



**STATE OF IDAHO**  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

2110 Ironwood Parkway, Coeur d'Alene, ID 83814  
(208) 769-1422

Brad Little, Governor  
Jess Byrne, Director

December 17, 2020

By certified mail

Jim Hallman  
Fox Farms LLC  
111 E. Victoria St., 2<sup>nd</sup> Floor  
Santa Barbara, CA 93101

Subject: Final § 401 Water Quality Certification for the Fox Farms Bank Stabilization Project; NWW-2020-00474

Dear Mr. Hallman:

Enclosed is the Final § 401 Water Quality Certification for the Army Corps of Engineers permit NWW-2020-00474. 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 the conditions of this certification prior to beginning work. Please also notify the DEQ Coeur d'Alene Regional Office when work begins.

An electronic copy of this certification has also been sent to you via email at [Jamesj.hallman@gmail.com](mailto:Jamesj.hallman@gmail.com). If you have questions or concerns, please contact Chantilly Higbee at 208-666-4605 or via email at [Chantilly.Higbee@deq.idaho.gov](mailto: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

Enclosure (1)

Ec: Shane Slate, Army Corps of Engineers, [Shane.P.Slate@usace.army.mil](mailto:Shane.P.Slate@usace.army.mil)  
Chantilly Higbee, Idaho DEQ, [Chantilly.Higbee@deq.idaho.gov](mailto:Chantilly.Higbee@deq.idaho.gov)  
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## Idaho Department of Environmental Quality Final §401 Water Quality Certification

December 17, 2020

**404 Permit Application Number:** NWW-2020-00474; Fox Farms Bank Stabilization

**Nationwide Permit Number:** 13, Bank Stabilization

**Applicant/Authorized Agent:** Fox Farms LLC/Jim Hallman

**Project Location:** 242 Pontoon Bay Rd., Sagle, ID 83860 in Bonner County;  
48.162917 N, -116.737528 W

**Receiving Water Body:** Pend Oreille River

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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 November 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 the activities 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 purpose of the project is to repair or replace existing riprap and install new riprap in order to stabilize the river bank and prevent erosion and sedimentation. Work will take place between November 2020 and March 2021. Work will occur in dry conditions at low water.

Approximately 376 linear feet of existing riprap will be replaced, and 563 linear feet of new riprap will be installed along the shoreline using an excavator. Combined excavation work will total 31 yd<sup>3</sup>. A 1-2 ft. deep toe trench will be excavated, lined with geotextile fabric, and filled with 1-2 ft. clean, angular rock. This will be capped with smaller-sized angular rock. Excavated materials will be disposed of at an upland location on the property. A minimum of 32 willows will be planted/embedded into the riprap and monitored for survival for two years after construction is complete. Plants that have died will be replaced.

## 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 the Mr. Hallman within the Pend Oreille Lake Subbasin assessment unit (AU) ID1704010214 (Pend Oreille Lake to Priest River). This AU is designated for cold water aquatic life, primary contact recreation, and domestic water supply. 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 2018/2020 Integrated Report, the cold water aquatic life use is not fully supported. Causes of impairment include dissolved gas supersaturation 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). DEQ currently has no such relevant information (e.g. *Escherichia coli* data)

for this AU. Therefore, DEQ will provide Tier II protection (IDAPA 58.01.02.051.02), in addition to Tier I protection, for the contact recreation use.

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.

### ***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). TMDLs have not yet been completed for this AU.

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. The applicant will work in the dry, between November 2020 and March 2021. Excavated materials will be disposed of at an upland location on the property where they will not be allowed to re-enter waters of the state. The project applicant proposes to install and monitor 32 willow plantings. Given the extent of bank stabilization needed for this project, DEQ recommends the applicant consider adding additional willow plantings where feasible as the roots will help to “lock in” and further protect the bank.

One resource that may be helpful 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>.

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 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.

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

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. 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 assurance of compliance with WQS or other appropriate requirements of state law. This condition is necessary to ensure the provisions of IDAPA 58.01.02.052 are met.
2. 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. This condition is necessary to ensure the provisions of IDAPA 58.01.02.052 are met.
3. 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. This condition is necessary to ensure the provisions of IDAPA 58.01.02.052 are met.
4. 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. This condition is necessary to ensure the provisions of IDAPA 58.01.02.052 are met.
5. 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. This condition is necessary to ensure the provisions of IDAPA 58.01.02.052 are met.
6. 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. This condition is necessary to ensure the provisions of IDAPA 58.01.02.052 are met.
7. All fill material subject to suspension shall be clean and free of easily suspended fine material. The fill material to be placed shall be clean material only. This condition is necessary to ensure the provisions of IDAPA 58.01.02.052, 58.01.02.200, and 58.01.02.250.02.e are met.
8. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible. This condition is necessary to ensure the provisions of IDAPA 58.01.02.052, 58.01.02.200, and 58.01.02.250.02.e are met.
9. All temporary fills shall be removed in their entirety on or before construction completion. This condition is necessary to ensure the provisions of IDAPA 58.01.02.052, 58.01.02.200, and 58.01.02.250.02.e are met.

10. Excavated and 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. This condition is necessary to ensure the provisions of IDAPA 58.01.02.052, 58.01.02.200, and 58.01.02.250.02.e are met.
11. Temporary and permanent BMPs for sediment and erosion control that are suitable to protect waters of the state shall be selected and installed before starting construction at the site. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective. This condition is necessary to ensure the provisions of IDAPA 58.01.02.052, 58.01.02.200, and 58.01.02.250.02.e are met.
12. 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. This condition is necessary to ensure the provisions of IDAPA 58.01.02.052, 58.01.02.200, and 58.01.02.250.02.e are met.
13. Disturbed areas that are suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion. This condition is necessary to ensure the provisions of IDAPA 58.01.02.052, 58.01.02.200, and 58.01.02.250.02.e are met.
14. Maximum fill slopes shall be such that material is structurally stable once placed and does not slough into the channel during construction, during periods prior to revegetation, or after vegetation is established.  

During a site visit, several sections of the existing streambank had steep slopes, which had been cut by erosion. Prior to riprap placement, these banks should be re-sloped to a 1:2 ratio where it is practical to do so.

This condition is necessary to ensure the provisions of IDAPA 58.01.02.052, 58.01.02.200, and 58.01.02.250.02.e are met.
15. Sediment resulting from this activity must be mitigated to prevent violations of the turbidity standard as stipulated under the Idaho WQS (IDAPA 58.01.02.250.02.e). *Any violation of this standard must be reported to the DEQ regional office immediately.*
16. All practical BMPs on disturbed banks 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). This condition is necessary to ensure the provisions of IDAPA 58.01.02.250.02.e are met.
17. Construction affecting the bed or banks shall take place only during periods of low flow. This condition is necessary to ensure the provisions of IDAPA 58.01.02.052, 58.01.02.200, and 58.01.02.250.02.e are met.
18. Disturbance of existing native vegetation shall be kept to a minimum. This condition is necessary to ensure the provisions of IDAPA 58.01.02.052, 58.01.02.200, and 58.01.02.250.02.e are met.
19. To the maximum extent practical, staging areas and access points should be placed in open, upland areas. This condition is necessary to ensure the provisions of IDAPA 58.01.02.052, 58.01.02.200, and 58.01.02.250.02.e are met.

20. If authorized work results in unavoidable vegetative disturbance, vegetation shall be successfully reestablished to function for water quality benefit at pre-project levels or improved at the completion of authorized work. This condition is necessary to ensure the provisions of IDAPA 58.01.02.052, 58.01.02.200, and 58.01.02.250.02.e are met.
21. Excavated and staged fill material must be placed so it is isolated from the water's edge or wetlands and not placed where it could re-enter waters of the state. This condition is necessary to ensure the provisions of IDAPA 58.01.02.052, 58.01.02.200, and 58.01.02.250.02.e are met.
22. 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. This condition is necessary to ensure the provisions of IDAPA 58.01.02.850 are met.
23. 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. This condition is necessary to ensure the provisions of IDAPA 58.01.02.851 and 58.01.02.852 are met.
24. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance. This condition is necessary to ensure the provisions of IDAPA 58.01.02.850 are met.
25. 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. Waste/wash water must not be allowed to enter a water of the state. This condition is necessary to ensure the provisions of IDAPA 58.01.02.850 are met.
26. 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. This condition is necessary to ensure the provisions of IDAPA 58.01.02.850, 58.01.02.851, and 58.01.02.852 are met.

## 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](mailto:Chantilly.Higbee@deq.idaho.gov).



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Dan McCracken

Regional Administrator

Coeur d’Alene Regional Office