



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

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Brad Little, Governor  
John H. Tippets, Director

April 16, 2020

Ennis Dale  
435 East Shore Dr., Suite 120  
Eagle, Idaho 83616

RE: Reference No. NWW-2020-00088-B03 – Neville Ranch Subdivision, Phase 4, 12-inch Diameter Water Main Crossing, Dry Creek and wetlands adjacent to Dry Creek

Dear Mr. Dale,

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 Kati Carberry at (208) 373-0434, or via email at [Kati.Carberry@deq.idaho.gov](mailto:Kati.Carberry@deq.idaho.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Scheff".

Aaron Scheff  
Regional Administrator  
Boise Regional Office

KLC/am

ec: Eric Gerke, COE – Boise  
Loren Moore, DEQ – State Office  
CM#: 2020AKF7



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

April 16, 2020

**404 Permit Application Number:** NWW-2020-00088-B03, Neville Ranch Subdivision, Phase 4

**Nationwide Permit Number:** 12 – Utility Line Activity

**Applicant/Authorized Agent:** A. Ennis Dale, Cartwright Ranch LLC.

**Project Location:** Latitude 43.7108° N, Longitude -116.2331° W; Dry Creek and adjacent wetlands on Cartright Road crossing.

**Receiving Water Body:** Dry Creek and associated wetlands

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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 February 24, 2020, 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 project includes installation of a Suez Utility 12” PVC Water Main into the streambed of Dry Creek and adjacent wetlands. The project will include a trench that is 5.5 foot deep by 4 foot wide by 30 foot long below the ordinary high water mark and adjacent wetlands. The project will also include installing a 72 inch diameter flared culvert end with a protection grate and armoring the streambed from the outlet end of the flared culvert with a layer of 4 to 8 inch diameter angular rock, 8 inches thick. The water line will service the proposed Neville Ranch Subdivision Phase 4 development and future developments to the east of Cartwright Road.

## 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. 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 Dry Creek within the Lower Boise River Subbasin assessment unit (AU) 17050114SW013\_03 (Dry, Carrant and Spring Valley Creeks - 3rd order sections). 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 receiving water body AU is fully supporting its assessed uses (IDAPA 58.01.02.052.05.a). As such, DEQ will provide Tier II protection in addition to Tier I for this water body (IDAPA 58.01.02.051.02; 58.01.02.051.01).

The only pollutant of concern associated with this project is sediment. However, sediment is not relevant to recreational uses since sediment will not degrade water quality necessary to support recreation uses, and it is therefore unnecessary for DEQ to conduct a Tier II analysis for contact recreation.

### ***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.

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.

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 Dry Creek is considered high quality for cold water aquatic life and secondary contact recreation. 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.

The only pollutant of concern associated with 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).

To determine whether degradation will occur, DEQ must evaluate how the permit issuance will affect water quality for each pollutant that is relevant to uses of the Dry Creek (IDAPA 58.01.02.052.06). These pollutants include sediment. Degradation to water quality is not expected because, per the permit, all work in Dry Creek will occur when flows are low or the channel is dry. If there are any flows in the channel during construction, the upstream flow will be bypassed around the area to a protected discharge location downstream of the construction activity. The project includes installation of a 72 inch diameter flared culvert end with a

protection grate and armoring the streambed at the culvert outlet end with a geotextile fabric and a layer of 4-8 inch diameter angular rock to minimize long term erosion. Additionally, all activities will be done in compliance with a Stormwater Pollution Prevention Plan (SWPPP) that has been developed through the current Construction General Permit (CGP) to prevent sediment from impacting water quality. 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 Dry, Currant and Spring Valley Creeks - 3rd order sections AU or the Dry 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**

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. Turbidity monitoring must be conducted in accordance with the Construction General Permit (CGP), recorded, and reported. Copies of turbidity monitoring must be available to DEQ upon request.

### **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. Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.
34. Work in waters of the state shall be restricted to areas specified in the application.
35. Measures shall be taken to prevent wet concrete from entering into waters of the state when placed in forms and/or from truck washing.
36. Stranded fish found in dewatered segments should be moved to a location (preferably downstream) with water.
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.
43. When possible, the permittee should implement native plant suggestions provided by the Army Corps of Engineers, per the permit's Special Conditions.

### ***Dredge Material Management***

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

### ***Culverts***

45. 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.
46. 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.
47. The culvert shall be installed such that it does not impede fish passage.
48. 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.



49. Culverts shall be sized appropriately to maintain the natural drainage patterns.


### ***Required Notification***

The permittee must notify the Boise Regional Office when authorized work begins and when authorized work ends. Please contact Kati Carberry at (208) 373-0434 or by email at [Kati.Carberry@deq.idaho.gov](mailto:Kati.Carberry@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 DEQ Boise Regional Office, Kati Carberry, (208) 373-0434 or [Kati.Carberry@deq.idaho.gov](mailto:Kati.Carberry@deq.idaho.gov).



Aaron Scheff  
Regional Administrator  
Boise Regional Office