



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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www.deq.idaho.gov

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

February 21, 2019

Martin Quill
Trestle Creek Investments, LLC
c/o James A Sewell & Associates, LLC
1319 N. Division Ave
Sandpoint, ID 83864

Subject: Final §401 Water Quality Certification for Trestle Creek Investment, LLC Marina
Project, Pend Oreille Lake; NWW-2007-001218

Dear Mr. Quill,

Enclosed is the final water quality certification for the above referenced project. The draft certification was advertised for public comment for 30 days from January 7 to February 6, 2019. Comments were received and changes have been made to the final certification. 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,

A handwritten signature in blue ink that reads "Daniel Redline".

Daniel Redline
Regional Administrator
Coeur d'Alene Regional Office

c: Shane Slate, Corps of Engineers – Coeur d'Alene Regulatory Office
Loren Moore, DEQ State Office



Idaho Department of Environmental Quality Final §401 Water Quality Certification

February 21, 2019

404 Permit Application Number: Trestle Creek Marina; NWW-2007-001218

Applicant/Authorized Agent: Martin Quill, Trestle Creek Investments, LLC; Authorized Agent: Martin Taylor, James Sewell and Associates, LLC

Project Location: Latitude 48.283458° Longitude -116.353176° and Latitude 48.278333° Longitude -116.350826° in Bonner County near Hope, Idaho. Driving directions from Sandpoint are to head east on Highway 200 and just past Trestle Creek Road turn south onto North Park Road (may not be signed) cross railroad tracks to the development.

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

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. § 1341(a)(1), as amended, 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 November 28, 2018, and the following additional information from the applicant: *Water Quality Management Plan* dated June 18, 2008; *Addenda to Water Quality Management Plan: Excavation and Dredging Protocol*, October 3, 2008; *North Branch Trestle Creek – Idaho Club Supplemental Design Report*, September 8, 2007; *Storm Water Quality Management and Erosion Control Plan*, September 24, 2007; *Riparian Vegetation Restoration/Planting Plan*, February 25, 2008; *The Idaho Club at Trestle Creek Stormwater Management and Erosion Control Plan*, stamp date June 29, 2007; Stormwater Management Plan Sheets 1-8, Sherwood Design Engineers, March 19, 2007; and *Wetland Reconnaissance for The Idaho Club Trestle Creek*, September 18, 2008.

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

The applicant proposes to excavate and fill areas of Pend Oreille Lake to create a 105 slip private boat marina. The project also includes installation of docks and breakwater structures and the restoration of North Fork Trestle Creek to improve fish passage.

The proposed project includes the following discharges below the ordinary high water mark (OHWM) of Pend Oreille Lake: 8,500 cubic yards of native material, 404 cubic yards of rock riprap for shoreline stabilization, 38 cubic yards of concrete for the construction of a boat ramp, and the temporary discharge of 33 cubic yards of rock onto the dry lakebed for equipment access. Heavy equipment travel on the lakebed is restricted to either the access road or areas that are to be dredged to minimize compaction of the lakebed. Work on the lakebed will be done during drawdown on dry lakebed only, and North Fork Trestle Creek work will be done when the stream is dry. A vibratory hammer is proposed to be used to install pilings for the dock system in locations where the installation must be done in the water. This method minimizes impacts to aquatic species sensitive to pressure waves. A silt curtain is proposed to be used during replacement of an existing breakwater and during in-water pile installation for some of the docks. Details regarding curtain deployment are described in the application documents. A vehicle bridge and foot bridge will be removed from North Branch Trestle Creek and an open span vehicle bridge will be placed over this stream at a different location.

The permittee will apply for coverage under the NPDES Stormwater Construction General Permit administered by EPA. Upland construction best management practices (BMPs) for roads, utilities, and other subdivision construction activities placed to protect surface waters include: a double sediment fence along the top of bank to prevent sediment from entering the lake or streams; a rocked construction entrance; street cleaning to prevent sediment track-out; disturbed areas within 100 feet of the lake will be covered with either a bonded fiber matrix or weed free straw; and temporary sedimentation infiltration basins will be created and may be moved as needed. Vegetation planting per the *Riparian Vegetation Restoration/Planting Plan* will occur along the stream channels and along the lake shoreline outside of the marina basin. Existing trees will be preserved. Permanent stormwater treatment on the site will be a combination of rain gardens, bio-infiltration trenches, and grassed conveyance swales which outfall to the lake.

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.

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. According to DEQ's 2014 Integrated Report, this AU is not fully supporting its aquatic life, salmonid spawning and recreation uses. Causes of impairment include mercury, other flow regime alterations, and phosphorus. As such DEQ will provide Tier 1 protection for both aquatic life and recreation uses (IDAPA 58.01.02.051.01).

Additionally, this project is located on North Fork Trestle Creek and Trestle Creek within the Pend Oreille Lake Subbasin AU 17010214PN030_02 (Trestle Creek source to mouth). This AU has the following designated beneficial uses: cold water aquatic life, salmonid spawning, and secondary contact recreation. According to DEQ's 2014 Integrated Report, this AU is not fully supporting its aquatic life and salmonid spawning uses due to excess temperature. As such, DEQ will provide Tier 1 protection (IDAPA 58.01.02.051.01) for the aquatic life use. The contact recreation beneficial use is unassessed. DEQ must provide an appropriate level of protection for the contact recreation use using information available at this time (IDAPA 58.01.02.052.05.b). As such, DEQ will provide Tier II, in addition to Tier I, protection for this beneficial use (IDAPA 58.01.02.051.05.c.ii). The only pollutant of concern associated with this project is sediment. Sediment is not relevant to recreational uses since sediment will not degrade water quality necessary to support recreation uses, so it is unnecessary for DEQ to perform a Tier II analysis for recreation support status.

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).

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. These BMPs include silt fence, straw mulch, sediment control wattles, erosion control blankets, bonded fiber matrix hydro-mulch, spill prevention practices, equipment cleaning to prevent invasive species introduction, and vibratory pile driving.

Permanent erosion and sediment controls will be implemented which will minimize or prevent future sediment contributions from the project area. These BMPs include stormwater treatment with rain gardens, bio-infiltration trenches, and grassed conveyance swales. The project must also comply with the Construction General Permit which focuses on preventing water quality degradation from stormwater runoff from construction sites. The restoration of the North Branch Trestle Creek will benefit bull trout and other migratory fish by improving habitat and diverting the outlet so fish no longer enter the artificially altered north marina favored by warm water predator fish. 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 existing and designated 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* (DEQ, 2002) and *Pend Oreille Lake Tributaries Temperature Total Maximum Daily Loads: Addendum to the Pend Oreille Lake Subbasin Assessment and TMDL* (DEQ, 2007). The Nearshore Waters of Pend Oreille Lake TMDL limit the input of phosphorus. Soils are likely to contain phosphorus so any disturbance of soil or sediment must be controlled so that it is not suspended in the water column of the lake. This includes runoff from upland construction. To accomplish this, in addition to the above listed BMPs, work in the dry lakebed will be done during low pool. Heavy equipment travel will be restricted to areas being dredged, or the rock access road. Sedimentation from breakwater reconstruction and in-water piling installation will be controlled using a silt curtain.

Reconstruction of the North Fork Trestle Creek stream channel will be done according to a plan developed by River Design Group, Inc. which focuses on creating a stable channel with features that will reduce streambank erosion. This will reduce the amount of sediment entering the lake

and therefore reduce phosphorus contributions. Restoration work will also add woody vegetation to further strengthen streambanks. Additionally, the lake shoreline will be stabilized with woody vegetation plantings and riprap.

The Pend Oreille Lake Tributaries TMDL concluded that temperature in Trestle Creek must be reduced to recover lost beneficial uses. This requires, among other measures, an increase in shade trees and shrubs in the riparian zone. The proposed project protects existing trees and adds additional trees and shrubs. Camping along the streambank will no longer be allowed which will also benefit riparian vegetation so it can grow per the planting plan. These measures should improve shade and contribute to reduced stream temperature, supporting the goals of the TMDL.

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. If ownership of the project changes, the certification holder shall notify DEQ, in writing, upon transferring this ownership or responsibility for compliance with these conditions to another person or party. The new owner/operator shall request, in writing, the transfer of this water quality certification to his/her name.
4. 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.
5. 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.
6. 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.

7. 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.
8. If this project disturbs more than 1 acre and there is potential for discharge of stormwater to waters of the state, coverage under the EPA Stormwater Construction General Permit *must* be obtained. More information can be found at <https://www.epa.gov/npdes-permits/stormwater-discharges-construction-activities-region-10>.

Fill Material

9. Fill material subject to suspension shall be free of easily suspended fine material. The fill material to be placed shall be clean material only.
10. Fill material shall not be placed in a location or in a manner that impairs surface or subsurface water flow into or out of any wetland area.
11. All temporary fills shall be removed in their entirety on or before construction completion.
12. 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

13. 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.
14. One of the first construction activities shall be placing permanent and/or temporary erosion and sediment control measures around the perimeter of the project or initial work areas to protect the project water resources.
15. 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.
16. 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.
17. A BMP inspection and maintenance plan must be developed and implemented. BMPs must be inspected and maintained daily during project implementation.
18. BMP effectiveness shall be monitored daily during project implementation. BMPs shall be replaced or augmented if they are not effective.
19. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation. This includes removing all demolition debris from the lake during breakwater replacement.
20. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.

21. Maximum fill slopes shall be such that material is structurally stable once placed and does not slough into the stream channel during construction, during periods prior to revegetation, or after vegetation is established.

Turbidity

22. 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 or leaving a message at (208)666-4605.*
23. All practical BMPs on disturbed banks and within the waters of the state must be implemented to minimize turbidity. A minimum of once daily visual observation is required to determine whether BMPs are functioning properly. If a plume is observed at any time, the project may be causing an exceedance of WQS and the permittee must inspect the condition of the projects BMPs. If the 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).

In-water Work

24. Work in open water is to be kept at a minimum and only when necessary. Equipment shall work from an upland site to minimize disturbance of waters of the state as indicated in the application and supplemental documents listed in this certification.
25. Construction affecting the shoreline, lakebed, or stream banks shall take place only during periods of low flow. Low flow and low pool are defined as within one foot of the lowest pool level planned for the year work is being scheduled. For waters not subject to flow regulation by dams, the low flow timeframe begins July 1 unless the streambed is dry prior to this date. If work in the North Fork Trestle Creek channel begins before the stream is dry you shall notify June Bergquist, DEQ at (208) 666-4605 and obtain written approval of additional BMPs that will be used to protect water quality.
26. Fording of the Trestle Creek channel is not permitted. Temporary bridges or other structures shall be built if crossings are necessary.
27. Activities in spawning areas must be avoided to the maximum extent practicable.
28. Work in waters of the state shall be restricted to areas specified in the application.
29. Measures shall be taken to prevent wet concrete from entering into waters of the state when placed in forms and/or from truck washing.
30. Stranded fish found in dewatered segments should be moved to a location (preferably downstream) with water.
31. To minimize sediment transport, stream channel or stream bank stabilization must be completed prior to returning water to a dewatered segment.

Pollutants/Toxics

32. The use of chemicals such as soil stabilizers, dust palliatives, sterilants, growth inhibitors, fertilizers, and deicing salts during construction and operation should be limited to the

best estimate of optimum application rates. All reasonable measures shall be taken to avoid excess application and introduction of chemicals into waters of the state.

33. To prevent the introduction of phosphorus and other pollutants into the lake, DEQ suggests the applicant provide signage that reminds patrons to not discharge their wastewater (gray or black water) into the lake.

Vegetation Protection and Restoration

34. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
35. If authorized work results in unavoidable vegetative disturbance, riparian and wetland vegetation shall be successfully reestablished to function for water quality benefit at pre-project levels or improved at the completion of authorized work.

Dredge Material Management

36. Upland disposal of dredged material must be done in a manner that prevents the material from re-entering waters of the state.

Management of Hazardous or Deleterious Materials

37. 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.
38. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
39. 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. A log book of these inspections shall be kept on site and provided to DEQ upon request.
40. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
41. Equipment and machinery shall be steam cleaned of oils and grease in an upland location or staging area with appropriate wastewater controls and treatment prior to entering a water of the state. Cleaning shall remove all life stages of invasive aquatic species. Any wastewater or wash water must not be allowed to enter a water of the state.
42. Emergency spill procedures shall be in place and include a spill response kit (e.g., oil absorbent booms or other equipment).
43. 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 by email at june.bergquist@deq.idaho.gov.



Daniel Redline

Regional Administrator

Coeur d'Alene Regional Office