Lake (an Idaho 404 waterbody and a source of the Henry's Fork of the Snake River). The Supreme Court gives special deference to direct and contiguous surface connection of 404 waters.

Sawtelle Creek has no nexus with Crooked Creek by Bootjack does, all three creeks contribute to the wetland on this property.

The National Wetland Inventory map has identified this property as wetland, Kagel acknowledges that.

The Fremont County map server does as well.

I submitted attachments in my first comment that verifies this information.

The developer, the developer's contractors, Tom Cluff and the county commissioners ignored all of this historic science in making this decision to reverse the FC P&Z denial. They were completely unaware of, and/or did not reference the draft Section 401 certification identifies U.S. Army Corps of Engineers project NWW-2022-00344 and Nationwide Permit 29 for residential development, which says work would discharge about 115 cubic yards of gravel or rock and affect about 0.17 acre of waters of the United States, including wetlands. They never questioned or considered whether this was in fact accurate or feasible.

Idaho DEQ proposes to certify the federal permit only if the permittee follows the federal authorization and the state's conditions. The draft is not a subdivision approval, building permit,

final federal permit or conclusion that every upland aspect of the development meets local requirements, and the county commissioners failed to vet this aspect of the project even though considerable public comment raised the issue.

Web inquiry has provided me with the following information. The draft proposal names Kevin Button of DK Land Company as applicant and Briana Schultz of Sundog Ecological Inc. as authorized agent. Idaho DEQ decides the state water-quality certification; the Army Corps controls the related federal permit. Have you all submitted, evaluate, and approved any hydrology diversion engineering plan? The public has not seen one.

The proposal would fill about 0.17 acre of an existing 2,833-foot wetland swale, excavate about 3,794 feet of replacement ditch and install two 36-inch culverts for proposed residential roads. Please help me understand how this reconciles with the Nationwide Permit 29 for residential development, which says work would discharge about 115 cubic yards of gravel or rock and affect only 0.17 acre of waters of the United States, including wetlands?

The applicant says the reroute is needed because the wetland swale bisects the property and the culverts are needed for two residential road crossings. Section 401 review asks whether the federally permitted discharge can comply with state water-quality requirements. Please assure me that it can or would.

The proposed new ditch would run along the western and southern property boundaries before reconnecting to the original swale, which then enters neighboring land owned by the applicant. One culvert would cross the original swale just downstream of the reroute; the second would cross another wetland feature on the east side of the property.

The draft describes the receiving waters as two unnamed water bodies of Henrys Lake Outlet within the Upper Henrys sub-basin. It identifies sediment as the pollutant of concern. The site-wide development may involve other effects, but this particular certification addresses discharges tied to the federal Section 404 permit.

The record lists beneficial uses including cold-water aquatic life, salmonid spawning, primary-contact recreation and domestic water supply. Idaho's standards also protect statewide uses such as agricultural and industrial supply, wildlife habitat and aesthetics. This is a subjective assurance, there is no science provided that can assure this.

DEQ says one assessed unit is fully supporting its assessed uses and receives Tier II anti-degradation protection. Another, AU ID17040202SK025_02, is not fully supporting aquatic life and has no EPA-approved total maximum daily load. The draft nevertheless concludes that its sediment controls can protect existing uses **if** the project and conditions are followed. What verifies this assertion? That's a BIG IF.

The permittee would have to design, install, maintain and adapt best management practices throughout the work. The permittee has failed to even help maintain a common property boundary fence and I know that personally there have been shared hydrology irrigation issues with neighbors. The permittee developer does not even reside in Island Park or the state of Idaho.

The draft requires daily checks of BMP effectiveness during project activity, on-site inspection logs and documentation of corrective measures available to DEQ on request. Is DEQ going to be onsite daily or are we going to rely on the local bulldozer operator to do this?

Only clean fill could be placed. Temporary fill must be removed by construction completion. Perimeter controls, stable structural fill, stabilized entrances and prompt revegetation would be required to prevent sediment from reaching waters. Excess dredged or fill material must be contained and disposed of so it cannot re-enter federal waters. Is IDEQ intending to have personnel on site daily for a period of 5 years (proposed development construction window) in order to monitor and insure that all compliance requirements are met?

The draft begins with visual observation. If work, a BMP failure, a spill or another event creates a **visible sediment plume**, the permittee must inspect the controls and activity, correct the cause and add or revise BMPs. A plume that persists after correction triggers instrument monitoring. The permittee does not reside in this state, who will be there to make a visual inspection every single day of excavation/construction?

Field measurements would use a calibrated turbidimeter, with upstream background and downstream samples recorded by location, date, time and value. If downstream turbidity is 50 nephelometric turbidity units or more above background, the project would exceed the cited standard, work would stop and DEQ would be notified within 24 hours….BY WHOM????

The permittee also would keep the certification at the site, ensure contractors understand it and provide access when DEQ requests inspection or monitoring. Any modification to the certified activity, including a changed work window, would first go to DEQ for a compliance review.

At 25 to 49 NTU above background, samples would be collected every two hours. Work could continue for up to eight hours in a 24-hour period, then must stop until readings return to acceptable levels. Persistent readings above 25 NTU for 10 days trigger corrective action, notice and a return below 25 NTU for at least 24

consecutive hours before resumption. IF THIS HAPPENED, THE DAMAGE IS ALEADY DONE IN THIS TIMEFRAME.

Culverts would have to preserve natural drainage, avoid constricting the channel, prevent flow from being directed into a bank and include grade control. Fish-bearing crossings could not impede passage. The outflow must be armored with clean, angular riprap free of fines.

Before in-water work, the applicant must contact Idaho Fish and Game to determine whether spawning areas are present. If they are, the applicant and agency would establish a work window protecting spawning fish, incubating eggs and newly emerged fry. Any fish salvage requires separate qualified personnel and authorizations.

Heavy equipment in wetlands generally must use mats or suitable pads, and temporary crossings should be perpendicular to the channel and removed when no longer needed. Concrete wash water must not enter waters. Fueling, repair and servicing are barred within federal waters. Who will do all of this work and be able to assure compliance?

The draft also requires secondary containment, daily equipment leak inspections, a spill kit and procedures for containment and notification. Unauthorized releases likely to reach water must be stopped and reported through the stated emergency and environmental contacts. DK Land (Doug and Kevin Button) live out-of-state. Who is the oversight authority for this proposed project, multiple independent local contractors, the backhoe operator, the bulldozer operator, the culvert installer? I will offer that the likelihood that if any non-complainance issue or spillage occurred, the incident would be not reported and the fact of it would be covered up is more highly likely.

DEQ's reasonable-assurance finding depends on compliance with the federal permit and the draft conditions. The certification does not authorize activity controlled by another agency or private party and does not remove the applicant's duty to obtain other state, federal or local approvals. None of this can be guaranteed.

The draft tells the applicant to consider Idaho Department of Lands requirements and requires contact with Idaho Fish and Game for spawning. It does not reproduce the complete Corps application, wetland delineation, plan sheets, culvert calculations, mitigation determination or local subdivision record.

A Fremont County preliminary master layout identifies DK Land and describes a broader 32-lot concept, but Buttons have lot split a larger and contiguous parcel. What are the future an complete development plans for this property? IDEQ should have that question answered. Fremont County asked but was not answered.

If ownership changes, and DK land intends to shift all compliance to individual property owners, will the certification be transferred in writing to 32 individual property owners? DEQ reserves authority to modify it if project conditions, receiving waters or standards change enough to undermine reasonable assurance. If this development is allowed to move forward IDEQ will be required to do constant and future monitoring.

Questions and records are still needed. IDEQ should immediately reconcile the October 12 deadline on the public page with the October 13 date in the draft. It should accept any timely submission reasonably relying on either official date and publicly state how it will handle the discrepancy.

The agency and Corps should publish the complete permit application, wetland delineation, swale profile, drainage calculations, culvert plans, alternatives analysis and

compensatory-mitigation determination. A map should show existing and proposed channels, both crossings, monitoring points and the downstream property boundary.

Idaho Fish and Game's work-window decision and any fish-passage analysis should be added before final work authorization. DEQ should also explain how it will inspect daily BMP logs, receive turbidity data and make exceedance and corrective-action records available.

Any final record should identify whether the 0.17-acre figure is temporary, permanent or combined impact, how it was calculated and explain how it could be possibly accurate considering the scale of this proposed development, and whether later design changes would trigger a new public review rather than only an internal certification modification. There will never be an opportunity for a do-over, and it will be impossible to restore or reverse any damage once construction commences.

Idaho DEQ is aware of the Henry's Lake Outlet sensitivity and vulnerability condition, have comprehensive monitoring requirements current to-date been conducted, are calculations accurate? The environmental finding is incomplete as to the conditions of the HL Outlet, IDEQ cannot speak to the condition of this critical fishery waterway. Can IDEQ guarantee that the larger public-notice issue of potential proposed disturbance to this hydrology system, beyond this singular proposed subdivision, has been met?

Two days ago (October 7, 2026) I drove the Henry's Lake Flat and observed equipment on the Button property at the nexus location of Bootjack Creek-Crooked Creek in the northeast corner of the property. Are Buttons being allowed to begin culvert work before this public comment period and IDEQ final decision is complete?

I request a immediate cease and desist of any work or land disturbance until of this critical analysis has been addressed, questions answered, and legal challenges (and there will be that) are resolved. A Comprehensive analysis by an independent party to evaluate downstream discharge and contaminant study before ANY DISTURBANCE, CULVERT, DIVERSION ACTION is approved. Relying solely on the developers hired consultant should be questioned and verified.

I request that the DEQ answer material points in the final record. I request a redline, calculation, map, sampling table, model input, inspection record or explanation of how a condition will be enforced. If the agency relies on a record that is not posted, identify it and ask that it be made available while review remains possible.

I appreciate your consideration of my comments and the multiple critical issues that I and many others have raised.

Respectfully,

Leanne Yancey

753 N 3100 E Chester

and 5174 Shawna, Island Park, Idaho

Official sources and records

- Idaho DEQ public notice, instructions and comment form
- Draft Section 401 certification for Caldera Flats, NWW-2022-00344
- Fremont County Caldera Flats preliminary master layout

- U.S. EPA overview of Clean Water Act Section 401 certification
- Idaho DEQ stormwater and construction BMP program
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The aspect of drilling 32 individual wells in this concentrated acreage and diversion of natural water flow to a historic wetland eco-system is going to be allowed because strict permitting language and compliance can be secured, according to what you are saying. How can we defend this wetland from these new federal rules?

To stop or alter the trajectory of the Caldera Flats development, you cannot rely on the federal permitting process alone. Accurately pointing out,

Comment 17

Destiny Locke

From: rjcervi@gmail.com
Sent: Saturday, October 10, 2026 7:03 PM
To: Destiny Locke
Cc: 'Teri Ehresman'; 'Leanne Yancey'
Subject: Public Comment - Caldera Flats Project (NWW-2022-00344)

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Dear Ms. Locke,

As Island Park property owners with a family background in engineering and construction, we strongly oppose the proposed Caldera Flats subdivision.

From a **common sense** construction standpoint, developing sensitive wetlands, altering natural drainage, and increasing runoff pose serious risks to Henry's Lake and its ecosystem.

Just because land can be developed does not mean it should be. The community has voiced its opposition, and the Planning and Zoning Commission voted to deny the subdivision. These concerns deserve to be respected.

We respectfully request that Idaho DEQ withhold water-quality certification until the environmental impacts are thoroughly evaluated and adequate protections demonstrated.

Please confirm receipt of our comments and include them in the official public record for the Caldera Flats water-quality certification.

Thank you for your consideration.

Ron & Heidi Cervi
rjcervi@gmail.com
Island Park Property Owners

Comment 18

Destiny Locke

From: JoAnn Farrell <joannkfarrell@gmail.com>
Sent: Saturday, October 10, 2026 7:51 PM
To: Destiny Locke
Subject: Destiny Locke- Idaho Department of Environmental Quality-Caldera/ Henry's lake Flats

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

October 9, 2026
Destiny Locke
Idaho Department of Environmental Quality
Idaho Falls Regional Office
900 N. Skyline Drive, Suite B
Idaho Falls, ID 83402
Destiny.Locke@deq.idaho.gov
Re: Caldera Flats draft 401 certification, NWW-2022-00344
Dear Ms. Locke:
I'm submitting these comments because the draft doesn't yet give a clear, project-specific basis for reasonable assurance. DEQ shouldn't finalize the certification until it does.
The project would fill about 0.17 acre of wetland swale, excavate a replacement ditch, and install two 36-inch culverts. The amount of fill is not the main issue. The issue is how the new drainage will function after the work is done.
The draft names sediment as the only pollutant of concern and withholds Tier II protection for aquatic life in AU ID17040202SK025_02 because the unit is listed as not fully supporting. A reader could take that to mean Henrys Lake Outlet is already established as sediment-impaired and the remaining question is only whether construction controls are adequate.
The 2021 record says something narrower. DEQ corrected a mapping error that had associated portions of Twin Creek with the Outlet unit. Once those waters were reassigned, the sediment TMDL followed Twin Creek. EPA approved sediment TMDLs for Twin Creek and Sand Creek and an E. coli TMDL for Timber Creek. It did not approve a sediment allocation for Henrys Lake Outlet.
Category 5 on that record means the unit remained listed. It does not mean EPA approved a sediment TMDL for it. The 2021 review also found that the realigned valley-bottom unit lacked recent representative data to determine use support and recommended reassessment. The status was left unresolved, not established as a defined sediment impairment.
Idaho's narrative criterion still applies: sediment may not be present in quantities that impair designated uses. IDAPA 58.01.02.200. The cold-water and salmonid-spawning criteria address the biological endpoint. IDAPA 58.01.02.250. Tier I requires protection of existing uses in any event. IDAPA 58.01.02.051.01. The absence of an Outlet TMDL is not a reason to ignore sediment. It is a reason the record needs a baseline and a site-specific comparison of the existing swale and the proposed ditch before DEQ can conclude the activity will comply.
Construction controls do not fill that gap. From the public materials, the record does not appear to include the profiles, elevations, hydraulic analysis, or groundwater information needed to evaluate the permanent change. Those materials should be placed in the record, or obtained, before certification.

Where fish passage applies, the culvert designs should demonstrate it rather than assume it. Any monitoring should be tied to risks the technical record actually identifies.

This comment is limited to the water-quality effects of the permitted discharge. At a minimum, the final record should explain the mapping correction and the lack of an approved sediment TMDL for the Outlet, identify the data that support the current listing, explain the Tier I and Tier II conclusions in light of that record, and include a site-specific comparison of the existing swale and the proposed drainage configuration.

The mapping error does not exonerate the project, and it does not convict it. It means the impairment status of the receiving water is unsettled. An unsettled status is what reasonable assurance is supposed to resolve, not assume.

Please confirm receipt and include these comments in the record for NWW-2022-00344.

Sincerely,

JoAnn Farrell, Mike Farrell
Ron Peterson, Jane Peterson
4224 Shoshone Rd and 4234 Grandview Rd.
Island Park, Idaho
JoAnnkfarrell@gmail.com
402-707-0194

Comment 19

Destiny Locke

From: Terry Thomas <terryrthomas@live.com>
Sent: Monday, October 12, 2026 7:00 AM
To: Destiny Locke
Subject: Caldera Flats, NWW-2022-00344
Attachments: LBCU Breeding Areas_2012.bmp

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

I am writing concerning the proposal to alter and fill wetlands on Henry's Lake Flat on DK Lands LLC property identified as Caldera Flats, NWW-2022-00344.

As a retired wildlife habitat biologist with over 25 years of experience in this region, I want to point out that while this is private land and the public has no access, it is easily viewable from the highway and from the Island Park Cemetery. My wife and I routinely bird this area and commonly see greater sandhill cranes and long-billed curlews (as well as pronghorn antelope) throughout this property. They are there all season, indicating that they are breeding in this area, which is consistent with studies conducted in this area (2009 Nesting Ecology of Greater Sandhill Cranes (Grus canadensis tabida) in Riparian and Palustrine Wetlands of Eastern Idaho DAVID B. MCWETHY AND JANE E. AUSTIN).

Also, see the attached map for identified long-billed curlew nesting sites. Long-billed curlews have been identified as a Species of Greatest Conservation Need by the 2024 Idaho State Wildlife Action Plan. This map indicates that the area in question, along with southern Teton Valley, has the highest number of curlew nests/acre of any place in Eastern Idaho.

I also quote from McWethy and Austin, "Increasing development pressures across many rural lowland valley wetlands across the Intermountain West may negatively impact future crane breeding habitat and re productive success through loss or degradation of habitat, increasing human and predator/dog disturbance and changes to the hydrology of wetlands as a result of changes in water-use and management."

I want to direct your attention to parts of this quote, "increasing development pressures...may negatively impact future crane breeding habitat and reproductive success through...changes to the hydrology of wetlands as a result of changes in water-use management." This is as true for curlews as it is for cranes. This area is used by cranes and curlews in large part because of the hydrology, and changes have the potential to degrade this habitat value.

So, my question is, is DEQ addressing crane and curlew habitat losses in its evaluation of this proposal? While the needs of aquatic species such as fish will be potentially addressed, there is a broader picture here that goes well beyond the footprint of the proposed mitigations. How will DEQ address this?

This entire parcel is essentially wetland/high water table as clearly seen from aerial photography and the fact that livestock water can be reached by simply scooping out a shallow hole. It is all wetland habitat and trying to excise a smaller portion for study and alteration runs counter to logic.

Fremont County needs to hear from professionals that developing a wetland is a bad idea. There are still plenty of places for subdivisions that do not directly impact sensitive wildlife and habitat, but no one is making any more wetlands (at least not in Idaho).

I hope this helps DEQ with decisions regarding this proposal (and other proposals in this area).

Regards,

Terry Thomas

Comment 20

October 12, 2026

TO:
Destiny Locke
Water Quality Analyst
Idaho Dept. of Environmental Quality
900 N. Skyline Drive, Suite B
Idaho Falls, ID 83402

FROM:
Brandon Hoffner
Executive Director
&
Matt Hively
Aquatic Resources Manager
Henry's Fork Foundation
801 Main Street | PO Box 550
Ashton, ID 83420

SUBJECT: Draft Section 401 Water Quality Certification — Caldera Flats, NWW-2022-00344

Dear Ms. Locke:

The Henry's Fork Foundation (HFF) is a 501(c)(3) nonprofit organization based in Ashton, Idaho. Founded in 1984, our mission is to conserve world-class wild trout fisheries in the Henry's Fork of the Snake River and connected watersheds through science-based collaboration. To accomplish our mission, we work collaboratively with irrigators and producers, public agencies, hydroelectric power companies, local businesses, guides and outfitters, and other watershed stakeholders, through programs in science and technology, education, outreach, and stewardship. More information regarding our mission and programs can be found at www.henrysfork.org.

We appreciate the opportunity to comment on the Idaho Department of Environmental Quality's Draft Section 401 Water Quality Certification for the Caldera Flats project, and recommend that IDEQ revise the certification before finalizing it to more fully address the long-term water-quality consequences of permanently rerouting the existing wetland swale. We also recommend that IDEQ strengthen several conditions in Section 3. Specifically, we request that IDEQ require the applicant, as appropriate, to provide and implement post-planting monitoring and establishment measures for revegetation, remove excess dredged or excavated material from the project site or provide an adequate disposal and stabilization plan, and provide the hydrologic and engineering analysis supporting the proposed reroute and culvert design.

The draft identifies sediment as the pollutant of concern and focuses much of its analysis and conditions on short-term construction-related effects such as erosion, turbidity, dewatering, and sediment control. Those

protections are important, but the activity being certified is not temporary. The project would fill approximately 0.17 acre of an existing wetland swale extending roughly 2,833 linear feet, reroute that drainage through approximately 3,794 linear feet of newly excavated ditch, and install two 36-inch culverts. The relevant water-quality question therefore extends beyond whether construction BMPs can prevent a sediment or turbidity exceedance during construction. The project will permanently replace an existing wetland drainage feature with a newly constructed one, raising longer-term questions about flow attenuation, sediment retention and transport, channel and bank stability, interaction with shallow groundwater, wetland and riparian vegetation, water temperature, and downstream delivery of water and sediment. These questions are particularly relevant where IDEQ identifies one of the affected assessment units, AU ID17040202SK025_04, as a high-quality water subject to Tier II protection.

The draft itself recognizes that the long-term performance of the altered feature matters. Section 3.7 requires disturbed riparian areas to be replanted with native species providing equivalent or improved shading, bank stability, and habitat functions. It further requires native riparian or wetland vegetation to be successfully reestablished and requires restoration to achieve, at minimum, pre-project levels of water-quality benefit or an overall ecosystem improvement. Section 3.9 likewise requires the proposed culverts to maintain natural drainage patterns and prevent channel erosion or sediment buildup. We support these requirements. Our concern is that the certification does not establish what information the applicant must provide, or what monitoring and performance measures must be implemented, to demonstrate that these outcomes are achieved and maintained over time.

This is particularly apparent in the revegetation requirements of Section 3.7. Successful revegetation cannot be demonstrated by planting alone. Establishment occurs over multiple growing seasons, and plantings may fail because of inadequate moisture, herbivory, competition, unsuitable species or planting methods, or other site conditions. We recommend that IDEQ require the applicant to prepare and implement a revegetation plan with measurable success criteria and annual post-planting monitoring for a minimum of three growing seasons. Where those criteria have not been achieved after three years, monitoring and corrective action should continue for up to five years or until the criteria are met. The plan should address replacement of failed plantings, invasive-species control, and other corrective measures necessary to achieve the functions required by Section 3.7, with monitoring results provided to IDEQ.

The revegetation plan should also require the applicant to address whether site hydrology will provide sufficient moisture to establish newly planted vegetation. Because these plantings would occur within restored riparian and wetland areas, supplemental watering may not be necessary. However, recent and ongoing drought conditions demonstrate that natural hydrology and precipitation may not always provide adequate moisture during the critical establishment period. Where supplemental watering is necessary, the applicant should be required to identify a lawful and reliable source of water and an establishment-watering plan before disturbance of existing riparian or wetland vegetation occurs. Supplemental irrigation should serve to establish vegetation rather than substitute indefinitely for appropriate site hydrology; the rerouted feature should ultimately provide hydrologic conditions capable of sustaining the required vegetation after establishment watering ceases.

We also recommend revisions to Sections 3.4 and 3.10 regarding dredged and excavated material. Section 3.4 requires excess dredged or fill material to be contained and properly disposed of so that it does not enter waters of the United States or cause water-quality degradation, while Section 3.10 allows upland disposal provided that dredged material is prevented from reentering jurisdictional waters. Given that the project requires excavation of approximately 3,794 linear feet of new ditch, we recommend that IDEQ require excess dredged or excavated material generated by the authorized activity be removed from the project site and disposed of at an appropriate off-site disposal location. If IDEQ determines that onsite upland disposal

is appropriate, the applicant should instead be required to provide a disposal plan identifying the location of the material, setbacks from drainage features and waters of the United States, stabilization measures, and long-term erosion controls sufficient to prevent the material from becoming a future source of sediment to downstream waters.

Section 3.9 likewise warrants additional clarification in the final certification. It requires that culverts be sized appropriately to maintain the natural drainage patterns, prohibits constriction or directing flow toward the streambank, and requires adequate grade control to prevent channel erosion or sediment buildup. Those are appropriate performance standards, but the draft does not identify the technical basis for determining that the proposed 36-inch culverts and approximately 3,794-foot rerouted channel will satisfy them. We request that IDEQ require the applicant to provide the hydrologic and engineering analysis supporting the proposed design, including the basis for culvert sizing, expected performance of the reroute channel, and measures necessary to maintain drainage patterns, channel stability, and sediment transport over the long term. That information should be incorporated into IDEQ's final certification determination and, where appropriate, into enforceable certification conditions.

Lastly, while we recognize that Section 401 certification is limited to the federally permitted aquatic-resource alteration and is separate from the subdivision and other land-use approvals associated with the Caldera Flats development, we are concerned that the record does not make clear whether the approximately 0.17 acre of aquatic-resource impacts evaluated here represents the full scope of aquatic-resource impacts encompassed by the federally permitted activity. The applicant also owns an adjoining approximately 271-acre property that we understand may be associated with the larger development. If development of that property is planned as a connected phase or component of the same overall project and will require additional discharges to waters of the United States, we request that IDEQ require the applicant to clarify that relationship and identify any associated aquatic-resource impacts so that the record reflects whether those impacts have been considered in determining the scope of the "single and complete project" under NWP 29. If they have not, the record should make clear why they are properly treated as separate activities.

Thank you for considering these comments.

Sincerely,



Brandon Hoffner, Executive Director



Matt Hively, Aquatic Resources Manager

Comment 21

HENRYS FORK WILDLIFE ALLIANCE
CHAMPIONS FOR WILDLIFE

PO Box 725
Ashton, Idaho 83420
www.henrysforkwildlifealliance.org

October 12, 2026

Idaho Department of Environmental Quality
c/o: Destiny Locke
900 N. Skyline Drive, Suite B
Idaho Falls, ID 83402

RE: Draft 401 Water Quality Certification for Caldera Flats (NWW-2022-00344)

The Henrys Fork Wildlife Alliance works to protect healthy wildlife populations and the waters and habitats they depend upon throughout the Henrys Fork watershed. We have not been provided with the applicant's certification request package and therefore have not been able to review its supporting materials. Based on the draft certification and available public records, we have outlined our concerns and requests below. We respectfully request that DEQ obtain any additional information needed to ensure that the project's full scope and long-term effects on water quality are adequately understood and addressed before issuing final Section 401 Water Quality Certification.

Ensure a Complete Accounting of Impacts: Projects must satisfy a number of General Conditions to qualify for authorization under the U.S. Army Corps of Engineers Nationwide Permit (NWP) program. General Condition 15 requires evaluation of a "single and complete project"[1] and General Condition 29 limits the aggregate loss of waters of the United States associated with a residential subdivision to 0.5 acre[2]. Together, these requirements call for a complete accounting of impacts and losses across the entirety of a proposed project. The following concerns warrant clarification to ensure that all components of the proposed development have been considered and that their combined loss remains within the 0.5 acre limit:

- The applicant's June 13, 2025 Preliminary Master Layout depicts an access road on the 271.5-acre parcel to the south of the parcel proposed for development under the current draft certification. That road bears the label "EASEMENT TO BE ACQUIRED AND ACCESS ROAD TO BE BUILT WITH DIVISION 2."[3] The road crosses Sawtell Creek, a mapped aquatic feature in the applicant's Preliminary Jurisdictional Delineation Report.[4] Before a final certification is issued, the applicant should clarify whether the reported 0.17-acre includes impacts associated with this road and ensure that those impacts and their effects on water quality are evaluated as part of the complete project.

[1] Nationwide Permits (2026) pg. 48
[2] Nationwide Permit 29 (2026) pg. 1
[3] Caldera Flats Preliminary Master Layout
[4] Exhibit C, Caldera Flats Appeal Submission pg. 96-103

- The Class II permit application submitted to Fremont County's Planning and Building Department on February 19, 2025 includes a map dated October 24, 2024 depicting the subdivision of a larger parcel into two smaller parcels. The northern parcel bears the label "160 ACRE PARCEL TO BE DEVELOPED NOW" and the southern parcel bears the label "REMAINING ACREAGE, FUTURE DEVELOPMENT."[5] The later Preliminary Master Layout instead labels that southern parcel with "NO PLANS FOR FUTURE DEVELOPMENT."[3] The application also includes the deed recorded December 2, 2024 describing the subdivision of the larger property into approximately 160.01-acre and 271.5-acre parcels[6]. The land division was exempt from a county permit requirement under §3.03.040 of the Fremont County Development Code because both resulting parcels were at least 160 acres[7]. That county exemption does not establish that they constitute separate projects under federal NWP requirements. Before a final certification is issued, additional information should be gathered to determine whether plans for development on the southern parcel was abandoned, deferred, or remains under consideration, and whether work proposed on the northern parcel (including roads, utilities, or changes to jurisdictional features) would serve or enable that development. If future development on the southern parcel would constitute a dependent phase or component of the same project, its associated water quality impacts must be included in the current project evaluation. A separate parcel boundary alone does not justify excluding them.

Evaluate the Long-Term Effects of the Proposed Project: The proposed project would reroute an existing 2,833-foot wetland swale through a newly excavated 3,794-foot ditch along the property's western and southern boundaries. This permanent alteration warrants careful review under NWP General Condition 9, which requires maintaining the preconstruction course, condition, capacity, and location of open waters to the maximum extent practicable, accommodating expected high flows, and generally avoiding restrictions on normal or high flows.[8]

The requirements of General Condition 9 have practical significance for long-term water quality. Relocating a wetland swale can change how water moves through and interacts with soils, vegetation, and groundwater, potentially altering erosion, sediment deposition and trapping, nutrient retention, seasonal flows, and water temperature. These effects may persist after construction is complete. A replacement ditch that conveys water to the same downstream location does not necessarily preserve the existing swale's water quality functions and warrants careful evaluation of long-term hydrologic and water quality effects beyond temporary construction-related monitoring.

Before a final certification is issued, the applicant should provide an assessment comparing the existing swale and proposed ditch, supported by surveyed elevations, channel profiles and cross-sections, seasonal flow information, and hydraulic calculations. The assessment should

[5] Caldera Flats Public Hearing Application - Class II Permit pg. 10
[6] Caldera Flats Public Hearing Application - Class II Permit pgs. 3-4
[7] Fremont County Development Code pg. 16
[8] Nationwide Permits (2026) pg. 47

evaluate whether the relocation would alter flow attenuation, groundwater interaction, adjoining wetland hydrology, sediment retention, channel stability, water temperature, or downstream delivery of water and sediment. It should also evaluate alternatives that retain the existing swale, including changes to road alignment and subdivision layout. A water quality certification should include measurable post-construction performance standards, monitoring, and corrective action requirements to verify that the replacement ditch performs as predicted.

Until these questions are resolved, the applicant has not adequately demonstrated that the activity evaluated for certification encompasses the complete proposed project and its associated water quality effects.

Thank you for your consideration,

Alison Brown, Co-Director
Henry's Fork Wildlife Alliance
Email: alison@hfwildlife.org
Phone: 661-345-4563

Jean Bjerke, President, Board of Directors
Henry's Fork Wildlife Alliance
Email: jeanebjerke@gmail.com
Phone: 909-732-3868

TRENTADUE LAW OFFICE PLLC | PO BOX 1443 DRIGGS ID 83422 | 208-557-4846

Comment 22

October 12, 2026

Sent via Email

Destiny Locke / Alex Bell
900 N. Skyline Drive, Suite B
Idaho Falls, Idaho 83402
Destiny.Locke@deq.idaho.gov
Alex.Bell@deq.idaho.gov

Re: Henrys Lake Flats Coalition comments and procedural demands on Draft § 401 Water Quality Certification for Caldera Flats, NWW-2022-00344.

Dear Ms. Locke and Mr. Bell -

This firm represents the Henrys Lake Flats Coalition Inc., a tax-exempt Idaho nonprofit organization with a pending 501(c)(3) filing.[1] (Hereafter referred to as the "Flats Coalition"). The purpose of the Flats Coalition is to preserve and conserve the Henrys Lake Flats wildlife, wildlife habitat, natural resources, and open space. I am writing to **(1)** express significant concerns regarding the narrow scope of review applied to this Draft Section 401 Water Quality Certification ("Draft Certification") and **(2)** ask that DEQ require further study and full disclosure of all USACE materials relied upon in the agency determination. From my view, the agency record is incomplete, and as such, there is insufficient information to provide reasonable assurance that Idaho's Water Quality Standards (IDAPA 58.01.02) will be maintained and protected.

The Caldera Flats project area sits on the ecologically priceless Henrys Lake Flats area of Island Park near Yellowstone National Park. The site is dominated by mapped freshwater emergent wetlands as part of the Henrys Lake Outlet subbasin AU ID17040202SK025_02. The Draft Certification identifies sediment as the only pollutant of concern here, yet no TMDL has been identified, and there is no baseline information or project-specific analysis of this site.

Issue 1. The Draft Certification gives inadequate consideration of cumulative and indirect water quality impacts associated with several permanent alterations, including the swale reroute.

Section 3.1 of the Draft Certification explicitly limits DEQ's conditions "solely to the activity subject to the § 404 permit" (0.17 acres of wetland swale fill and culvert installations). While this reflects the immediate footprint of the federal dredge-and-fill permit, it fails to account for **(1)** the indirect and cumulative water quality impacts caused by the *permanent*

[1] EIN 42-4792399; effective date of tax-exempt status is August 28, 2026.

alterations to create ¾ of a mile of new swale, as proposed here and **(2)** the impacts of the broader 32-lot Caldera Flats residential subdivision which is the driving force behind all this work. Each of these 32 subdivision lots can contain a house with up to 10,000sf in "living space" *excluding* garages, barns, outbuildings, and a guest house may also be permitted.

The Draft Certification lists the primary receiving waters of the Henrys Lake Outlet as "not fully supporting aquatic life uses." Splitting the project into isolated components fails to account for how a 3,794 linear foot drainage swale reroute, roads, home construction, lawn maintenance, domestic land use, and site-wide hydrologic alterations will further degrade an already impaired waterbody. Disassociating the immediate wetland rerouting from the broader conversion of 160 acres of wet meadow/wetlands into residential infrastructure (roads, lawns, septic/runoff footprint) threatens to worsen degradation in an already impaired waterbody.

In addition, the southerly "remaining acreage" immediately abutting the project site is designated for future development in the materials submitted to Fremont county, but has not been included within the scope of DEQ's review. Shown below are the existing interconnected wetlands and buffers on the Caldera Flats site, as submitted to Fremont County

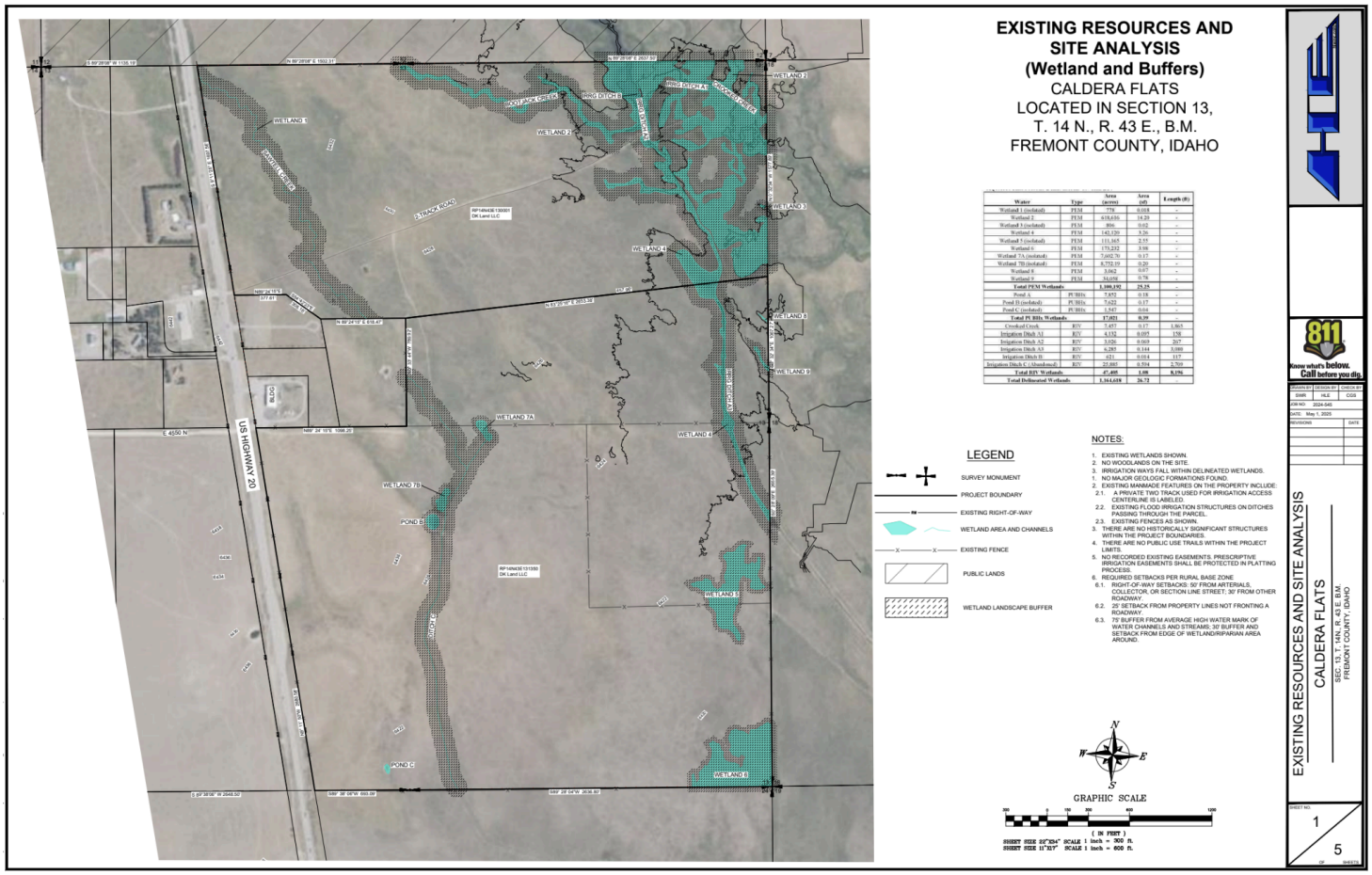


Fig 1: Caldera Flats Existing Resources and Site Analysis May 1, 2025. Submitted to Fremont County.

Now for comparison, shown below is an excerpt from Caldera Flats Traffic Impact Study submitted to Fremont County, Idaho. The large parcel to the south is slated for future development. This future development parcel is hydrologically interconnected to the project site, and is the downstream receiving property for water flow.

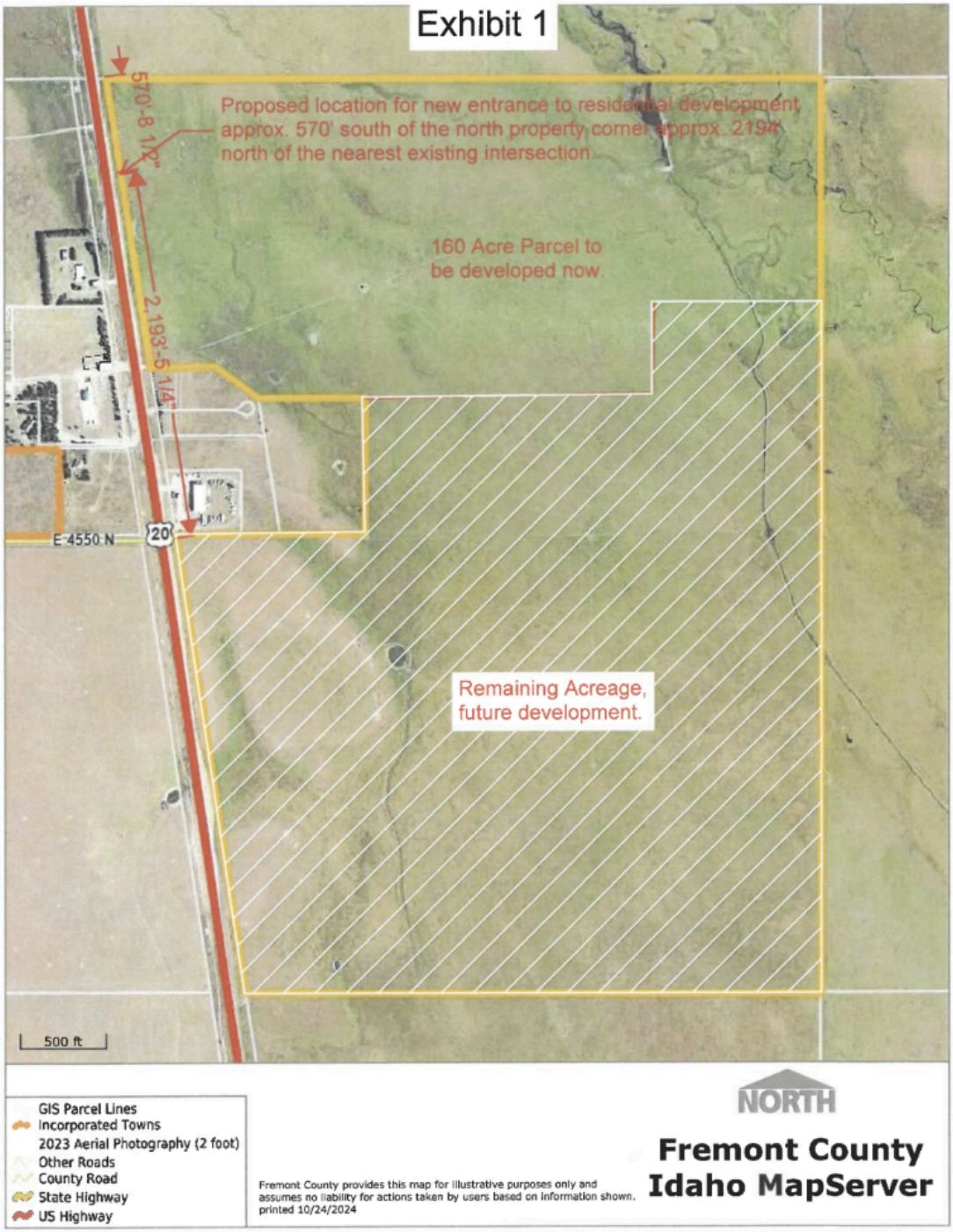


Figure 2: Caldera Flats HLE Engineering traffic impact analysis July, 2025.

Issue 2: The public record lacks technical rigor; there is no factual basis for an agency determination.

What site specific data does DEQ have to support any affirmative conclusions that there will be no degradation to water quality standards? DEQ must identify the technical basis for concluding that this permanent reroute of nearly ¾ of a mile of drainage through the Henrys Lake Outlet will maintain applicable water-quality standards and beneficial uses. From my view, there is no factual basis in the existing record because it is largely incomplete, and very few submittals have been disclosed to the public. More specifically, the public materials do not appear to include the profiles, elevations, cross-sections, groundwater information, hydraulic analysis, or the site-specific functional comparison needed to evaluate the existing swale against the proposed ditch. Also missing is any analysis of *how it will function in the long term once constructed.* DEQ must disclose whatever relevant USACE materials were used in the agency decision-making process, including all drawings, drainage and grading plans, wetland assessments, hydraulic information, culvert designs, and other technical materials.

Issue 3. Request for extension, public hearing, and baseline studies.

The public has been given very little time and inadequate technical information to review a major development proposal in an ecologically sensitive region. The 21-day public comment period provides insufficient opportunity for thorough public and technical review because there are no supporting studies and reports to inform the process. Stakeholders cannot comment on a certification without the necessary background contextual information.

To remedy this, we formally request that DEQ take the following actions prior to making a final decision:

1. **Extend the public comment period.** Extend the comment window by an additional 60 days to allow downstream property owners, local residents, and technical experts adequate time to review the proposal and relevant project files.

2. **Hold a public hearing.** Schedule a public hearing in Fremont County (or host a hybrid virtual hearing) to allow local residents and stakeholders to present oral testimony on water quality impacts.

3. **Disclose the full record <u>and</u> require further studies where needed.** The information provided to the public has no baseline data, and no supporting studies to explain the agency decision-making process. DEQ has not shown there are any assessments of how the swale reroute and road construction crossings will function in the long-term. Agency decisions cannot be based on assumptions or "filling in the gaps" where there is a lack of information. The following is needed:

a. **Wetland functional assessment:** A quantitative functional assessment comparing the ecological, thermal, and hydrological functions of the 2,833 linear feet of natural wetland swale being filled against the 3,794 linear feet of excavated ditch.

b. **Hydrologic & post-construction stormwater modeling:** Hydrogeologic modeling assessing post-development stormwater runoff volume, velocity, and nutrient/pollutant delivery from the full 32-lot subdivision into receiving waters.

c. **Baseline biological & temperature monitoring:** In-stream biological and temperature monitoring in Henrys Lake Outlet receiving waters to establish accurate pre-construction baselines.

d. **Demonstrated fish passage:** There is no way to conclude fish passage will be adequate and feasible without designs demonstrating as such.

If this information does not yet exist in the agency record, then DEQ must obtain it before issuing a final certification. In my view, if the available record does not allow a meaningful comparison between the existing swale and proposed drainage system; DEQ has not yet shown the factual basis for reasonable assurance of no degradation.

Issue 4: At a minimum, the following conditions should be attached to any final Certification issued by DEQ.

To ensure reasonable assurance that state water quality standards (IDAPA 58.01.02) will be met, DEQ should strengthen the final certification by including the following conditions to assess long-term impacts:

1. **Cumulative impact evaluation:** An assessment of how the full 32 -lot residential build-out (with guest homes) and associated hydrological alterations impact receiving water support status.

2. **Permanent post-construction stormwater standards:** Requirement of permanent post-construction stormwater retention and nutrient management controls, rather than relying solely on temporary construction BMPs.

3. **Enhanced wetland mitigation & monitoring:** Concrete, multi-year monitoring conditions for the 3,794-foot swale reroute to verify that wetland functions, shading, and aquatic habitat are fully restored and replaced, rather than simply relying on visual sediment checks.

4. **Strict in-water work windows:** Mandatory coordination with the Idaho Department of Fish and Game (IDFG) to establish strict work windows that protect salmonid spawning and egg incubation periods. We have attached a comment letter

submitted to Fremont County by IDFG, which identifies this project site as incredibly valuable to both fish and wildlife species, and the adjacent wetlands are highly vulnerable to harmful eutrophication from development runoff.

Thank you for your consideration of these comments and procedural requests. Please keep me informed of any public hearings, extensions, or final determinations regarding this certification.

Respectfully,



Anna R. Trentadue Esq.
Trentadue Law Office
anna@trentaduelawoffice.com
Attorney for the Flats Coalition

ATTACHMENTS:

A. Idaho Department of Fish & Game letter to Fremont County Board of County Commissioners regarding the Caldera Flats subdivision, January 27, 2025.

ATTACHMENT A

IDAHO DEPARTMENT OF FISH AND GAME
UPPER SNAKE REGION
4279 Commerce Circle
Idaho Falls, Idaho 83401

Brad Little / Governor
Jim Fredericks / Director

January 27, 2025

Thomas Cluff, AICP
Planning & Building Administrator
Fremont County Idaho
125 N. Bridge Street
St. Anthony, ID 83445

RE: DK Subdivision: Parcel TP14N43E130001

This letter was prepared in response to a request for comments from the Fremont County Planning and Building Department related to a proposed development by DK Land LLC (Property). The proposal is to divide 160 acres into 32 individual lots in an area known as Henry's Lake Flats (HLF) in Fremont County, Idaho.

Fish, wildlife, and associated public recreation are culturally, ecologically, and economically important for Idaho's citizens. The Idaho Department of Fish and Game's (IDFG) mission is to preserve, protect, perpetuate, and manage Idaho's fish and wildlife resources for the public interest (Idaho Code § 36-103(a)). Accordingly, IDFG is providing the following comments about the proposed project.

The Property is adjacent to US highway 20, north of Island Park Village, on HLF. It is bordered by Idaho Department of Lands on the north and private lands to the east and south (Figure 1). The combined natural resources on the HLF provides habitat for many species. Residential development may affect wildlife by 1) directly removing or altering natural resources (habitat loss or degradation), 2) disturbing, displacing, and impeding movement of wildlife due to increased human activity (Shannon et al. 2016; Sordello et al. 2020), and 3) expanding attractants (garbage, pet food, landscaping, etc.) to wildlife, thereby increasing potential for human-wildlife conflict.

The following are some natural resource themes we are highlighting to help Fremont County Commissioners and staff as they seek to balance conservation of important fish and wildlife habitats with the goals of the applicant.

Wetlands and Aquatic Ecosystems

Wetlands are vital features in Idaho's landscape providing many benefits to people and wildlife including protecting/improving water quality, providing fish and wildlife habitats, storing floodwaters, and maintaining surface water flow during dry periods http://www.epa.gov/wetlands/what-wetland. According to Idaho Department of Environmental Quality (IDEQ), "although wetlands make up only one to two percent of the land mass in Idaho, they are critical for the survival of 80 to 90 percent of the state's species" http://www.deq.idaho.gov/permitting/water-quality-permitting/dredge-fill.aspx.

Most of the Property is identified as freshwater emergent wetlands through the Fremont County Idaho GIS MapServer. A freshwater emergent wetland is a transitional area between wet and dry environments. It is frequently flooded, and water levels can fluctuate seasonally from dry to pooled. These wetlands are hydrologically (and ecologically) connected to the Henry's Fork Snake River, a major natural, cultural and economic resource in Fremont County. According to the Henry's Fork Foundation (HFF), water yield in the Henry's Fork watershed has declined by 15% in the last 23 years (compared to the prior 23 years). The causes of declines in available water (for all users) and water quality are complex, but commercial and residential development, particularly in wetland areas, are a significant concern. Additionally, HFF water quality monitoring data has indicated the river is experiencing increased nutrient loading which negatively impacts water quality and fish habitat. Construction of multiple septic systems in a hydrologically connected wetland adjacent to the Henry's Fork Snake River has the potential to lead to further eutrophication (concentration of harmful nutrients) and degradation of water quality in the Henry's Fork Snake River through nutrient loading of nitrogen and phosphorus (Withers et al. 2011). Eutrophication of the Henry's Fork could cause substantial shifts in aquatic macrophyte and macroinvertebrate densities and composition which could adversely affect quality and quantity of insect hatches on the river and impact recreational fishing opportunity.

Per the proposal, each of the 32 lots will be required to install an individual private well for culinary water and a septic system for wastewater. Surplus nitrogen and phosphorus from wastewater, lawn fertilizers, and other nutrient sources from development will stimulate the eutrophication process. Natural wetlands on and adjacent to the Property may be unable to contain the influx of extra nutrients allowing excess nutrients to enter the Henry's Fork River affecting the fishery, including native Yellowstone cutthroat trout.

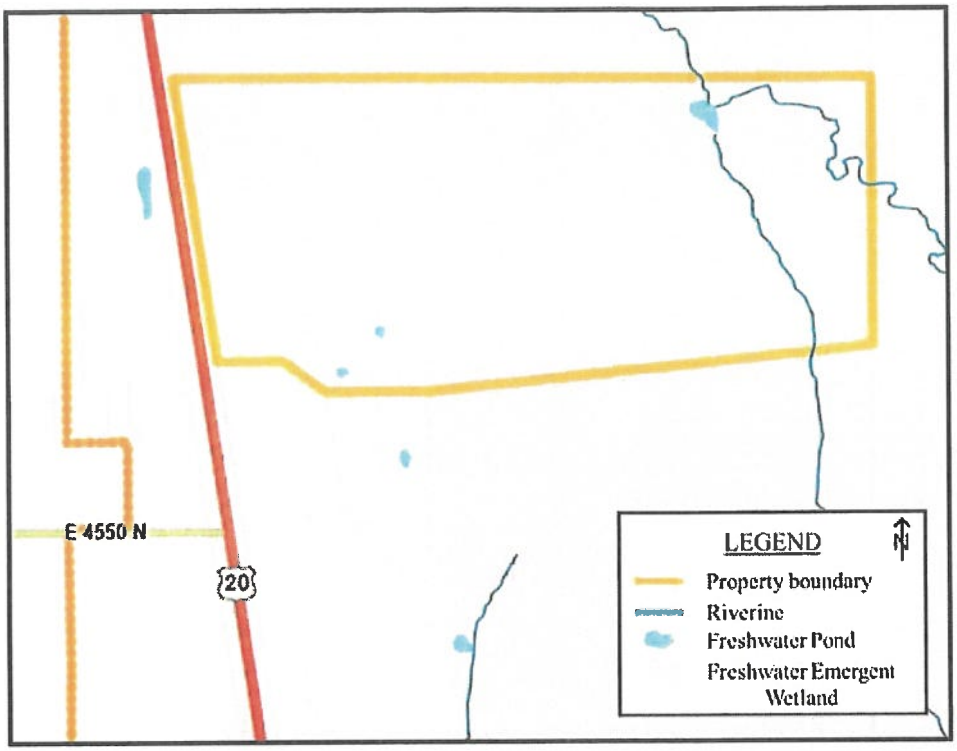


Figure 1: Map of property with identified wetlands from the Fremont County Idaho GIS MapServer.

Landscape Value to Fish and Wildlife Conservation

The Island Park area is a major component of the Greater Yellowstone Ecosystem (GYE), one of the largest intact ecosystems remaining in the temperate zones of the world (Keiter and Boyce 1991); terrestrial fauna of the GYE is unique due to its completeness (Hansen 2006).

The HLF is identified by several agencies and/or nongovernmental organizations as a priority landscape for conservation. The BLM classifies Henry's Lake Flats as an Area of Critical Environmental Concern (ACEC) due to its extraordinary value to wetlands and wildlife (BLM 1997). The Nature Conservancy's (TNC) 1,600-acre Flat Ranch Preserve is located on the HLF (adjacent to the Property). The Flat Ranch is a preserve and working cattle ranch where conservation and sustainable ranching practices are used to maintain highly functional habitats. The Flat Ranch is a lynchpin for surrounding private lands conservation and restoration. The IDFG identifies both HLF and the Flat Ranch as high conservation priorities in the Idaho Wetland Conservation Prioritization Plans (Hahn et al. 2005; Murphy et al.2012) and the Conservation Strategy for Henry's Fork Wetlands (Jankovsky-Jones 1996).

Given the conservation values of the Property and greater landscape, IDFG believes that Fremont County's Comprehensive Plan (Policy 14) provides valuable guidance. The Policy states that development should occur away from ***critical areas***, including "wetlands, stream and lakeshore corridors, steep slopes, wildlife habitat and corridors, and visually sensitive areas."

Big Game Seasonal Ranges and Movements

Big game wildlife species (e.g. elk, moose, mule deer, pronghorn, grizzly bear, and black bear) use the HLF extensively. Location and movement data from GPS collars show spring/summer/fall pronghorn antelope habitat use on the Property (Millspaugh et al. 2021). Individual pronghorn antelope that were collared during winter months near Ennis, Montana migrated into the HLF. Based on the timing of the data locations, pronghorn antelope use the Property and vicinity for migration (spring and fall), fawning habitat, and summer habitat (Appendix 1).

Elk also utilize the HLF for calving and during summer-fall. Most elk summering in Island Park winter in the Sand Creek Desert in Southern Fremont County, although some Island Park elk migrate to winter ranges in and around the Madison valley (MTFWP 2024). During an elk calf survival and movement research project, private lands on the flats surrounding Henry's Lake were heavily utilized for calving and early calf rearing (Roberts et al. 2012).

Development of the Property will likely impede wildlife movement and habitat use in general. Although fencing is not mentioned in the application, it is often developed in coordination with residential lots to define property boundaries. Fencing can create impediments to wildlife movement. The IDFG encourages limiting fencing on the Property. Where necessary for special needs, please consider using proper fencing to exclude wildlife.

Grizzly Bear

The Property falls entirely within the Greater Yellowstone Ecosystem (GYE) grizzly bear *Priority Conservation Area (PCA)* and *Demographic Monitoring Area (DMA)* as identified in the Interagency Grizzly Bear Committee's 2024 Conservation Strategy for the Grizzly Bear in the GYE. Grizzly bears are relatively common on HLF, and collared grizzly bears and incidental sightings have been recorded on and near the Property. There have also been several recent human-bear conflicts near the Property.

One of IDFG's most important grizzly bear management activities is advancing efforts that minimize conflicts between grizzly bears, people and livestock. Development of the Property as proposed stands to exacerbate human-grizzly bear conflicts in Island Park (Schwartz et al. 2010). A major cause of conflicts is the presence of attractants that are perceived as food by foraging bears. Common attractants that perennially result in human-bear conflicts in Island Park include pet food, bird seed, garbage and outdoor grills. Minimizing the availability of attractants related to subdivisions (new and existing) is an important consideration for human safety.

Species of Greatest Conservation Need

The HLF provides important resources for a variety of wildlife species. Idaho's State Wildlife Action Plan (SWAP) identifies *Species of Greatest Conservation Need* (SGCN) and their associated habitats (IDFG 2024). Idaho SGCN documented or likely to occur on or near the Property include but are not limited to moose, pronghorn, grizzly bear, wolverine, multiple bat species, Monarch butterfly, western bumblebee, various amphibian species, Yellowstone cutthroat trout, sandhill crane (McWethy et al. 2009), and long-billed curlew (Coates et al. 2019).

Two SGCN species that exemplify the importance of HLF habitats are greater sandhill crane (McWethy et al. 2009) and long-billed curlew (Coates et al. 2019). Both species rely on the wetland-grassland mosaic of the HLF for various aspects of their annual cycle. Adult and subadult cranes are present on HLF from April/May to October using the area for foraging, nesting, brood-rearing, and migration staging. HLF supports one of the densest nesting areas for long-billed curlews in Idaho. Curlews use HLF from early spring through July for foraging, nesting, brood-rearing and migration staging. Generally, declines in Curlew populations are attributed to development and conversion of curlew nesting habitat (Fellows and Jones 2009). The development of residential lots will likely affect sandhill crane and long-bill curlew and other avian species on the HLF.

IDFG supports the Fremont County Development Code (FCDC) that advises minimizing impacts to significant fish, wildlife, and associated habitat. We encourage attention to Chapter 5, Division 2 -Natural Assets and Critical Areas (Pg. 81-87). Specifically, 5.08 Critical Areas: Water Quality Vulnerability, Table 5.2 (pg. 84) Minimum Water and Wetland Buffers and Setbacks, and Section 5.14 Critical Areas: Wildlife and Plant Habitat. We encourage Fremont County Planning and Zoning committee to require a Wildlife Plan as stated in section 5.14 (pg. 85) in the FCDC. The Wildlife Plan may include the FCDC requirements above and other information required from the P&Z committee. Following these ordinances of the FCDC and IDFG recommendations will help protect residents, fish, wildlife, and recreational resources of the area.

Conserving ecologically valuable open space through the development process is a key strategy Fremont County leaders and planners should consider to help maintain important fish and wildlife habitat and populations. In general, larger contiguous areas of undeveloped habitat better avoid disturbing or displacing wildlife. Also, utilizing open space to buffer sensitive areas (wetlands, streams etc.); or aligning open space to abut existing protected lands (public and private) are two strategies that can expand the value of set-asides to fish and wildlife. For example, establishing open space in foothills habitats to abut public lands, or alongside private lands enrolled in conservation easements or protected as preserves (Flat Ranch) increases the likelihood of maintaining functional wildlife habitat on the larger landscape.

IDFG appreciates the opportunity to provide information to assist the Fremont County in their planning efforts. Please contact Eric Anderson (Upper Snake Region Technical Assistance Manager; 208-535-8032) if you have any additional questions.

Sincerely,



Matt Pieron
Regional Supervisor

MP:eda

CC: Rob Cavallaro (IDFG – Idaho Falls)
Tim Swearingen (IDFG – Idaho Falls)
Curtis Hendricks (IDFG – Idaho Falls)
Cade Bowlin (IDFG – Idaho Falls)
Brett High (IDFG – Idaho Falls)

Citations

Coates, Stephanie E.; Wright, Benjamin W.; and Carlisle, Jay D. (2019). Long-Billed Curlew Nest Site Selection and Success in the Intermountain West. *The Journal of Wildlife Management*, 83(5), 1197-1213. https://dx.doi.org/10.1002/jwmg.21661.

Fellows, S. D., and S. L. Jones. (2009). Status assessment and conservation action plan for the long-billed curlew (Numenius americanus). U.S. Department of the Interior, Fish and Wildlife Service, Biological Technical Publication, U.S. Fish and Wildlife Service, Region 6, Nongame Migratory Bird Coordinator's Office, Denver, Colorado, USA.

Hahn, L. C. Murphy, A. Schmidt, T. Fields. 2005. Idaho wetland conservation prioritization plan–2005. Idaho Department of Fish and Game, Boise, USA.

Henry's Fork Foundation. 2024. Letter to the City of Island Park Planning and Zoning Commission. March 20, 2024.

Idaho Department of Fish and Game (IDFG). 2024. Idaho state wildlife action plan. 2023 rev. ed. Boise (ID): Idaho Department of Fish and Game. https://idfg.idaho.gov/.

Jankovsky-Jones. 1996. Conservation Strategy for Henry's Fork Wetland. Conservation Data Center, Idaho Department of Fish and Game. April 1996.

McWethy, David B. and Austin, Jane E. (2009). Nesting Ecology of Greater Sandhill Cranes (Grus canadensis tabida) in Riparian and Palustrine Wetlands of Eastern Idaho, *Waterbirds* 32(1), 106-115.

Millspaugh, J., DeVoe, J., & Proffitt, K. (2021). Pronghorn Movement and Population Ecology. Fish, Wildlife & Parks and University of Montana. Federal Aid in Wildlife Restoration Grant W-176-R, Annual Interim Report. September 2021.

Montana Fish, Wildlife & Parks. 2024. Montana Action Plan Update: Implementation of Department of the Interior Secretarial Order 3362: "Improving Habitat Quality in Western Big Game Winter Range and Migration Corridors".
https://fwp.mt.gov/conservation/strategy-for-wildlife-movement-and-migration

Murphy, C., J. Miller, and A. Schmidt. 2012. Idaho wetland conservation prioritization plan–2012. Idaho Department of Fish and Game, Boise, USA.

Roberts, S., H. Miyasaki, and D. Meints. 2012. Interstate movements of elk in the Centennial/Henry's Lake mountains of eastern Idaho. Idaho Chapter of The Wildlife Society Meeting, 5–8 March 2012, Boise, USA.

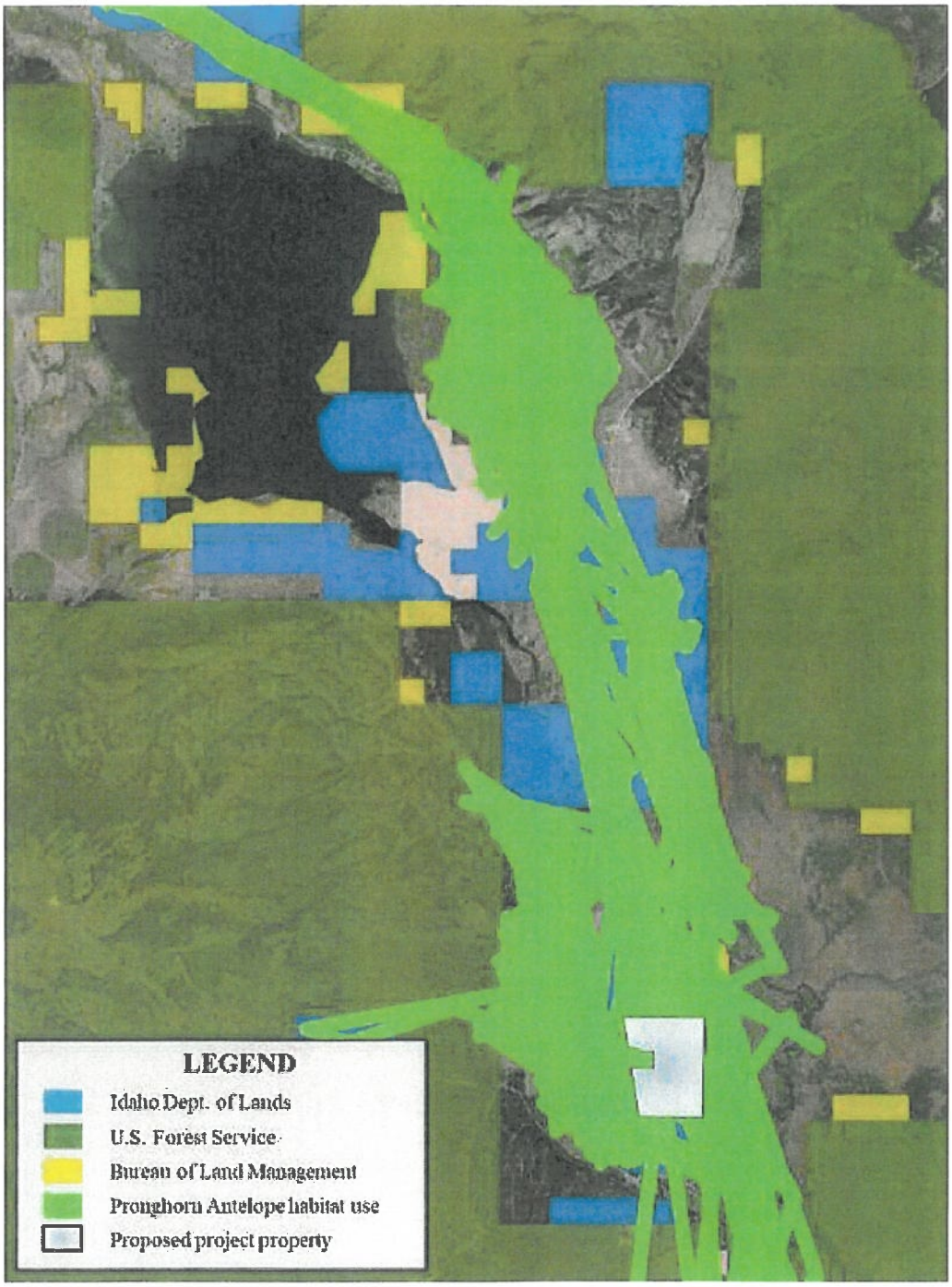
Schwartz CC, Haroldson MA, White GC. 2010. Hazards affecting grizzly bear survival in the Greater Yellowstone Ecosystem. [accessed 2015 Jun 01]; Journal of Wildlife Management. 74(4):654–667.

Shannon, G., McKenna, M. F., Angeloni, L. M., Crooks, K. R., Fristrup, K. M., Brown, E., et al. 2016. A synthesis of two decades of research documenting the effects of noise on wildlife. *Biol. Rev. Camb. Philos. Soc.* 91, 982–1005. doi: 10.1111/brv.12207

Sordello, R., Ratel, O., de Lachapelle, F. F., Leger, C., Dambry, A., and Vanpeene, S. (2020). Evidence of the impact of noise pollution on biodiversity: A systematic map. *Environ. Evid.* 9, 1–27. doi: 10.1186/s13750-020-00202-y

Withers, P. J. A., H. P. Jarvie, and C. Stoate. 2011. Quantifying the impact of septic tank systems on eutrophication risk in rural headwaters. Environmental International 37:644-653

Appendix



Appendix 1: Pronghorn antelope habitat use from collared individuals (Millspaugh et al. 2021). Collars identify pronghorn use (bright green) along Henry's Lake and Henry's Lake Flats. The parcel proposed is highlighted. Based on the timing of the data locations, pronghorn antelope use the Property for important migration routes (spring and fall), fawning habitat, and summer habitat.

Comment 23

Destiny Locke

From: Jean Bjerke <jeanebjerke@gmail.com>
Sent: Monday, October 12, 2026 4:59 PM
To: Destiny Locke
Subject: Comment on draft 401 water quality certification for Caldera Flats Project .

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Idaho Department of Environmental Quality
c/o: Destiny Locke
900 N. Skyline Drive, Suite B
Idaho Falls, ID 83402

I am a 28-year property owner and part time resident of Island Park. I have several comments on the draft 401 water quality certification for the Caldera Flats Project NWW-2022-00344.

1. I am deeply concerned about the broader water-quality question of whether the proposed replacement ditch will actually maintain the hydrologic and water-quality functions of the existing wetland feature over the long term—things like flow attenuation, sediment retention, channel stability, groundwater interaction, wetland/riparian vegetation, temperature, and downstream delivery of water and sediment. This concern seems especially relevant given that one of the affected assessment units is considered high quality and receives Tier II protection.
2. It is essential that IDEQ identify the technical basis for concluding that this permanent reroute will maintain applicable water-quality standards and beneficial uses over the long term.
3. It is essential that IDEQ require measurable post-construction monitoring, including precise, specific, and demonstrable performance standards to make sure that post-construction monitoring takes place. IDEQ must also build in concrete consequences for failure to meet post-construction monitoring, up to and including cancellation of the project.
4. The permittee would have to design, install, maintain and adapt best management practices throughout the work. The draft requires daily checks of BMP effectiveness during project activity, on-site inspection logs and documentation of corrective measures available to DEQ. IDEQ should make available to the public, information about who will perform daily inspections, what qualifications are required, how long logs must be retained, when DEQ audits them, and whether corrective-action records will be posted or available through a public-records request.
5. The Corps' Idaho regional conditions require phased projects to disclose previously authorized fill so the Corps can determine the "single and complete project." This raises significant questions about the Buttons' remaining 271-acre parcel of land. If that parcel is part of the same overall development or contemplated buildout—as is implied by some of the property owner's previous public statements and other evidence—IDEQ must confirm that the 0.17 acre being evaluated here represents the full aquatic-resource impact associated with the NWP 29 authorization, rather than one phase or component of a larger project.

Thank you for your consideration of these comments and concerns.

Comment 24

Destiny Locke

From: Tara Kleffner
Sent: Tuesday, October 13, 2026 8:53 AM
To: Destiny Locke
Subject: FW: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

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From: Webmaster@deq.idaho.gov <Webmaster@deq.idaho.gov>
Sent: Friday, October 9, 2026 1:19 PM
To: Webmaster <Webmaster1@deq.idaho.gov>
Subject: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Name

David OLeary

Email

davidolearyslc@msn.com

Affiliation

Property Owner

Comments

I own property at the outlet of Henrys Lake and am very concerned about the impact of this project on the fishery and spawning fish. The fishery is already very stressed due to lower water levels and additional sediment, obstructed flow and disruption of habitat will very likely make the situation worse and be very difficult to recover from. I oppose the approval of this applied for permit.

Comment 25

Destiny Locke

From: Tara Kleffner
Sent: Tuesday, October 13, 2026 8:54 AM
To: Destiny Locke
Subject: FW: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

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From: Webmaster@deq.idaho.gov <Webmaster@deq.idaho.gov>
Sent: Friday, October 9, 2026 2:51 PM
To: Webmaster <Webmaster1@deq.idaho.gov>
Subject: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Name

Erika Meadows

Email

erika_meadows@hotmail.com

Affiliation

cabin owner

Comments

Dear DEQ,
Please accept these formal comments regarding the draft Section 401 Water Quality Certification for the Caldera Flats project (NWW-2022-00344). As a local citizen, I urge DEQ to deny or heavily condition this certification. The Fremont County Planning and Zoning Commission initially denied this application precisely because of the long-term, irreversible risks it poses to the Henry's Lake Flat wetlands. The current draft fails to provide reasonable assurance that Idaho's water quality standards will be maintained.

1. Flawed Hydrological Baseline and Deficient Seasonal Testing The technical data used to justify this draft certification is fundamentally flawed because the applicant's wetland and groundwater testing was conducted during the driest part of the year in an exceptionally dry year. Evaluating a dynamic wetland system solely during a seasonal low and a drought cycle creates a completely inaccurate baseline.
Wetlands naturally recede during dry periods and expand dramatically during wet and plentiful water years. A temporary lack of surface water during a drought does not mean the wetland has ceased to exist or function. By failing to evaluate the site during a peak water year, the applicant has completely underestimated the project's true hydrological footprint and contamination risks.
Action Required: DEQ must reject these dry-year baselines. The applicant must be required to supplement the administrative record with engineering, drainage, groundwater, and wetland data captured during a wet, high-water year and during peak spring runoff. The final certification and sediment controls must be modeled to withstand high-water conditions, not drought conditions, to prevent catastrophic downstream failures.

2. Destruction of Wetland Functions and Contamination Risks The proposal to fill 0.17 acre of a 2,833-foot wetland swale and excavate a 3,794-foot replacement ditch along property boundaries will severely disrupt local hydrology. Excavation, road construction, and foundation digging will permanently alter groundwater flows, sediment transport, and flow timing.
Ecological Degradation: Stripping the existing swale will destroy native plants, microbes, and beneficial insects crucial to the

wetland's natural filtration and survival.
Downstream Watershed Impacts: The project sits less than a half-mile from the Henry's Lake Outlet. Any contamination or sediment discharge on the Buttons property will directly impair aquatic life, recreational uses, and spawning fisheries in both the Outlet and the broader Henry's Fork watershed.

3. Unresolved Impairments and Antidegradation Compliance DEQ's own assessment notes that one of the receiving water units, AU ID17040202SK025_02, is already failing to fully support aquatic life and completely lacks an EPA-approved Total Maximum Daily Load (TMDL).
Action Required: DEQ must publicly disclose its complete Tier I and Tier II antidegradation conclusions. Relying on the applicant's unverified promises to prevent further degradation of an already impaired water body violates water quality standards.

4. Direct Interference with Neighboring Water Rights Alteration of the groundwater table and surface flows within Caldera Flats poses a direct threat to the senior water rights of the neighboring Orme Ranch, which has operated continuously since the late 19th century.
Action Required: DEQ must prove how it can guarantee this project will not interfere with the Ormes' ability to irrigate their land. Experienced Idaho agricultural producers know that the two proposed 36-inch culverts are entirely insufficient to sustain natural, historical flows to downstream properties.

5. Lack of Strict Oversight and Watchdog Mechanisms The applicant has publicly insisted that his experts "proved" the property lacks wetlands, demonstrating a clear adversarial stance toward environmental compliance. DEQ cannot rely on self-policing or the overburdened Fremont County Planning and Building Department to enforce these stringent federal and state requirements.
Action Required: DEQ must implement independent, permanent, on-site monitoring starting immediately. The final certification must explicitly define who will audit the daily BMP logs, where turbidity exceedance records will be publicly posted, and establish strict triggers for corrective actions or immediate permit revocation.

6. Failure to Account for Drought and Cumulative Impacts Idaho is facing severe, prolonged drought conditions. New water regulations governing personal wells may limit property owners to culinary use or face curtailment. DEQ has failed to evaluate how this project will interact with restricted water availability and whether the proposed 32-lot master layout will cause severe cumulative groundwater depletion.

Thank you for your rigorous review of this comment and for fulfilling your duty to protect Idaho's pristine water resources.
Erika Meadows

Comment 26

Destiny Locke

From: Tara Kleffner
Sent: Tuesday, October 13, 2026 8:54 AM
To: Destiny Locke
Subject: FW: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

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From: Webmaster@deq.idaho.gov <Webmaster@deq.idaho.gov>
Sent: Saturday, October 10, 2026 7:51 PM
To: Webmaster <Webmaster1@deq.idaho.gov>
Subject: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Name

Joseph Gerhards

Email

joeygerhards@hotmail.com

Comments

October 10, 2026

Destiny Locke
Idaho Department of Environmental Quality
Idaho Falls Regional Office
900 N. Skyline Drive, Suite B
Idaho Falls, ID 83402
Destiny.Locke@deq.idaho.gov

Re: Oppose draft § 401 certification, Caldera Flats, NWW-2022-00344; Henrys Lake Outlet, AU ID17040202SK025_02 and AU ID17040202SK025_04

Dear Ms. Locke:

Deny this certification, or withhold it. The record does not support reasonable assurance that the discharge will comply with Clean Water Act §§ 301, 302, 303, 306, and 307 or with Idaho's water quality standards. 33 U.S.C. § 1341(a)(1); 40 C.F.R. Part 121; IDAPA 58.01.02.
Caldera Flats would fill about 2,833 feet of wetland swale, excavate about 3,794 feet of new ditch, and install two 36-inch culverts on unnamed waters of Henrys Lake Outlet. The draft counts that as 0.17 acre and 115 cubic yards. The real action is a permanent relocation of valley-bottom drainage on waters designated for cold water aquatic life and salmonid spawning. IDAPA 58.01.02.100; 58.01.02.150.04.
The draft names sediment as the pollutant of concern and treats AU ID17040202SK025_02 as not supporting aquatic life, then finds no lowering if silt fence and related conditions are followed. That reading is wrong.

The 2021 Upper and Lower Henrys Fork Sediment and Bacteria TMDLs state that a mapping error associated the Outlet unit with portions of the Twin Creek watershed. The failing data were largely from forested streams, including a 2014 Sawtell Creek bioassessment that DEQ said was not representative of the valley-bottom channels. After the miles were moved, the sediment TMDL followed them. EPA approved sediment TMDLs for Twin Creek (ID17040202SK030_02) and Sand Creek (ID17040203SK013_04), and an E. coli TMDL for Timber Creek. It did not approve a sediment allocation for Henrys Lake Outlet.

What remained was Category 5 on a narrower basis: the valley-bottom unit because the channels are hydrologically modified and DEQ had no recent data adequate to judge use support, and the dam-to-forest unit because of a failing bioassessment. The 2021 document said to retain the listing and reassess. Category 5 here means “still listed, not cleared.” It does not mean the Outlet is a defined sediment-impaired water with an approved load.

Using that label to skip Tier II, then clearing the project on construction controls, skips the question the 2021 document left open. After Twin Creek was removed, no one had the data to say whether this unit supports its uses. A turbidity plan does not answer that. Tier I still requires protection of existing uses and the water quality necessary to protect them. IDAPA 58.01.02.051.01; 58.01.02.052. The narrative sediment criterion applies whether or not a TMDL exists. IDAPA 58.01.02.200; 58.01.02.250. Certification covers the activity, not just the cubic yards of rock. PUD No. 1 of Jefferson County v. Washington Department of Ecology, 511 U.S. 700 (1994).

The mapping error does not clear the project. The 2021 document kept the valley-bottom unit listed in part because those streams are already hydrologically modified. This certification would add another modification — 2,833 feet of swale filled and 3,794 feet of ditch cut — on a unit DEQ has not reassessed since it admitted the last listing was partly the wrong stream. Acreage hides that. The new ditch changes length, slope, shade, and groundwater connection, which is a temperature and sediment pathway, not a construction-window problem. Poole and Berman, 27 Environmental Management 787 (2001). Fine sediment in redds affects salmonid spawning even when the water column looks acceptable. Chapman, 117 Transactions of the American Fisheries Society 1 (1988). Filling the swale removes sediment and nutrient retention that a boundary ditch cannot be assumed to replace. Johnston, 21 Critical Reviews in Environmental Control 491 (1991); Fisher and Acreman, 8 Hydrology and Earth System Sciences 673 (2004); Moreno-Mateos et al., 10 PLoS Biology e1001247 (2012). A 36-inch culvert with a “do not impede passage” condition is not a showing that fish can pass. Warren and Pardew, 127 Transactions of the American Fisheries Society 637 (1998).

Do not certify until the record contains three things: a correct statement that the Outlet has no approved sediment TMDL; a use-support evaluation of the realigned valley-bottom unit; and an antidegradation analysis of the permanent ditch and swale fill, not just construction turbidity. AU ID17040202SK025_04 is fully supporting and requires a real Tier II finding. IDAPA 58.01.02.051.02; 58.01.02.052. Until then, reasonable assurance is not available.

Sincerely,

Joseph Gerhards

Comment 27

Destiny Locke

From: Tara Kleffner
Sent: Tuesday, October 13, 2026 8:54 AM
To: Destiny Locke
Subject: FW: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Tara Kleffner
Web Design and Content Specialist
Idaho Department of Environmental Quality
1410 N. Hilton St., Boise, ID 83706
P: (208) 373-0299
www.deq.idaho.gov

From: Webmaster@deq.idaho.gov <Webmaster@deq.idaho.gov>
Sent: Sunday, October 11, 2026 2:12 PM
To: Webmaster <Webmaster1@deq.idaho.gov>
Subject: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Name
Gary S. Ellis
Email
gse0190@gmail.com
Affiliation
Property owner off Red Rock Road
Comments
I am in opposition to the Caldera Flats proposed Development due to the fact that the property is an important part of the downstream Henry's Lake drainage which includes critical nesting wet land habitat and the Henry's Lake Outlet which terminates at the Henry's Fork of the Snake near Big Springs. It's a very important fishery and spawning route and a summer home to many important waterfowl including but not limited the long billed curlew which I have viewed nesting on numerous occasions. Please vote no to permanent development, roads, houses, and motorized travel in this historical and crucial landscape.

Comment 28

Destiny Locke

From: Tara Kleffner
Sent: Tuesday, October 13, 2026 9:01 AM
To: Destiny Locke
Subject: FW: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

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From: Webmaster@deq.idaho.gov <Webmaster@deq.idaho.gov>
Sent: Monday, October 12, 2026 4:23 PM
To: Webmaster <Webmaster1@deq.idaho.gov>
Subject: New submission from Public Comment Form re: DEQ seeks comment on draft 401 water quality certification for Caldera Flats Project

Name

Cynthia Riegel

Email

cindy@projectgreateryellowstone.org

Affiliation

Project Greater Yellowstone

Comments

Re: Draft Section 401 Certification, Caldera Flats (USACE NWW-2022-00344, Nationwide Permit 29), DK Land LLC, Fremont County
To the Idaho Department of Environmental Quality:

Dear Ms. Locke -
I am writing to comment on the draft Section 401 certification for the Button's proposed Caldera Flats subdivision on Henry's Lake Flats in the Island Park Area of the Greater Yellowstone Ecosystem (GYE). Henry's Lake Flats provides year-round, seasonal, and transitional habitat for sensitive, threatened, and endangered wildlife species including sandhill cranes, long billed curlew, trumpeter swans, Yellowstone cutthroat trout, pronghorn antelope, and grizzly bears. Intense residential development will likely do permanent damage to the hydrology, soils, water quality and quantity, emergent wetlands and wildlife habitat of this area. Prior to issuing any permits, a thorough understanding of the cumulative impacts and adequate mitigation of those impacts must be determined.

A primary concern concern for this application is that the 0.17-acre impact figure accounts only for the swale reroute and two road culverts needed to access the proposed subdivision. It does not account for the wetland impacts of building out the 32-lot subdivision itself. The 0.17-acre figure covers only part of the project. The draft describes filling about 0.17 acre of a 2,833-foot wetland swale, excavating about 3,794 feet of replacement ditch, and installing two 36-inch culverts. Nationwide Permit 29 caps the total loss of waters at one-half acre for the entire residential subdivision, including roads, driveways, home sites, utility lines, and every individual lot. The project also includes 32 homes and driveways, 32 private wells, power lines, and a sewer connection to the Macks Inn system, which lies on the west side of US 20 and may require trenching and lift stations through saturated ground. Alternatively, individual septic systems will be installed. None of these impacts appear in the record.

The preliminary master layout places lots directly over mapped wetlands, stream channels, and swales, especially in the

northeast corner where Crooked Creek and Bootjack Creek meet. The National Wetlands Inventory and the Fremont County map server both show this property as wetland, and the applicant's own consultant acknowledges the NWI mapping. Without a full accounting of lot-level impacts, there is no basis to conclude the project stays under the half-acre limit.

Splitting the project shifts impacts to future lot owners. If the developer permits only the roads, culverts, and swale reroute, and leaves home construction to individual buyers, the remaining wetland impacts fall on 32 future owners. Once the land is divided into lots, there will often be no practical way to avoid wetlands. A buyer whose lot is largely wetland can only build in wetland. This is the community's central concern. The developer can claim less than half an acre of impact to create the lots and meet county requirements, then leave buyers in a position where the only place to build is in wetlands. At that point, avoiding impacts is no longer realistic, and regulators face pressure to approve fill one lot at a time. NWP 29 counts lot-level impacts toward the same half-acre subdivision total, so if even a few owners must fill wetland to build, the subdivision could exceed the limit. Those owners would need individual permits, could be denied after already buying the land, or might fill without authorization. The time to avoid wetland impacts is now, when lot lines, roads, and building sites can still be designed to avoid them, not after the property has been divided and sold.

The same applies to stormwater. Lot-by-lot runoff and retention on saturated ground adds sediment and contaminant risk that this certification does not address. Lots in a common plan of development are also generally subject to construction stormwater permit requirements. The project must be evaluated as a whole, as it will actually be built, not as it has been split up for permitting.The delineation may understate the wetlands. Fieldwork was done in mid-November, when surface water is at its seasonal low, and again the following summer, after the natural water supply to the property had been cut off. This property historically has standing water in spring. Before relying on the delineation, DEQ and the Corps should require independent verification under normal hydrologic conditions.

Enforcement depends on the permittee. The draft relies on daily BMP checks, self-reported turbidity monitoring, and spill reporting by the permittee, over what could be a multi-year build-out. Please explain how DEQ will verify compliance, who will be responsible on-site, and how the certification will apply once lots are sold to individual owners.

I am requesting that DEQ:
1. Require a complete accounting of all wetland impacts from full subdivision build-out, including lots, driveways, utilities, and the sewer connection, before certifying.
2. Require the applicant to show a buildable home site, driveway, and stormwater retention area outside wetlands on every lot, or include those impacts in the half-acre total.
3. State whether the 0.17-acre figure is temporary, permanent, or combined, and how it was calculated.
4. Publish the full Corps application, wetland delineation, swale profile, culvert and drainage plans, alternatives analysis, and mitigation determination.
5. Require independent verification of the wetland delineation.
6. Confirm that no work proceeds until certification and federal authorization are final.

Thank you for your consideration.

Sincerely,
Cindy Riegel

Comment 29

IDAHO DEPARTMENT OF FISH AND GAME
UPPER SNAKE REGION
4279 Commerce Circle
Idaho Falls, Idaho 83401

Brad Little / Governor
Jim Fredericks / Director

October 13, 2026

Destiny Locke
Water Quality Analyst
Idaho Department of Environmental Quality
900 N. Skyline Drive, Suite B
Idaho Falls, ID 83402

Dear Ms. Locke:

The Idaho Department of Fish and Game (IDFG) has reviewed Idaho Department of Environmental Quality (DEQ) draft 401 Water Quality Certification for the Caldera Flats Project in Fremont County, Idaho. The objectives of the proposed project are to reroute a wetland swale that bisects the property and install two culverts to facilitate proposed residential road crossings of two water bodies.

The Idaho Department of Fish and Game and the Idaho Fish and Game Commission are expressly charged with statutory responsibility to preserve, protect, perpetuate, and manage all fish and wildlife in Idaho (Idaho Code36-103(a)). In fulfillment of our statutory charge and direction as provided by the Idaho Legislature, we offer the following comments and recommendations.

The property is adjacent to US highway 20, north of Island Park Village on Henrys Lake Flats. It is bordered by Idaho Department of Lands on the north and private lands to the east and south. Most of the property is identified as freshwater emergent wetlands through the Fremont County Idaho GIS MapServer. In January of 2025, IDFG provided comments to the Fremont County Planning and Building Department related to a proposed development on the property. That comment letter (see attachment) highlighted the importance of the property to wetlands and wildlife in the context of the Henrys Lake Flats, as well as potential impacts of residential development. The proposed Caldera Flats projects aims to alter wetlands on the property which creates a variety of concerns including: 1) potential declines in downstream water availability in the Henrys Fork watershed, 2) potential increases in nutrient loading which could impact aquatic macrophytes and macroinvertebrates, and 3) changes in the dynamics of the wetland-grassland mosaic on the property that supports breeding sandhill cranes and long-billed curlews, both identified as *Species of Greatest Conservation Need* in Idaho. Wetlands are vital features in

Idaho's landscape, providing many benefits to people and wildlife including protecting/improving water quality, providing fish and wildlife habitat, storing floodwaters, and maintaining surface water flow during dry periods. IDFG recommends careful project evaluation, compliance with codified water quality standards, and mitigation for wetland loss, where applicable.

The Idaho Department of Fish and Game appreciates the opportunity to work with the Idaho DEQ, providing technical input on fish, wildlife and associated habitat. For additional assistance, please contact Matt Proett, Regional Technical Assistance Manager (matt.proett@idfg.idaho.gov, 208-535-8030).

Sincerely,



Matt Pieron
Regional Supervisor
IDFG Upper Snake Region

CC: Brett High
Rob Cavallaro
Chase Cusack