



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

May 7, 2012

**NPDES Permit Number(s):** City of Blackfoot, NPDES permit #ID-002004-4

**Receiving Water Body:** Snake River (AU - ID17040206SK022\_04)

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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 National Pollutant Discharge Elimination System (NPDES) permits and issue water quality certification decisions.

Based upon its review of the above-referenced permit and associated fact sheet, 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 discharge 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.

### 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 58.01.02.052.05).
- **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; 58.01.02.052.06).
- **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; 58.01.02.052.07).

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). 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.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 City of Blackfoot discharges the following pollutants of concern: BOD, TSS, *E. coli*, Ammonia, total phosphorus and pH. Effluent limits have been developed for these pollutants. No effluent limits are proposed for lead (no reasonable potential to exceed state water quality standards), and mercury (effluent and receiving water monitoring is required because of 2010 listing of this river reach for mercury and the facility has no recent or current data on levels of this pollutant in its effluent).

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

The City of Blackfoot discharges to the Snake River assessment unit (AU) ID17040206SK022\_04. This AU has the following designated beneficial uses: cold water aquatic life, salmonid spawning, primary contact recreation, domestic water supply, agricultural and industrial water supply, wildlife habitats and aesthetics. There is no available information indicating the presence of any existing beneficial aside from those that are already designated.

The cold water aquatic life and recreation beneficial use in this Snake River AU is not fully supported due to excess mercury (2010 Integrated Report). As such, DEQ will provide Tier 1 protection only for these two uses (Idaho Code § 39-3603(2)(b)).

### ***Protection and Maintenance of Existing Uses (Tier 1 Protection)***

As noted above, a Tier 1 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. In order to protect and maintain designated and existing beneficial uses, a permitted discharge must comply with narrative and numeric criteria of the Idaho WQS, as well as other provisions of the WQS such as Section 055, which addresses water quality limited waters. The numeric and narrative criteria in the WQS are set at levels that ensure protection of designated beneficial uses. The effluent limitations and associated requirements contained in the City of Blackfoot permit are set at levels that ensure compliance with the narrative and numeric criteria in the WQS.

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. A central purpose of TMDLs is to establish wasteload allocations for point source discharges, which are set at levels designed to help restore the water body to a condition that supports existing and designated beneficial uses. Discharge permits must contain limitations that are consistent with wasteload allocations in the approved TMDL.

The EPA-approved *American Falls Subbasin Total Maximum Daily Load Plan: Subbasin Assessment and Loading Analysis* (approval pending) establishes wasteload allocations for total suspended solids (TSS) and total phosphorus (T-P). These wasteload allocations are designed to ensure the Snake River and American Falls Reservoir will achieve the water quality necessary to support its existing and designated aquatic life beneficial uses and comply with the applicable numeric and narrative criteria. While the Snake River AU is not impaired for TP or TSS, pollutant levels in the Snake affect water quality in the American Falls Reservoir. Therefore, wasteload allocations were assigned to the City of Blackfoot. The effluent limitations and associated requirements contained in the City of Blackfoot permit are set at levels that comply with these wasteload allocations.

In sum, the effluent limitations and associated requirements contained in the City of Blackfoot permit are set at levels that ensure compliance with the narrative and numeric criteria in the WQS and the wasteload allocations established in the *American Falls Subbasin Total Maximum Daily Load Plan: Subbasin Assessment and Loading Analysis*. Therefore, DEQ has determined the permit will protect and maintain existing and designated beneficial uses in the Snake River.

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

This certification is conditioned upon the requirement that any material modification of the permit or the permitted activities—including without limitation, any modifications of the permit to reflect new or modified TMDLs, wasteload allocations, site-specific criteria, variances, or other new information—shall first be provided to DEQ for review to determine compliance with Idaho WQS and to provide additional certification pursuant to Section 401.

## **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 Lynn Van Every, Regional Water Quality Manager, Pocatello Regional Office of the Idaho Department of Environmental Quality at (208) 236-6160 or [lynn.vanevery@deq.idaho.gov](mailto:lynn.vanevery@deq.idaho.gov).

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