



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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www.deq.idaho.gov

Governor Brad Little
Director John H. Tippetts

October 15, 2019

Jim Paxton
220 Lincoln Street
Twin Falls, Idaho 83301

RE: Reference No. NWW-2019-00438, Paxton Streambank Stabilization Project on Solider Creek

Dear Mr. Paxton:

The Twin Falls Regional Office of the Idaho Department of Environmental Quality (DEQ) has considered water quality certification for construction related to the referenced project. No comments were received during the public comment period.

This letter is to inform you that DEQ is issuing the attached §401 Water Quality certification subject to the terms and conditions contained therein. Please review the general and specific conditions of the certification.

If you have any questions please contact Balthasar B. Buhidar, Ph.D. at (208) 736-2190, or via email at Balthasar.buhidar@deq.idaho.gov.

Sincerely,

A handwritten signature in blue ink that reads "Sue Switzer".

Sue Switzer
Regional Administrator
Twin Falls Regional Office

BBB/sh

Cc: Megan Biljan, ACOE, Boise Regulatory Office
Loren Moore, DEQ State Office



Idaho Department of Environmental Quality Final §401 Water Quality Certification

October 15, 2019

404 Permit Application Number: NWW-2019-00438 / Paxton Bank Stabilization Project on Soldier Creek

Nationwide Permit Number: 13, Bank Stabilization

Applicant/Authorized Agent: Jim Paxton

Project Location: 206 Phillips Creek Lane, Fairfield, Idaho in Camas County

Receiving Water Body: Soldier Creek

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended; 33 U.S.C. Section 1341(a)(1); 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 September 13, 2019, 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 proposed Paxton Bank Stabilization Project is located at 206 Phillips Creek Lane, Fairfield, Idaho in Camas County. The project will entail the placement of an angular rock riprap revetment and excavated toe with a gravel filter blanket along approximately 50 linear feet of stream bank, which will result in the discharge of approximately 60 cubic yards of rock and 20 cubic yards of pit-run sand and gravel backfill material below the ordinary high water mark of Soldier Creek, a waters of the United States (U.S.). Additional work includes dormant willow cuttings, bundles, clumps or other native woody vegetation plantings within the rock revetment.

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 for this project is sediment. The project resides on private lands and not on agricultural, BLM, or USFS lands. The owner minimizes any applications of fertilizers and pesticides and wants to maintain as much of the natural condition as possible. 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 Soldier Creek within the Camas Creek Subbasin assessment unit (AU) ID 17040220SK012_03 (Soldier Creek – Source to and including Wardrop Creek). This AU has not yet been designated. Because DEQ presumes most waters in the state will support cold water aquatic life and primary or secondary contact recreation beneficial uses, undesignated waters are protected for these uses (IDAPA 58.01.02.101.01.a). 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).

According to DEQ's 2016 Integrated Report, this AU is not fully supporting one or more of its assessed uses. The aquatic life use is not fully supported. Causes of impairment include water

temperature. The contact recreation beneficial use is fully supported. As such, DEQ will provide Tier I protection (IDAPA 58.01.02.051.01) for the aquatic life use and Tier II protection (IDAPA 58.01.02.051.02) in addition to Tier I for the contact recreation use (IDAPA 58.01.02.052.05.c).

The only pollutant of concern for this project is sediment. Because sediment is not relevant to contact recreation, project activities will not result in a lowering of water quality with respect to recreational beneficial use support. Sediment is relevant to the aquatic life beneficial use and the permittee must minimize the transport of sediment and removal of riparian vegetation through implementation of best management practices (BMPs).

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 *Camas Creek TMDL (EPA approved 2005)* and the *Camas Creek Subbasin TMDL – Temperature Addendum (EPA approved 2016)*. The proposed project will comply with both TMDLs based on the following best management practices:

1. As proposed the project activity will not result in a temperature increase to Soldier Creek. Although Soldier Creek does not have a temperature TMDL, it is identified in the 2016 approved Integrated Report as needing thermal reductions. There is one point source associated with Soldier Creek but it exists downstream of the project site. Therefore, sources of temperature upstream of the dredge and fill activity are associated with nonpoint sources. The project proposes to riprap the eroded vertical streambank. Additionally, woody vegetation will be planted in the riprap zone to fortify the streambank and increase the amount of shade to the stream. The addition of woody vegetation will have a positive benefit at the project site in reducing the thermal loading at Soldier Creek.

2. The project site resides in an area of Soldier Creek that has erodible soils. The proposed project will prevent soil erosion from discharging into Soldier Creek by riprap placement and woody vegetation plantings that will more firmly armor the streambank.
3. Project work will occur outside of Soldier Creek and back from the streambank. No ingress or egress of Soldier Creek will occur. A rubber-tired backhoe will be used to minimize vegetation impacts along the streambank.
4. Project work will occur during the low flow fall season and will be short-term because it will not take longer than 30 days.
5. Project work will be directed at the eroded vertical streambank and will be laid back to a 2:1 slope (horizontal: vertical) that meets NRCS standards.
6. Project work involves angular gravel (riprap gradation) placement on a filter blanket in the eroded vertical area that also meets NRCS standards.
7. Woody vegetation (as cuttings, bundles, clumps, and native) will be planted within the armored streambank.

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).

High-Quality Waters (Tier II Protection)

The Soldier Creek is considered high quality for cold water aquatic life and salmonid spawning. As such, the water quality relevant to these uses must be maintained and protected, unless a lowering of water quality is deemed necessary to accommodate important social or economic development.

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for each pollutant that is relevant to cold water aquatic life and salmonid spawning uses of the Soldier Creek (IDAPA 58.01.02.052.06). These pollutants include the following: sediment as total suspended solids. Project implementation will ensure no degradation to high-quality water based on the following:

1. The project size is a small (50 linear feet, 60 cubic yards of rock riprap, 20 cubic yards of pit-run sand and gravel backfill material) and is less than the 500 linear feet for a NWP-13 permit.
2. Project mitigation is not necessary because there will not be a loss of more than 150 linear feet of stream.
3. Construction equipment includes a rubber tired backhoe that will work from the streambank and not ingress or egress Soldier Creek.
4. The project is a short-term project of less than 30-days, expecting to start and finish in a 2-week period.

5. Willow vegetation will anchor the riprap rock as an additional component to the riprap bank stabilization.
6. The project activity is not a stream channelization activity.
7. The project activity must comply with all regional and general permit conditions for NWP No. 13: Bank Stabilization.
8. The project activity must comply with all regional conditions - Vegetation Protection/ Restoration and Soil Stabilization - Permittee shall avoid and minimize the removal of native vegetation in riparian and wetland areas to the maximum extent practicable. Areas subject to temporary vegetation removal in riparian and wetland areas during construction shall be replanted with appropriate native species by the end of the first growing season following the disturbance except as waived by the USACOE District Engineer.
9. The permittee shall ensure that all work done below the ordinary high water mark is performed in the dry or during periods of low flow when stream levels are at their lowest, to reduce turbidity and sedimentation impacts.
10. The permittee shall ensure that BMP's for erosion and sedimentation control shall be installed between any area of earth disturbance and a water of the United States and left in place throughout construction. The device must be installed according to the manufacturer's specifications, during construction, and must be maintained until the construction activity is completed.
11. The permittee is responsible for all work done by any contractor. Permittee shall ensure any contractor who performs the work is informed of and follows all the terms and conditions of this authorization, including any Special Conditions listed in the USACOE permit. Permittee shall also ensure these terms and conditions are incorporated into engineering plans and contract specifications.
12. The permittee will comply with the 401 water quality certification general and specific conditions shown below.

As such, the project complies with IDAPA 58.01.02.051.02 and IDAPA 58.01.02.052.06.

In order to maintain the ambient water quality conditions, permanent erosion and sediment controls must be implemented which will minimize or prevent future sediment contributions from the project area. The provisions in the 404 permit, coupled with the conditions of this certification, ensure that degradation to the ID 17040220SK012_03 AU or the Soldier Creek will not occur. Therefore, DEQ concludes that this project complies with the Tier II provisions of Idaho's WQS (IDAPA 58.01.02.051.02; 58.01.02.052.06 and 58.01.02.052.08).

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

1. Fill material subject to suspension shall be free of easily suspended fine material. The fill material to be placed shall be clean material only.
2. 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.
3. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.

4. All temporary fills shall be removed in their entirety on or before construction completion.
5. 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 uncontrolled.

Erosion and Sediment Control

1. 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.
2. 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.
3. 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.
4. Permanent 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.
5. Top elevations of bank stabilization shall be such that adequate freeboard is provided to protect from erosion at 100-year design flood elevation.
6. Structural fill or bank protection shall consist of materials that are placed and maintained to withstand predictable high flows in the waters of the state.
7. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
8. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
9. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
10. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.
11. 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.
12. To the extent reasonable and cost-effective, the activity submitted for certification shall be designed to minimize subsequent maintenance.
13. 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.

In-water Work

1. 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. If this is not practicable, appropriate measures must be taken to ensure disturbance to the waters of the state is minimized.
2. Construction affecting the bed or banks shall take place only during periods of low flow.
3. Fording of the channel is not permitted. Temporary bridges or other structures shall be built if crossings are necessary.
 - a. Temporary crossings must be perpendicular to channels and located in areas with the least impact. The temporary crossings must be supplemented with clean gravel or treated with other mitigation methods at least as effective in reducing impacts. Temporary crossings must be removed as soon as possible after the project is completed or the crossing is no longer needed.
4. Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.
5. Activities in spawning areas must be avoided to the maximum extent practicable.
6. Work in waters of the state shall be restricted to areas specified in the application.
7. Measures shall be taken to prevent wet concrete from entering into waters of the state when placed in forms and/or from truck washing.
8. Activities that include constructing and maintaining intake structures must include adequate fish screening devices to prevent fish entrainment or capture.
9. Stranded fish found in dewatered segments should be moved to a location (preferably downstream) with water.
10. To minimize sediment transport, stream channel or stream bank stabilization must be completed prior to returning water to a dewatered segment.

Pollutants/Toxics

1. 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.

Vegetation Protection and Restoration

1. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
2. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
3. Fencing and other barriers should be used to mark the construction areas.
4. Where possible, alternative equipment should be used (e.g., spider hoe or crane).

5. 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

1. 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

1. Petroleum products and hazardous, toxic, and/or deleterious materials shall not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of waters of the 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.
2. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
3. 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.
4. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
5. 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. Any wastewater or wash water must not be allowed to enter a water of the state.
6. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
7. 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).
 - Twin Falls Regional Office: 208-736-2190 / 800-270-1663
 - d. Collect, remove, and dispose of the spilled material in a manner approved by DEQ.

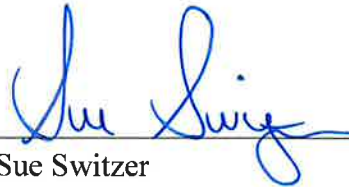
Required Notification

The permittee must notify the Twin Falls Regional Office when authorized work begins by contacting Balthasar B. Buhidar, Ph.D. at (208) 736-2190 or by email at Balthasar.buhidar@deq.idaho.gov.

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 Balthasar B. Buhidar, Ph.D., Twin Falls Regional Office, (208) 736-2190, or balthasar.buhidar@deq.idaho.gov.



Sue Switzer

Regional Administrator

Twin Falls Regional Office