STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

2110 Ironwood Parkway • Coeur d'Alene, Idaho 83814 • (208) 769-1422
www.deq.idaho.gov

Governor Brad Little
Director John H. Tippets

March 22, 2019

Matthew Keim, Manager Engineering
BNSF Railway Company
Northtown GOB 80-44th Ave NE
Minneapolis, MN 55421

RE: Modification of Final §401 Water Quality Certification for Sandpoint Junction Connector Project NWW-2007-01303

Dear Mr. Keim,

In regards to the above referenced project, your consultant, Mr. Bordenave, recently contacted our agency and indicated that BNSF was concerned with one of our 401 certification conditions. Specifically, your project includes large stationary equipment that will be placed over the lake which cannot be rolled or driven to an overland location for refueling, repair, and maintenance. Our certification condition #38 had required all equipment and machinery to be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance. At the request of BNSF, this letter modifies the September 21, 2018 Final 401 Certification issued for the Sandpoint Junction Connector Project (Second Rail Crossing Pend Oreille Lake) Certification Condition #38 to read:

38. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance. Exceptions to this condition are for large stationary equipment and machinery that reasonably cannot be rolled on rails or otherwise driven to an upland location for refueling, repair, or maintenance. Stationary equipment and machinery shall have adequate secondary containment to prevent spills from entering waters of the state.

Minimizing the movement of large stationary equipment and machinery over waters of the state enhances water quality protection by lowering the risk of spills during complex assembly/disassembly and transport. Because this modification increases protection of water quality, no additional antidegradation analysis is required. A modified final 401 certification reflecting this change is attached.

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There was also confusion over Certification Condition #9. This Condition remains unchanged but we wanted to clarify that plans must be submitted to DEQ for review and approval for ANY over-water handling and transport of uncured concrete.

If you have any questions or concerns, please contact June Bergquist at 208.666.4605 or via email at june.bergquist@deq.idaho.gov .

Sincerely,

Daniel Redline
Regional Administrator
Coeur d'Alene Regional Office

attachment

c: Shane Slate , Corps of Engineers – Coeur d'Alene Regulatory Office
Shelly Sugarman, Chief, Bridge Permits and Policy Division U.S. Coast Guard
Loren Moore, DEQ State Office
Pierre Bordenave, Jacobs Engineering 101 North Fourth Ave, Suite 203
Sandpoint, ID 83864

Idaho Department of Environmental Quality

Modified Final §401 Water Quality Certification

March 22, 2019

404 Permit Application Number: NWW-2007-01303; BNSF Sandpoint Junction Connector (SJC) Project – Second Rail Crossing Pend Oreille Lake
Applicant/Authorized Agent: Matthew Keim, Manager Engineering, BNSF Railway Co. Northtown GOB 80-44th Ave NE, Minneapolis, MN 55421; Authorized Agent: Pierre Bordenave, Director –Rail Jacobs Engineering, 101 North Fourth Ave, Suite 203 Sandpoint, ID 83864
Project Location: Latitude 48° 15' 54.81"N; Longitude 116° 32' 11.3"W The north end of the SJC project begins where Montana Rail Link tracks join BNSF tracks. This is located immediately north of the end of Sandpoint Road in Sandpoint. The project extends south to a point approximately 2.12 miles north on Bottle Bay Road, Sandpoint. Note all access to the BNSF Right of Way must be coordinated with BNSF.

Receiving Water Body: Pend Oreille Lake

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has authority to review activities receiving Section 404 dredge and fill permits and issue water quality certification decisions.

Based upon our review of the joint application for permit, received on February 26, 2018, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the activity will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02), and other appropriate water quality requirements of state law.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits.

Project Description

Overview
BNSF proposes to discharge 14,900 cubic yards of rock into 1.54 acres of waters of the U.S. including wetlands, associated with the construction of a 2.2 mile long second mainline track located 50 feet to the west of the existing BNSF mainline. The second mainline track proposes to connect the North Algoma Siding track located south of Sandpoint, to the Sandpoint Junction switch located in Sandpoint where the BNSF and Montana Rail Link mainlines converge. The second track is proposed to cross over Bridge Street in Sandpoint (Bridge 3.0), cross over Sand

Creek (Bridge 3.1) and cross Pend Oreille Lake (Bridge 3.9). Proposed work in waters of the U.S. is related to Bridges 3.1 and 3.9 construction, a wetland fill, and nearshore transition zones. A temporary work bridge is proposed for work related to Bridges 3.1 and 3.9. The work bridge will have "set-outs" every 500 feet which are widened areas along the work bridge for materials and equipment staging and worker safety. The project is proposed to start in fall 2018 and take approximately 3 to 3.5 years to complete.

Regulatory Background

As stated above, section 401 of the Clean Water Act (CWA) provides states with the opportunity to determine if federally issued licenses or permits will violate state water quality standards. This 401 certification requested by the U.S. Army Corps of Engineers, addresses activities related to the BNSF construction project within the scope authorized by the CWA. Other federal permits related to this project are the U.S. Coast Guard's (USCG) bridge permit and U.S. Environmental Protection Agency's (EPA) Construction General Permit (CGP).

The applicant indicated they will obtain coverage under the CGP. This federal permit has a 401 certification from DEQ dated December 22, 2016 (Appendix A) with conditions that apply to project activities on land where discharges from the construction site could enter waters of the U.S.

Under the National Environmental Policy Act, the USCG is the lead federal agency. Their permit, issued under the authority of the General Bridge Act of August 2, 1946, will be in order of issuance, the last federal permit issued for this project. The USCG permit will include this final 401 certification, provisions of the CGP, and the final Corps permit as conditions to be met.

Proposed BMPs

Listed below are the major BMPs proposed by BNSF (in italics but not verbatim) for this project and related certification condition(s). Please note that this list is not all inclusive:

1. *Fills in nearshore and wetland locations will occur at the earliest stages of the project to take advantage of performing that work while lake levels are lower and wetland areas are relatively dry.* This BMP has been modified by the certification conditions to conduct nearshore filling activities during low pool (see Condition 7). A stormwater swale will treat runoff displaced by the wetland fill.
2. *All roads, staging areas, and access pads will be rock covered. Vehicle entrance/exits will have rocked track-out control.* The need for track out control is further addressed by Condition 20 which requires other BMPs be used if the proposed rocked exits do not function adequately.
3. *Limits of activities will be clearly marked to protect existing vegetation.*
4. *Sediment filtering fencing or equivalent BMPs will be installed at the work perimeter/limits to protect adjacent undisturbed surface water and wetland resources.*
5. *Erosion control BMPs will be inspected daily.* The 401 certification conditions also require maintenance of BMPs and modification of inspection frequency (see Conditions 14, 15, 16, 27, 28, and CGP part 9.7.1).
6. *Work boats or barges will be inspected for invasive species prior to deployment into Pend Oreille Lake.* See Condition 39 for more details regarding cleaning of equipment.

7. *Open soil areas will be seeded with native grass species and weed-free mulch within seven days of work completion and during periods of seasonal shutdown.* See the CGP part 2.2.14 for modifications to this proposed BMP.

8. *Dust control by means of watering or clean rock cover.*

9. *Portable toilets and garbage containers will be located in upland staging area, on work bridge set-outs and regularly maintained. Garbage containers and toilets on the bridge will be secured to the bridge.* See Condition 40 for more details.

10. *Petroleum spill containment materials will be on-site at all times and staged to be within immediate direct access of machinery and vehicles on site. Fuel containers will not be stored on work bridges or within 50 feet of surface water. All equipment parked on the work bridge will have appropriately sized containment beneath it in the event of a spill or leak.*

11. *Equipment operating near or adjacent to Pend Oreille Lake or Sand Creek will have spill containment booms and/or other spill retention and containment materials deployed under and around the location of the work.* See Conditions 35-39 and 41 for more details.

12. *Temporary work bridges (for both Bridge 3.1 and 3.9) will be constructed using steel pilings that are vibrated into the lake or creek bed and removed upon project completion. One pile per bent will be impact proofed which requires striking the pile repeatedly. Vibratory installation of piles is used as a BMP to minimize acoustic impacts to aquatic life. The frequency of use of an impact hammer to drive piles has been minimized and is further mitigated by use of a bubble curtain when it must be used.*

13. *Bubble curtains and silt curtains are proposed to be used for pile driving associated with the temporary and permanent Bridge 3.9 for depths that are 8 feet and greater. For depths less than 8 feet only a silt curtain is proposed to be used. There are no bubble or silt curtains proposed for pile driving for Bridge 3.1 due to shallow conditions and current that renders these BMPs unable to function correctly.* Conditions 21-25 modify the use of these BMPs.

14. *Containment BMPs will be used to capture inadvertent fall of construction materials or debris into the lake or creek.*

15. *Isolation of in-water work areas via temporary coffer dams and installation of turbidity curtains for in-water work is proposed.* See Conditions 9, and 21-25 for more details.

16. *Monitoring and compliance with Idaho Water Quality Standards for turbidity is proposed.* See Conditions 26-28 for more details.

17. *Concrete pours will be associated with work on top of the precast bridge decks. Pilings may be filled with concrete but as yet has not been determined. There will be no cement in-water pours or contact with surface waters, however, final designs may require handling and transport of cement over surface waters.* In this event, Condition 9 requires a concrete best management plan be developed for DEQ review and approval.

Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- 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 deemed 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 not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ is employing 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 Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

Pollutants of Concern

The primary pollutants of concern for this project are sediment and phosphorus. As part of the Section 401 water quality certification, DEQ is requiring the applicant comply with various conditions to protect water quality and to meet Idaho WQS, including the water quality criteria applicable to sediment and phosphorus.

Receiving Water Body Level of Protection

This project is located on Pend Oreille Lake within the Pend Oreille Lake Subbasin assessment unit (AU) 17010214PN018L_0L (Pend Oreille Lake). This AU has the following designated beneficial uses: cold water aquatic life, salmonid spawning, primary contact recreation, and domestic water supply. In addition to these uses, all waters of the state are protected for agricultural and industrial water supply, wildlife habitat, and aesthetics (IDAPA 58.01.02.100).

The water intake for the City of Sandpoint is located approximately 0.67 mile north of the proposed construction activity. The intake pipe is placed at a depth of 14 – 25 feet depending on water levels, and the general flow pattern of water in the vicinity of the intake is south towards the proposed construction. Therefore, DEQ has reasonable assurance that WQS for this domestic water supply use will be met.

Although Bridge 3.1 is being constructed over what is locally known as Sand Creek, the Pend Oreille Lake assessment unit includes the lower portion of Sand Creek upstream to near where Highway 2 crosses the creek. Therefore, beneficial uses and water quality impairments in this lower portion of Sand Creek are the same as the lake. This certification refers to Sand Creek as a location in an effort to avoid confusion.

According to DEQ's 2014 Integrated Report, this AU is not fully supporting one or more of its assessed uses. The aquatic life use in this receiving water body AU is not fully supported. Causes of impairment include mercury, other flow regime alterations, and phosphorus. The contact recreation beneficial use is also not fully supported. Causes of impairment include mercury. As such, DEQ will provide Tier I protection for both the aquatic life and contact recreation uses (IDAPA 58.01.02.051.01).

Protection and Maintenance of Existing Uses (Tier I Protection)

A Tier I review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing uses and the level of water quality necessary to protect existing uses shall be maintained and protected. The numeric and narrative criteria in the WQS are set at levels that ensure protection of existing and designated beneficial uses.

Water bodies not supporting existing or designated beneficial uses must be identified as water quality limited, and a total maximum daily load (TMDL) must be prepared for those pollutants causing impairment. Once a TMDL is developed, discharges of causative pollutants shall be consistent with the allocations in the TMDL (IDAPA 58.01.02.055.05). Prior to the development of the TMDL, the WQS require the application of the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04).

During the construction phase, the applicant will implement, install, maintain, monitor, and adaptively manage best management practices (BMPs) directed toward reducing erosion and minimizing turbidity levels in receiving water bodies downstream of the project. In addition, permanent erosion and sediment controls will be implemented, which will minimize or prevent future sediment contributions from the project area.

As long as the project is conducted in accordance with the provisions of the project plans, Section 404 permit, and conditions of this certification, then there is reasonable assurance the project will comply with the state's numeric and narrative criteria. These criteria are set at levels that protect and maintain designated and existing beneficial uses. In addition, the project will be consistent with the *Total Maximum Daily Load (TMDL) for Nutrients for the Nearshore Waters of Pend Oreille Lake, Idaho*. This TMDL focuses on the prevention of additional phosphorus added to the lake. Because significant amounts of phosphorus can be found in soils, limiting sources of sedimentation and turbidity should adequately prevent significant amounts of phosphorus from entering Pend Oreille Lake and Sand Creek. This project will comply with the TMDL by application of BMPs such as silt fences, silt curtains, straw wattles, and other BMPs (see list under Project Description) that minimize or prevent soil erosion and in-water turbidity.

There is no available information indicating the presence of any existing beneficial uses aside from those that are already designated and discussed above; therefore, the permit ensures that the level of water quality necessary to protect both existing and designated uses is maintained and

protected in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

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

General Conditions

1. This certification is conditioned upon the requirement that any modification (e.g., change in BMPs, work windows, etc.) of the permitted activity shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401. Such modifications may not be implemented until DEQ has determined whether additional certification is necessary.
2. DEQ reserves the right to modify, amend, or revoke this certification if DEQ determines that, due to changes in relevant circumstances—including without limitation, changes in project activities, the characteristics of the receiving water bodies, or state WQS—there is no longer reasonable assurance of compliance with WQS or other appropriate requirements of state law.
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. Project areas shall be clearly identified in the field prior to initiating land-disturbing activities to ensure avoidance of impacts to waters of the state beyond project footprints.
5. The applicant shall provide access to the project site and all mitigation sites upon request by DEQ personnel for site inspections, monitoring, and/or to ensure that conditions of this certification are being met.
6. 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 Section 404 permit.

Fill Material

7. **Fill activities affecting the shoreline, stream banks or wetland shall take place only during periods of low flow and/or low pool. Low flow and low pool means within one foot of the lowest pool level planned for the year the work is being scheduled.**
8. Fill material subject to suspension shall be free of easily suspended fine material. The fill material to be placed shall be clean material only from an Idaho Department of Lands permitted source.
9. If concrete is placed inside pilings or if cofferdams require dewatering, the permittee shall **submit to DEQ plans for review and approval**, for the over-water handling and transport of uncured concrete that prevents spillage into water and/or a dewatering plan that meets WQS.
10. All temporary fills shall be removed in their entirety on or before construction completion.

11. Excavated or staged fill material must be placed so it is isolated from the water edge or wetlands and not placed where it could re-enter waters of the state.

Erosion and Sediment Control

12. BMPs for sediment and erosion control suitable to prevent exceedances of state WQS shall be selected and installed before starting construction at the site. One resource that may be used in evaluating appropriate BMPs is DEQ's *Catalog of Stormwater Best Management Practices for Idaho Cities and Counties*, available online at http://www.deq.idaho.gov/media/494058-entire.pdf. Other resources may also be used for selecting appropriate BMPs.
13. Permanent erosion and sediment control measures shall be installed in a manner that will provide long-term sediment and erosion control to prevent excess sediment from entering waters of the state.
14. Erosion and sediment control measures shall be installed at the earliest practicable time consistent with good construction practices and shall be maintained as necessary throughout project operation.
15. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
16. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
17. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
18. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.
19. Maximum fill slopes shall be such that material is structurally stable once placed and does not slough into the stream or lake during construction, during periods prior to revegetation, or after vegetation is established.
20. Sediment from disturbed areas or able to be tracked by vehicles onto pavement must not be allowed to leave the site in amounts that would reasonably be expected to enter waters of the state. Placement of clean aggregate at all construction entrances or exits and other BMPs such as truck or wheel washes, if needed, must be used when earth-moving equipment will be leaving the site and traveling on paved surfaces.
21. Silt curtains (turbidity curtains) must be implemented and properly maintained to minimize in-water sediment suspension and resulting turbidity, in accordance with all monitoring and compliance requirements of this certification.
22. Silt curtains shall be reliable and function correctly. Curtain design and materials (product) must have been previously and scientifically field tested to determine effectiveness in water quality protection. Manufacturers' specifications and deployment instructions shall be followed. If there is flowing water, curtains must have been designed, tested and recommended by the manufacturer for this condition (velocity rating). Curtains that drag back and forth along the bottom of the lake or stream due to wave action are incorrectly installed and are a violation of this certification, unless a manufacturer who has scientifically field tested this design recommends this type of

placement. The silt curtain shall function in such a manner as to meet WQS. Silt curtains shall be deployed so as to minimize the area within the curtain while still maintaining optimum function. Curtains shall hang so the fabric is smooth allowing sediment to slide down its face rather than becoming trapped in folds.

23. Total containment curtains are not required unless conditions are conducive to them functioning without themselves creating turbidity that exceeds WQS from movement of the curtain bottom against the lake or stream bed.
24. Bubble curtains shall be deployed as directed by Idaho Fish and Game and U.S. Fish and Wildlife Service to protect aquatic life. If bubble curtains create turbid plumes, they shall be enclosed with a silt curtain or similar BMP.
25. The use of silt/turbidity curtains in various depths and water velocities shall be guided by manufacturer's suggested uses, and shall be used to protect all aquatic life and habitat, not limited by just considering protections for bull trout.

Turbidity Monitoring and Compliance Requirements

26. Sediment resulting from this activity must be mitigated to prevent violations of the turbidity standard as stipulated under the Idaho WQS (IDAPA 58.01.02). *Any violation of this standard must be reported to the DEQ regional office immediately by calling (208)666-4605 and leaving a message.*
27. Visual observation is acceptable to determine whether BMPs are functioning properly **unless a plume is observed**. If a plume is observed, the project may be causing an exceedance of WQS and the permittee must inspect the condition of the projects BMPs and initiate turbidity monitoring consistent with Table 1 with a properly and regularly calibrated turbidimeter. These turbidity monitoring requirements do not replace or supersede any monitoring or other requirements of the CGP.

    a. Turbidity Sampling Location. Choose, identify, and document the following locations for each plume observed:
        i. Background locations

        Collect background samples at relatively undisturbed locations unaffected by the construction activity, up-current from the permitted activity.

        ii. Compliance locations

        For **Sand Creek and shoreline activity along Pend Oreille Lake** choose a location 50 feet down-current from the permitted activity, within any visible plumes. For plumes associated with **work in and over open waters of Pend Oreille Lake** (bridge work), choose a location in the plume that is immediately outside of any containment measures such as silt curtains.

    b. Turbidity measurements must be representative of stream or lake turbidity when the activity is being conducted. *Measurements cannot be taken during a cessation of activity.*

Table 1. Turbidimeter Monitoring When a Plume is Observed

Turbidity Amount Above Background[2]	Monitoring Frequency	Action Required
0 to 24 NTU	Monitor every 2 hours	None
25 to 49 NTU	Monitor every 2 hours	STOP work after 8 hours in every 24-hour period
≥50 NTU (first occurrence)	Monitor after Instructions[1] are followed	STOP work and follow Instructions[1]
≥50 NTU (second occurrence)	Monitor after Instructions[1] are followed	STOP work, follow Instructions[1] and notify DEQ Regional Office at (208) 666-4605

[1] **Instructions**: If BMPs appear to be functioning to their fullest capability, then the permittee must modify the activity or implement additional BMPs (this may also include modifying existing BMPs) until additional monitoring indicates turbidity standards are met. Monitoring can cease when a plume is no longer observed.

[2] Turbidity shall be sampled three times at each location and reported. Use the maximum value of the three samples for determining compliance and following Table 1 direction.

28. Reporting. Beginning with observation of a plume, provide a written description of the information required in 28a and 28b. Copies of these reports must be made available to DEQ and other local, state and federal regulatory agencies upon request. The reports must include:
    a. Background NTUs, compliance location NTUs and their difference in NTUs, a mapped location, time, and date for each sample.
    b. A narrative discussing BMPs in use when the plume was observed (27.a.ii), all exceedances, controls applied and their effectiveness, subsequent monitoring, work stoppages, and any other actions taken.

In-water Work

29. Work in open water is to be kept at a minimum and conducted only when necessary.
30. Fording of the channel is not permitted. Temporary bridges or other structures may be built if crossings are necessary.
31. Activities in spawning areas must be avoided to the maximum extent practicable.
32. Work in waters of the state shall be restricted to areas specified in the application.
33. Practices must prevent wet concrete from entering into waters of the state.
34. Stranded fish found in dewatered cofferdams should be safely moved to a location (preferably downstream) with water.

Management of Hazardous or Deleterious Materials

35. Petroleum products and hazardous, toxic, and/or deleterious materials shall not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of waters of the state. Adequate measures and controls must be in place to ensure that those materials will not enter waters of the state as a result of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third-party activities.

36. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
37. Daily inspections of all fluid systems on equipment to be used in or near waters of the state shall be done to ensure no leaks or potential leaks exist prior to equipment use. If equipment leaks fluids as a normal part of operation it shall have an absorbent drip pad (diaper) that captures all leaks. A log book of these inspections shall be kept on site and provided to DEQ upon request.
38. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance. Exceptions to this condition are for large stationary equipment and machinery that reasonably cannot be rolled on rails or otherwise driven to an upland location for refueling, repair, or maintenance. Stationary equipment and machinery shall have adequate secondary containment to prevent spills from entering waters of the state.
39. Equipment and machinery used in or over water shall be steam cleaned of oils, grease, and invasive species in an upland location or staging area with appropriate wastewater controls and treatment prior to entering on or over a water of the state. Any wastewater or wash water must not be allowed to enter a water of the state. **Cleaning shall be adequate enough to remove all life stages of aquatic invasive species.**
40. Portable toilets placed on land shall be securely anchored to prevent tipping.
41. Emergency spill procedures shall be in place and include spill response kits (e.g., oil absorbent booms or other equipment) located where heavy equipment is being operated.
42. In accordance with IDAPA 58.01.02.850, in the event of an unauthorized release of hazardous material to state waters or to land such that there is a likelihood that it will enter state waters, 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 in such a manner that it will not reach surface or ground waters of the state.
    c. Call 911 if immediate assistance is required to control, contain, or clean up the spill. If no assistance is needed in cleaning up the spill, contact the appropriate DEQ regional office during normal working hours or Idaho State Communications Center after normal working hours (1-800-632-8000). If the spilled volume is above federal reportable quantities, contact the National Response Center (1-800-424-8802).
        - Coeur d'Alene Regional Office: 208-769-1422 / 877-370-0017
    d. Collect, remove, and dispose of the spilled material in a manner approved by DEQ.

Right to Appeal Final Certification

The final Section 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 June Bergquist, Coeur d'Alene Regional Office at 208-666-4605 or via email at june.bergquist@deq.idaho.gov .

Daniel Redline
Regional Administrator
Coeur d'Alene Regional Office

Appendix A

Please note:
Appendix A is a 401 certification that was issued to U.S. EPA for their Construction General Permit in 2016. General permits such as the Construction General Permit cover a class of activity potentially impacting waters throughout the state of Idaho and are typically authorized for a five year timeframe. Because the proposed project intends to seek coverage under the Construction General Permit, the conditions of the following certification will also apply to the project in addition to those found in the certification for the Sandpoint Junction Connector project. The reason two certifications will apply to this project is that the Construction General Permit focuses on land disturbing activities and the Corps of Engineers 404 permit focuses on activities in waters of the U.S.

STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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C.L. "Butch" Otter, Governor
John H. Tippels, Director

December 22, 2016

Mr. Daniel Opalski, Director
USEPA Region 10
Office of Water and Watersheds
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

Subject: FINAL §401 Water Quality Certification for the Draft NPDES General Permit for Discharges from Construction Activities (CGP); NPDES IDR100000

Dear Mr. Opalski:

The Idaho Department of Environmental Quality (DEQ) has reviewed the above-referenced draft permit and associated fact sheet, which was received in our office on April 13, 2016. DEQ offered a 46-day public comment period beginning on July 28 and ending on September 12, 2016. DEQ received comments from the following individuals:

1. Austin Hopkins, Idaho Conservation League, received August 30, 2016
2. Dave Yorgason, Building Contractors Association of Southwestern Idaho, received September 12, 2016

DEQ has reviewed these comments and made several modifications from the draft certification to the final certification. The modifications include:

1. Removed the provision that the permittee must notify the appropriate DEQ regional office of any potential discharges to impaired waters because this information is already captured in the NOI;
2. Revised the turbidity monitoring condition to include all waters of the United States where there is a direct discharge causing a visible plume;
3. Clarified when turbidity monitoring is to be conducted;
4. Included six steps for the permittee to follow to ensure compliance with the turbidity standard;
5. Authorized the use of the Equivalent Analysis Waiver; and
6. Revised the language for reporting discharges containing hazardous materials or petroleum products.

Please find enclosed the final certification for inclusion with the final CGP for the State of Idaho. If the final CGP is substantially different from the draft permit upon which this certification is based, DEQ reserves the right to revise the enclosed final certification.

If you have any questions or concerns, please feel free to contact Nicole Deinarowicz at (208) 373-0591 or via email at nicole.deinarowicz@deq.idaho.gov.

Sincerely,

Barry N. Burnell

Barry N. Burnell
Water Quality Division Administrator

BNB:ND:er

e: Final 401 Certification for the Construction General Permit

c: Michael Lidgard – USEPA, Region 10
Margaret McCauley – USEPA, Region 10
DEQ Regional Administrators
Don Essig, DEQ, Surface Water Program Manager

Idaho Department of Environmental Quality

Final §401 Water Quality Certification

December 22, 2016

NPDES Permit Number(s): General Permit for Stormwater Discharge from Construction Activities (CGP) IDR100000

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); and Idaho Code §§ 39-101 et seq. and 39-3601 et seq., the Idaho Department of Environmental Quality (DEQ) has authority to review National Pollutant Discharge Elimination System (NPDES) permits and issue water quality certification decisions.

Based upon its review of the draft Construction General Permit (CGP) and associated fact sheet, received from EPA on April 1, 2016, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit along with the conditions set forth in this water quality certification, then there is reasonable assurance the discharge will comply with the applicable requirements of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, the Idaho Water Quality Standards (WQS) (IDAPA 58.01.02), and other appropriate water quality requirements of state law.

This certification does not constitute authorization of the permitted activities by any other state or federal agency or private person or entity. This certification does not excuse the permit holder from the obligation to obtain any other necessary approvals, authorizations, or permits, including without limitation, the approval from the owner of a private water conveyance system, if one is required, to use the system in connection with the permitted activities.

The draft CGP authorizes discharges associated with construction activity, including clearing, grading, and excavation, if the construction activity:

- Will result in the disturbance of 1 or more acres of land; or
- Will result in the disturbance of less than one acre of land but is part of a common plan of development or sale that will ultimately disturb 1 or more, acres of land; or
- Has been designated by EPA as needing permit coverage under 40 CFR 122.26(a)(1)(v) or 40 CFR 122.26(b)(15)(ii)

Antidegradation Review

The WQS contain an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051).

- 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 deemed 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 not cause a lowering of water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ is employing 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 Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

Pollutants of Concern

The primary pollutant of concern associated with storm water discharges from construction activities is sediment, typically measured as total suspended solids and turbidity. Other potential pollutants include the following: phosphorus, nitrogen, pesticides, organics, metals, PCBs, petroleum products, construction chemicals, and solid wastes.

Receiving Water Body Level of Protection

The CGP provides coverage to construction activities throughout the entire State of Idaho. Because of the statewide applicability, all of the jurisdictional waters within Idaho could potentially receive discharges either directly or indirectly from activities covered under the CGP. DEQ applies a water body by water body approach to determine the level of antidegradation protection a water body will receive.

All waters in Idaho that receive discharges from activities authorized under the CGP will receive, at minimum, Tier I antidegradation protection because Idaho's antidegradation policy applies to all waters of the state. Water bodies that fully support their aquatic life or recreational uses are considered to be *high quality waters* and will receive Tier II antidegradation protection.

Although Idaho does not currently have any Tier III designated outstanding resource waters (ORWs) designated, it is possible for a water body to be designated as an ORW during the life of the CGP. Because of this potential, the antidegradation review also assesses whether the permit complies with the outstanding resource water requirements of Idaho's antidegradation policy.

To determine the support status of the receiving water body, persons filing a Notice of Intent (NOI) for coverage under this general permit must use the most recent EPA-approved Integrated Report, available on Idaho DEQ's website: http://www.deq.idaho.gov/water-quality/surface-water/monitoring-assessment/integrated-report/.

High quality waters are identified in Categories 1 and 2 of the Integrated Report. If a water body is in either Category 1 or 2, it is a Tier II water body.

Unassessed waters are identified in Category 3 of DEQ's Integrated Report. These waters require a case-by-case determination to be made by DEQ based on available information at the time of the application for permit coverage. If a water body is unassessed, the applicant is directed to contact DEQ for assistance in filing the NOI.

Impaired waters are identified in Categories 4 and 5 of the Integrated Report. Category 4(a) contains impaired waters for which a TMDL has been approved by EPA. Category 4(b) contains impaired waters for which controls other than a TMDL have been approved by EPA. Category 5 contains waters which have been identified as "impaired", for which a TMDL is needed. These waters are Tier I waters, for the use which is impaired. With the exception, if the aquatic life uses are impaired for any of these three pollutants—dissolved oxygen, pH, or temperature—and the biological or aquatic habitat parameters show a healthy, balanced biological community, then the water body shall receive Tier II protection, in addition to Tier I protection, for aquatic life uses (IDAPA 58.01.02.052.05.c.i)

DEQ's webpage also has a link to the state's map-based Integrated Report which presents information from the Integrated Report in a searchable, map-based format: http://www.deq.idaho.gov/assistance-resources/maps-data/.

Water bodies can be in multiple categories for different causes. If assistance is needed in using these tools, or if additional information/clarification regarding the support status of the receiving water body is desired, the applicant is directed to make contact with the appropriate DEQ regional office or the State Office (Table 1).

Table 1. Idaho DEQ Regional and State Office Contacts

Regional and State Office	*Address*	*Phone Number*	*Email*
Boise	1445 N. Orchard Rd., Boise 83706	208-373-0550	kati.carberry@deq.idaho.gov
Coeur d'Alene	2110 Ironwood Parkway, Coeur d'Alene 83814	208-769-1422	june.bergquist@deq.idaho.gov
Idaho Falls	900 N. Skyline, Suite B., Idaho Falls 83402	208-528-2650	troy.saffle@deq.idaho.gov
Lewiston	1118 "F" St., Lewiston 83501	208-799-4370	mark.sellet@deq.idaho.gov
Pocatello	444 Hospital Way, #300 Pocatello 83201	208-236-6160	lynn.vanevery@deq.idaho.gov
Twin Falls	650 Addison Ave. W., Suite 110, Twin Falls 83301	208-736-2190	balthasar.buhidar@deq.idaho.gov
State Office	1410 N. Hilton Rd., Boise 83706	208-373-0502	nicole.deinarowicz@deq.idaho.gov

Protection and Maintenance of Existing Uses (Tier I Protection)

A Tier I review is performed for all new or reissued permits or licenses, applies to all waters subject to the jurisdiction of the Clean Water Act, and requires demonstration that existing uses and the level of water quality necessary to protect existing uses shall be maintained and

protected. In order to protect and maintain designated and existing beneficial uses, a permitted discharge must comply with narrative and numeric criteria of the Idaho WQS, as well as other provisions of the WQS such as Section 055, which addresses water quality limited waters. The numeric and narrative criteria in the WQS are set at levels that ensure protection of existing and designated beneficial uses. The effluent limitations and associated requirements contained in the CGP are set at levels that ensure compliance with the narrative and numeric criteria in the WQS.

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. A central purpose of TMDLs is to establish wasteload allocations (WLA) for point source discharges, which are set at levels designed to help restore the water body to a condition that supports existing and designated beneficial uses. Discharge permits must contain limitations that are consistent with wasteload allocations in the approved TMDL. A permit with effluent limitations consistent with TMDL wasteload allocations will provide the level of water quality necessary to support existing and designated uses and therefore satisfies Tier I antidegradation requirements.

The non-numeric effluent limitation requirements in the CGP address erosion and sediment controls, soil stabilization requirements, de-watering procedures, pollution prevention measures, prohibited discharges and surface outlets. Further, the 2017 CGP imposes the same additional requirements for construction activities where the discharge will occur on water bodies identified as "impaired" for sediment or a sediment-related parameter, such as total suspended solids (TSS) or turbidity, and/or nutrients, including impairments for nitrogen and/or phosphorus as in the 2012 CGP. The permittee will be responsible for identifying such waters in the NOI.

Those additional control measures to be taken if the affected water body is impaired for sediment and/or nutrients are:

- Increased frequency of site inspections;
- Compliance with the deadline for complete stabilization; and
- Any additional State or Tribal requirements.

In order to ensure compliance with Idaho WQS, DEQ has included a condition requiring that the permittee(s) must comply with Idaho's numeric turbidity criteria, developed to protect aquatic life uses. The criterion states, "Turbidity shall not exceed background turbidity by more than 50 NTU instantaneously or more than 25 NTU for more than 10 consecutive days" (IDAPA 58.01.02.250.02.e). When there is a direct discharge from an unstabilized portion of the site to a water of the United States, DEQ is requiring the permittee to conduct turbidity monitoring as described below in the "Conditions" section of this certification.

As written in the CGP, if EPA determines that the controls outlined in Parts 2, 3, and 9 of the permit will not be sufficient to control discharges in a manner which is consistent with the assumptions and requirements of any applicable wasteload allocation set forth in an applicable TMDL, then additional water quality-based limitations will be imposed on a site-specific basis, or EPA will require the permittee to obtain an individual permit. An individual permit necessitates an individual certification by the state.

Lastly, per section 3.2 of the CGP, if a discharge to a water body that is impaired for a parameter other than a sediment-related parameter or nutrients, EPA will inform the permittee if any

additional limits or controls are necessary for the discharge to be controlled as necessary to meet water quality standards.

The effluent limitations, including non-numeric technology based and water quality-based effluent limits, frequent site inspections, visual monitoring requirements, and associated requirements contained in the CGP, coupled with the conditions in this certification, ensure compliance with the narrative and numeric criteria in the Idaho WQS. In addition, the permit ensures compliance with any applicable WLA in any applicable TMDL. Therefore, DEQ has determined the permit will protect and maintain existing and designated uses in compliance with the Tier I provisions of Idaho's WQS (IDAPA 58.01.02.051.01 and 58.01.02.052.07).

Protection of High-Quality Waters (Tier II Protection)

Water bodies that fully support their beneficial uses are recognized as high-quality waters and are provided Tier II protection in addition to Tier I protection. Water quality parameters applicable to existing or designated beneficial uses must be maintained and protected under Tier II, unless a lowering of water quality is deemed necessary to accommodate important economic or social development. Although EPA is not proposing any significant modifications to the draft CGP as compared to the 2012 CGP, they are including several minor new or modified requirements that will further protect water quality. Such modifications include, but are not limited to:

1. Implementing the 2014 amendments to the Construction and Development Rule (C&D rule);
2. Including information on public notices on how to contact EPA if stormwater pollution is observed in the discharge;
3. Requiring all inactive stockpiles and land clearing debris piles be covered or temporarily stabilized;
4. Requiring waste containers remain covered when not in use and;
5. Implementing controls to minimize the release of PCBs from demolition.

Further, the draft CGP will continue to provide additional protection for high quality waters. Those additional protection measures include: maintaining natural buffers in riparian areas, more frequent site inspections, and a more stringent timeline for implementing stabilization measures. In cases where information submitted with the NOI, or available from other sources, indicates that further Tier II analysis is necessary and/or additional conditions are needed, either for a new project or an existing project with a significantly increased discharge, EPA will conduct this review and require any appropriate additional controls. DEQ is requiring, as a condition of this certification, that EPA consult DEQ during any such review. If during this review, EPA and DEQ decide that an additional Tier II protection is warranted, then EPA may either change the terms of coverage or terminate coverage under the CGP and require an individual permit. This individual permit will then necessitate an individual review and certification by the state.

With respect to existing sites that were covered under the 2012 CGP, the 2017 CGP imposes permit limits at least as stringent as the 2012 permit. Therefore, there will be no lowering of water quality as a result of existing sites covered under the new CGP.

For new sites, DEQ believes the effluent limitations and associated requirements in the CGP, coupled with the conditions set forth in this certification, provide reasonable assurance that there

will be no lowering of water quality in any high quality waters. Therefore, DEQ concludes that the activities authorized will comply with the provisions of IDAPA 58.01.02.051.02 and IDAPA 58.01.02.052.08.

Protection of Outstanding Resource Waters (Tier III Protection)

Idaho's antidegradation policy requires that the quality of outstanding resource waters (ORWs) be maintained and protected from the impacts of point and nonpoint source activities (IDAPA 58.01.02.051.03). To date, no water bodies in Idaho have been designated as ORWs. In the event that water bodies are designated as ORWs during the term of this permit, DEQ believes that the terms of the CGP and the conditions in this 401 Certification, provide reasonable assurance there will be no lowering of water quality. In addition to the requirements that apply to all work covered by the CGP, Part 3.2 of the CGP requires more frequent site inspections and a more stringent timeline for implementing stabilization measures for activities on ORWs. In addition, on a case-by-case basis, EPA may require additional analyses, stormwater controls, or other permit conditions that are necessary to comply with applicable antidegradation requirements, or require an individual permit be obtained. As a condition of this certification, DEQ is requesting that EPA coordinate with the appropriate DEQ Regional Office prior to authorizing any work on an ORW to ensure there is no lowering of water quality.

In sum, DEQ concludes that the authorized activities will comply with Idaho antidegradation provisions should waters become designated ORWs during the term of the CGP.

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

Turbidity Monitoring

The permittee must conduct turbidity monitoring during construction activities and thereafter on days when there is a direct discharge of pollutants from an unstabilized portion of the site which is causing a visible plume to a water of the United States.

A properly and regularly calibrated turbidimeter is required for measurements analyzed in the field (preferred method), but grab samples may be collected and taken to a laboratory for analysis. If the permittee can demonstrate that there will be no direct discharge from the construction site, then turbidity monitoring is not required. When monitoring is required, a sample must be taken at an undisturbed area immediately upstream of the project area to establish background turbidity levels for the monitoring event. Background turbidity, location, date and time must be recorded prior to monitoring downstream of the project area. A sample must also be taken immediately downstream from any point of discharge and *within* any visible plume. The turbidity, location, date and time must be recorded. The downstream sample must be taken immediately following the upstream sample in order to obtain meaningful and representative results.

Results from the compliance point sampling or observation[1] must be compared to the background levels to determine whether project activities are causing an exceedance of state WQS. If the downstream turbidity is 50 NTUs or more than the upstream turbidity, then the project is causing an exceedance of the WQS. *Any exceedance of the turbidity standard must be reported to the appropriate DEQ regional office within 24 hours. The following six (6) steps should be followed to ensure compliance with the turbidity standard:*

1. If a visible plume is observed, quantify the plume by collecting turbidity measurements from within the plume and compare the results to Idaho's instantaneous numeric turbidity criterion (50 NTU over the background).
2. If turbidity is less than 50 NTU instantaneously over the background turbidity; continue monitoring as long as the plume is visible. If turbidity exceeds background turbidity by more than 50 NTU instantaneously then stop all earth disturbing construction activities and proceed to Step 3.
3. Take immediate action to address the cause of the exceedance. That may include inspecting the condition of project BMPs. If the BMPs are functioning to their fullest capability, then the permittee must modify project activities and/or BMPs to correct the exceedance.
4. Notify the appropriate DEQ regional office within 24 hours.
5. Possibly increase monitoring frequency until state water standards are met.
6. Continue earth disturbing construction activities once turbidity readings return to within 50 NTU instantaneously and 25 NTU for more than ten consecutive days over the background turbidity.

Copies of daily logs for turbidity monitoring must be available to DEQ upon request. The report must describe all exceedances and subsequent actions taken, including the effectiveness of the action.

High Quality Waters

For any high quality waters that require a further Tier II analysis and or additional conditions, either for a new project or an existing project with a significantly increased discharge, DEQ requires that EPA consult with the appropriate DEQ regional office during any such review.

Outstanding Resource Waters

Should waters become designated as ORWs during the term of the CGP, DEQ is requiring that EPA coordinate with the appropriate DEQ regional office prior to authorizing any work on an ORW to ensure there is no lowering of water quality.

[1] A visual observation is only acceptable to determine whether BMPs are functioning properly. If a plume is observed, the project may be causing an exceedance of WQS and the permittee must collect turbidity data and inspect the condition of the projects BMPs. If the BMPs appear to be functioning to their fullest capability and the turbidity is 50 NTUs or more than the upstream turbidity, then the permittee must modify the activity or implement additional BMPs (this may also include modifying existing BMPs).

Equivalent Analysis Waiver

Prior to granting a waiver from the permitting requirements of the CGP, EPA must coordinate with the appropriate DEQ regional office to conduct a joint review of the equivalent analysis waiver submitted by the permittee to ensure there will be no lowering of water quality.

Reporting of Discharges Containing Hazardous Materials or Petroleum Products

All spills of hazardous material, deleterious material or petroleum products which may impact waters (ground and surface) of the state shall be immediately reported. 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 in Table 2 during normal working hours or Idaho State Communications Center after normal working hours. If the spilled volume is above federal reportable quantities, contact the National Response Center.

For immediate assistance: Call 911

National Response Center: (800) 424-8802

Idaho State Communications Center: (800) 632-8000

Table 2. Idaho DEQ Regional Contacts

Regional Office	*Toll Free Phone Number*	*Phone Number*
Boise	888-800-3480	208-373-0550
Coeur d'Alene	877-370-0017	208-769-1422
Idaho Falls	800-232-4635	208-528-2650
Lewiston	877-541-3304	208-799-4370
Pocatello	888-655-6160	208-236-6160
Twin Falls	800-270-1663	208-736-2190

Other Conditions

This certification is conditioned upon the requirement that any material modification of the permit or the permitted activities—including without limitation, significant changes to the draft CGP, any modifications of the permit to reflect new or modified TMDLs, wasteload allocations, site-specific criteria, variances, or other new information—shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401.

Right to Appeal Final Certification

The final Section 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 Nicole Deinarowicz, DEQ State Office, at 208-373-0591 or via email at nicole.deinarowicz@deq.idaho.gov.

Barry N. Burnell

Barry N. Burnell
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