



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

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Governor Brad Little  
Director John H. Tippetts

July 31, 2019

Mayor Darin Taylor  
City of Middleton  
1103 W. Main Street  
Middleton, Idaho 83644

RE: Reference No. NWW-2019-0298-B03-- Middleton Road Realignment Project

Dear Mayor Taylor:

The Department of Environmental Quality (DEQ) has considered water quality certification for construction related to the referenced project. DEQ is issuing the attached 401 Water Quality Certification subject to the terms and conditions contained therein.

If you have any questions or further information to present please contact Julia Achabal at (208) 373-0321, or via email at [Julia.Achabal@deq.idaho.gov](mailto:Julia.Achabal@deq.idaho.gov).

Sincerely,

*for* 

Aaron Scheff  
Regional Administrator  
Boise Regional Office

JRA/am

ec: Eric M. Gerke, COE, Boise  
Loren Moore, DEQ State Office  
TRIM 2019AKF68



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

July 31, 2019

**404 Permit Application Number:** NWW-2019-0298-B03, Middleton Road Realignment Project

**Nationwide Permit Number:** No. 14: Linear Transportation Projects

**Applicant/Authorized Agent:** City of Middleton

**Project Location:** 43°42'0.84"N, -116°36'47.05"W in the community of Middleton, Canyon County, Idaho.

**Receiving Water Body:** Boise River, South Middleton Drain and Watkins Ditch

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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 its review of the joint application for permit, received on June 10, 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, 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.

### Project Description

This project will construct a new 0.45 mile four lane section of Middleton Road. It will align Middleton Road south of SH 44 with Middleton Road north of SH 44 to meet projected growth needs identified in the City's Comprehensive Plan (2015). A concrete box culvert and wing walls will be constructed at the South Middleton Drain and a corrugated metal culvert will be installed at the Watkins Ditch. Wetlands adjacent to the Boise River will be impacted. Permanent wetland impacts will be mitigated using approved mitigation banks located in the Lower Boise Watershed upon approval of the U.S. Army Corps of Engineers.

## 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 temperature. 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 temperature.

### ***Receiving Water Body Level of Protection***

This project will affect three waterbodies within the Lower Boise Subbasin; Boise River, Watkins Ditch and South Middleton Drain.

Wetlands located along the Boise River are associated with (AU) 17050114SW005\_06a (Boise River – Star to Middleton). This AU has been designated for cold water aquatic life, salmonid spawning and primary contact recreation beneficial uses. 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 its cold water aquatic life, salmonid spawning and primary contact recreation beneficial uses. Causes of impairment include: low flow, physical substrate habitat alterations, temperature,

sediment/siltation and fecal coliform. As such, DEQ will provide Tier I protection for both the aquatic life and contact recreation uses (IDAPA 58.01.02.051.01).

Both Watkins Ditch and South Middleton Drain are not within the AU database maintained by DEQ, nor is it part of the National Hydrography Dataset. Watkins Ditch and South Middleton Drain are not specifically designated in Idaho's water quality standards, and are considered man-made waters (IDAPA 58.01.02.101.02). DEQ protects these waterways for the use for which they were developed, namely agricultural water supply. As such, DEQ will provide Tier I protection only for both Watkins Ditch and South Middleton Drain.

### ***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. Specifically this project will follow an approved Storm Water Pollution Prevention Plan during construction operations to eliminate soil erosion from leaving the site. Construction will take a phased approach to keep stream disturbance to a minimum. Work along the streambank will be isolated by silt fencing and fiber rolls to keep soil in place. Construction below ordinary high water mark will be isolated and dewatered to prevent sediment movement downstream. Water removed from the isolated areas will be treated for suspended sediment before being returned to any surface waterway. All exposed areas will be seeded or mulched within 14 days of final grading. In addition, other 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 *Lower Boise River Total Maximum Daily Load* (DEQ 1998) by preventing water quality impacts, potentially resulting from construction, through the use of Best Management Practices, construction sequencing, storm water retention and isolating disturbance to the construction area. Agricultural water conveyance will not be impeded and water quality will not be impacted.

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. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.
12. All temporary fills shall be removed in their entirety on or before construction completion.
13. 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***

14. 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.
15. 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.
16. 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.
17. 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.
18. Top elevations of bank stabilization shall be such that adequate freeboard is provided to protect from erosion at 100-year design flood elevation.
19. 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.
20. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
21. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
22. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
23. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.
24. 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.
25. To the extent reasonable and cost-effective, the activity submitted for certification shall be designed to minimize subsequent maintenance.

26. 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.

### **Turbidity**

27. 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.*
28. All practical BMPs on disturbed banks and within the waters of the state must be implemented to minimize turbidity. Visual observation is 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 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).
29. Containment measures such as silt curtains, geotextile fabrics, and silt fences must be implemented and properly maintained to minimize instream sediment suspension and resulting turbidity.
30. Monitoring must occur each day during project implementation when project activities may result in turbidity increases above background levels.

### **In-water Work**

31. 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.
32. Construction affecting the bed or banks shall take place only during periods of low flow.
33. Forging 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.
34. Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.
35. Work in waters of the state shall be restricted to areas specified in the application.
36. Measures shall be taken to prevent wet concrete from entering into waters of the state when placed in forms and/or from truck washing.
37. To minimize sediment transport, stream channel or stream bank stabilization must be completed prior to returning water to a dewatered segment.

### ***Vegetation Protection and Restoration***

38. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
39. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
40. Fencing and other barriers should be used to mark the construction areas.
41. Where possible, alternative equipment should be used (e.g., spider hoe or crane).
42. 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***

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

### ***Culverts***

44. To prevent road surface and culvert bedding material from entering a stream, culvert crossings must include best management practices to retain road base and culvert bedding material. Examples of best management practices include, but are not limited to, parapets, wing walls, inlet and outlet rock armoring, compaction, suitable bedding material, anti-seep barriers such as bentonite clay, or other acceptable roadway retention systems.
45. The culvert shall not constrict the stream channel and shall not be angled such that the outflow is directed toward the stream bank. The culvert's flow line shall match the existing stream invert at its entrance and exit. Adequate grade control shall be installed to prevent channel down cutting or excessive deposition from occurring.
46. The culvert shall be installed such that it does not impede fish passage.
47. The culvert outflow shall be armored with riprap to provide erosion control. This riprap will be clean, angular, dense rock that is free of fines and resistant to aquatic decomposition.
48. Culverts shall be sized appropriately to maintain the natural drainage patterns.

### **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 Julia Achabal, Boise Regional Office, (208) 373-0321 or [Julia.Achabal@deq.idaho.gov](mailto:Julia.Achabal@deq.idaho.gov).



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Aaron Scheff  
Regional Administrator  
Boise Regional Office