STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1410 North Hilton • Boise, Idaho 83706 • (208) 373-0502

C.L. "Butch" Otter, Governor
Curt Fransen, Director

April 23, 2013

David B. Barrows, Chief
US Army Corps of Engineers
Regulatory Division
Walla Walla District
201 North Third
Walla Walla, Washington 99362-1876

Subject: FINAL §401 Water Quality Certification for the Regional General Permit – Management of Aquatic Invasive Species (RGP-AIS)

Dear Mr. Barrows:

The Idaho Department of Environmental Quality (DEQ) has reviewed the above-referenced permit, formerly entitled "Benthic Barriers." DEQ drafted a revised §401 water quality certification and offered a 21-day public comment period, during which time no comments were received. Enclosed is DEQ's final certification of the Regional General Permit for the Management of Aquatic Invasive Species.

Please direct any questions or concerns to Miranda Adams, 401/404 Program Coordinator, at (208) 373-0574 or via email at miranda.adams@deq.idaho.gov.

Sincerely,

Barry N. Burnell
Water Quality Division Administrator

BNB:MA:ls

Enclosure

c: Beth Reinhart, ACOE – Coeur d'Alene Regulatory Office

Idaho Department of Environmental Quality
Final §401 Water Quality Certification

April 23, 2013

404 Permit Application Number: Regional General Permit – Management of Aquatic Invasive Species (RGP-AIS)

Applicant/Authorized Agent: U.S. Army Corps of Engineers, Walla Walla District

Project Location: Idaho

Receiving Water Body: All waters of the U.S., within the State of Idaho, except the waters in ESA exclusion areas.

Pursuant to the provisions of Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), as amended, 33 USC 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 a water quality certification decision.

Based upon its review of the public noticed issued by the Army Corps of Engineers on March 5, 2013, for the above-referenced activity, 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, including 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 Regional General Permit for the Management of Aquatic Invasive Species (RGP-AIS) authorizes the discharge of fill material, structures and/or work associated with the placement of temporary benthic (bottom) barriers, mechanical harvesting, raking, pulling by hand, and divers using vacuum suction to control growth of invasive, noxious aquatic vegetation as designated by the Idaho State Department of Agriculture and usually associated with docks and swimming areas for safety and navigation purposes. It also authorizes the

discharge of fill material, structures and/or work associated with the placement of temporary benthic (bottom) barriers and or divers utilizing vacuum suction to control the spread of non-native bivalves and gastropods as designated by the Idaho State Department of Agriculture in areas identified with infestations.

Pollutants of Concern

The primary pollutant of concern for this activity 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.

Antidegradation Review

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

- Tier 1 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 1 review is performed for all new or reissued permits or licenses (IDAPA 58.01.02.052.07).
- Tier 2 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 3 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 1 protection for that use, unless specific circumstances warranting Tier 2 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).

This permit authorizes discharges associated with the placement of benthic barriers for the purpose of controlling aquatic invasive species. All waters of the state, regardless of their support status, could potentially be affected by the issuance of this permit – except certain geographic areas which have been excluded from coverage to protect flora and fauna which may be listed as endangered or threatened under the Endangered Species Act (ESA).

DEQ believes the permit conditions and notifications provide the protection needed to maintain existing water quality and will not contribute to a decline in water quality for either aquatic life or recreation uses. DEQ agrees with the Army Corps of Engineers that the long

term benefit to water quality and beneficial uses of invasive species eradication outweighs the potential minor impact, if any, to water quality.

DEQ believes the three (3) required notification and approval procedures along with the fourteen (14) proposed conditions in the permit to manage invasive vegetation and the eleven (11) proposed conditions to manage bi-valve or gastropod infestations, will ensure that the use of Benthic Barriers for the control of invasive species will reduce or minimize potential sediment impacts. This will be achieved by implementing the following:

- requiring the invasive species presence be confirmed,
- placing them below the high water mark,
- weighting barrier frames to the bottom of the lake,
- periodic inspection,
- limiting the time barriers can be in one place to minimize sediment build up,
- requiring barriers to be removed by October 31,
- requiring construction waste to be disposed in an upland location (not the water body),
- requiring sediment control activities outside those described in the permit get an individual permit,
- requiring barrier placement not interfere with navigation, and
- providing for endangered species consultation where Endangered Species Act (ESA) organisms are involved.

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.

As long as the project is conducted in accordance with the provisions of the project plans, Section 404 permit, mitigation plan, and conditions of this certification, then there is reasonable assurance the project will comply with the States' numeric and narrative criteria. The numeric and narrative criteria are set at levels which protect and maintain designated and existing beneficial uses. Furthermore, there is reasonable assurance the projects will be conducted in a manner that will maintain and protect the water quality of the relevant waterbodies. Therefore, DEQ concludes that this project complies with the Antidegradation Policy contained within Idaho's WQS (IDAPA 58.01.02.051 and 58.01.02.052).

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

General Conditions

1. This certification authorizes the activity as described in the notice of intent to apply for coverage under the general permit.

2. A copy of this certification must be kept on the job site and readily available for review by any contractor working on the project as well as any federal, state, or local government personnel.

3. The applicant shall provide access to project sites 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.

4. The applicant is responsible for all work done by contractors and must ensure the contractor(s) are informed of and follow all the conditions described in this certification and the Section 404 permit.

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 regarding the actions taken in this certification should be directed to Miranda Adams, Idaho Department of Environmental Quality – State Office, at 208-373-0574 or via email at *miranda.adams@deq.idaho.gov.*

Barry N. Burnell
Water Quality Division Administrator
Idaho Department of Environmental Quality