



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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www.deq.idaho.gov

Brad Little, Governor
John Tippetts, Director

July 29, 2020

By certified mail

Robert Kruger
P.O. Box 1107
Clarkia, ID 83812

Subject: Final §401 Water Quality Certification for the Middle Fork St. Maries River bank stabilization project, NWW-2017-00313

Dear Mr. Kruger:

Enclosed is the Final §401 Water Quality Certification for the Army Corps of Engineers permit NWW-2017-00313. No comments were received during the 21-day period that the document was available on our website for public comment. Please make sure that you and anyone performing this work read the document and are familiar with conditions of this certification prior to beginning work.

If you have questions or concerns, please contact Chantilly Higbee at 208-666-4605 or via email at Chantilly.higbee@deq.idaho.gov.

Sincerely,

A handwritten signature in blue ink that reads "Dan McCracken".

Dan McCracken
Regional Administrator
Coeur d'Alene Regional Office

c: Garrett Schock, Army Corps of Engineers
Keith Swallows, National Resource Conservation Service



Idaho Department of Environmental Quality Final §401 Water Quality Certification

July 29, 2020

404 Permit Application Number: NWW-2017-00313, Kruger – Bank Stabilization

Nationwide Permit Number: 13, Bank Stabilization

Applicant/Authorized Agent: Robert Kruger

Project Location: Approximately 47.0137 N, -116.2473 W; Immediately north of Clarkia in Shoshone County

Receiving Water Body: Middle Fork St. Maries River

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 19, 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

This Natural Resources Conservation Service (NRCS) project is designed to reduce streambank erosion and sedimentation into the Middle Fork St. Maries River. This work will prevent the mobilization of approximately 849.2 tons of sediment into the river. The applicant proposes to place approximately 2,946 cubic yards of riprap, trees, and root wads along the river to stabilize 3,700 linear feet of bank. Of the proposed discharge, 1,500 cubic yards will be placed below the ordinary high water mark. Black Cottonwood trees will be planted, and willow bundles keyed into the bank to provide a riparian buffer. Fencing will be installed to exclude cattle use of the area. Work will be done from the top of the bank during low flow. Disturbed areas will be seeded and mulched.

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 is located on the Middle Fork St. Maries River within the St. Joe Subbasin assessment unit (AU) 17010304PN018_05 (Middle Fork St. Maries River - source to mouth). 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 its aquatic life use. Causes of impairment include sediment and temperature. As such, DEQ will provide Tier I protection (IDAPA 58.01.02.051.01) for the aquatic life use.

The contact recreation beneficial use is unassessed. DEQ must provide an appropriate level of protection for the contact recreation use using information available at this time (IDAPA 58.01.02.052.05.c). However, the only pollutants of concern associated with this project are sediment and temperature. These pollutants are not relevant to recreational uses since sediment and temperature will not degrade water quality necessary to support recreation uses; it is therefore unnecessary for DEQ to conduct a Tier II analysis.

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. A track hoe will work from the top of the bank, and work will be performed during low water. Vegetation will be re-established post-construction via seeding and mulching in areas that are disturbed during construction. 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 existing and designated beneficial uses.

In addition, the project will be consistent with the *St. Maries River Subbasin Assessment and Total Maximum Daily Loads, 2003*, and the *St. Joe River Subbasin Assessment and Total Maximum Daily Loads Addendum, 2011*. This NRCS project is designed to reduce erosion and sedimentation to the river by stabilizing the streambank and excluding cattle use of the area.

Currently, there is little riparian vegetation in the subject area. The applicant proposes to plant trees and willows. These efforts should result in a greatly enhanced shading of the river, consistent with the TMDLs.

The permit must ensure that the level of water quality necessary to protect both existing and designated uses are 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). Salmonid spawning is an existing use in the Middle Fork St. Maries River and will be protected by timing the project so work is done during low flow conditions when spawning is not a concern. Reduced sedimentation resulting

from the completion of the project, as well as the installation of root wads, riparian shade trees, and willows will enhance fish habitat.

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. Work shall be done during low flow conditions.

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. BMPs shall be installed to prevent the undermining of the riprap, and to prevent scouring and migration of soil particles.
11. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.

12. 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.
13. All temporary fills shall be removed in their entirety on or before construction completion.
14. Excavated or staged fill material must be placed so it is isolated from the water's edge and wetlands, and not placed where it could re-enter waters of the state.

Erosion and Sediment Control

15. 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.
16. 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.
17. 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.
18. 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.
19. Top elevations of bank stabilization shall be such that adequate freeboard is provided to protect from erosion at 100-year design flood elevation.
20. 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.
21. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
22. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
23. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
24. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.
25. To the extent reasonable and cost-effective, the activity shall be designed to minimize subsequent maintenance.
26. 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.
27. 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

28. 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.*
29. 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).
30. 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.

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. Activities in spawning areas must be avoided to the maximum extent practicable.
35. Work in waters of the state shall be restricted to areas specified in the application.

Pollutants/Toxics

36. 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

37. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
38. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.

39. Fencing and other barriers should be used to mark the construction areas.
40. 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.

Dredged Material Management

41. Upland disposal of dredged/excavated material must be done in a manner that prevents the material from re-entering waters of the state. Dredged/excavated material shall not be placed within the floodplain.

Management of Hazardous or Deleterious Materials

42. 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.
43. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
44. 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.
45. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
46. 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. Cleaning shall be sufficient to remove all life stages of aquatic invasive species.
47. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
48. 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). Coeur d'Alene Regional Office: 208-769-1422 / 877-370-0017
 - d. Collect, remove, and dispose of the spilled material in a manner approved by DEQ.

Required Notification

The permittee must notify the Coeur d'Alene Regional Office when authorized work begins; 208-666-4605 or via email at Chantilly.Higbee@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 Chantilly Higbee, Coeur d'Alene Regional Office at 208-666-4605 or via email at Chantilly.Higbee@deq.idaho.gov.



Dan McCracken

Regional Administrator

Coeur d'Alene Regional Office