STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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

Brad Little, Governor
Jess Byrne, Director

November 7, 2022

By certified mail

Robert Thomson
4381 S. Boisen Loop
Coeur d'Alene, ID 83814

Subject: Final § 401 Water Quality Certification for the Thomson Streambank Protection Project; NWW-2022-00342

Dear Mr. Thomson:

Enclosed is the Final Section 401 Water Quality Certification for the Army Corps of Engineers permit NWW-2022-00342. 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 work for this project read the document and are familiar with the conditions of this certification prior to beginning work. Please also notify the Department of Environmental Quality Coeur d'Alene Regional Office when work begins. If you have questions, please contact Chantilly Higbee at 208-666-4605 or via email at Chantilly.Higbee@deq.idaho.gov.

Sincerely,

Dan McCracken
Regional Administrator
Coeur d'Alene Regional Office

Encl. 1 Final Section 401 Water Quality Certification for the Army Corps of Engineers permit NWW-2022-00342

ec: Keith Swallows, Natural Resource Conservation Service, Keith.Swallows@usda.gov
Garrett Schock, Army Corps of Engineers, Garrett.N.Schock@usace.army.mil
Chantilly Higbee, Idaho DEQ, Chantilly.Higbee@deq.idaho.gov

Idaho Department of Environmental Quality
Final Section 401 Water Quality Certification

November 7, 2022

Project Name: NWW-2022-00342, Thomson Streambank Protection

Permit Number: 13, Bank Stabilization

Applicant/Authorized Agent: Robert Thomson

Project Location: 47°3’35.60” N, -116°18’23.42” W; Approximately 7 miles east on Highway 3 from Fernwood in Shoshone County

Receiving Water Body: 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 federal permits and issue water quality certification decisions.

In accordance with the Clean Water Act §§ 121.4 and 121.5, all project proponents must submit a request for a prefiling meeting at least thirty days in advance of submitting a certification request. A prefiling meeting request was received by DEQ on 8/22/2022. DEQ reviewed the prefiling meeting request and determined that necessary project information submitted with advance notice was sufficient to evaluate potential water quality impacts to act on the certification request within a reasonable period of time.

Based on its review of the certification request in accordance with the Clean Water Act § 121.5 (b) and (c), received on 9/20/2022, DEQ certifies that if the permittee complies with the terms and conditions imposed by the permit and the conditions set forth in this water quality certification, then it is reasonable for DEQ to conclude that the activity will comply with water quality requirements, including applicable requirements of the Clean Water Act §§ 301, 302, 303, 306, and 307, Idaho’s “Water Quality Standards” (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.

1 Project Description

The purpose of this project is to stabilize 2,142 feet of eroding streambank along the St. Maries River. The project was designed by the Natural Resource Conservation Service (NRCS). The

NRCS estimates approximately 300 tons of sediment erode into the St. Maries River annually. The project will include the installation of 143 rootwads and logs, 536 bundles of willow shrubs, 300 cottonwood trees and approximately 1,000 cubic yards of clean angular rock. The project will be performed during low flow conditions in 2022 and 2023. The affected riverbank will be reduced to a 2:1 slope using a track hoe from the top of the bank. Disturbed areas will be seeded and mulched.

2 Antidegradation Review

As part of its water quality standards program, Idaho has an antidegradation policy providing three levels of protection to water bodies in Idaho (IDAPA 58.01.02.051). DEQ adopted regulations to implement the antidegradation policy (IDAPA 58.01.02.052).

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 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 do not lower water quality (IDAPA 58.01.02.051.03; 58.01.02.052.09).

DEQ employs 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 DEQ Integrated Report and supporting data are used to determine support status and the tier of protection (IDAPA 58.01.02.052.05).

2.1 Pollutants of Concern

The pollutant of concern for this project is sediment. As part of the § 401 water quality certification, DEQ requires the applicant to comply with various conditions to protect water quality and meet Idaho's water quality standards, including the water quality criteria applicable to this pollutant.

2.2 Receiving Water Body Level of Protection

This project affects the St. Maries River within the St. Joe Subbasin assessment unit (AU) 17010304PN015_05 (St. Maries River - confluence of West Fork and Middle Fork St. Maries Rivers to Carpenter Creek). The St. Maries River 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, this AU is not fully supporting its cold water aquatic life use, with sediment and temperature listed as the causes of impairment. 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 fully supported. As such, DEQ will provide Tier II protection (IDAPA 58.01.02.051.02) in addition to Tier I for the contact recreation use (IDAPA 58.01.02.052.05.c).

The only pollutant of concern for this project is sediment. Sediment is not relevant to recreational uses since aquatic life is the more sensitive use and sediment is expected to cause impairments to aquatic life at concentrations well below what would be necessary to cause recreational use impairment; it is therefore unnecessary for DEQ to conduct a Tier II analysis (IDAPA 58.01.02.052.06) for sediment.

2.3 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 will be maintained and protected. The numeric and narrative criteria in the water quality standards are set at levels that ensure protection of existing and designated beneficial uses.

During the construction phase, the applicant must 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. Additionally, permanent erosion and sediment controls must be implemented, which will minimize or prevent future sediment contributions from the project area. Work in the St. Maries River will be performed during low flow conditions.

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). Before developing the TMDL, the water quality standards require applying the antidegradation policy and implementation provisions to maintain and protect uses (IDAPA 58.01.02.055.04).

Regarding the sediment impairment, this project will be consistent with the goals of the *St. Maries River Subbasin Assessment and Total Maximum Daily Loads*. This is a restoration project and will result in a long-term decrease in sediment loading to the St. Maries River. Additionally, the applicant proposes the use of BMPs to avoid sedimentation to surface water. These are described in the *Project Description* section of this document.

Regarding the temperature impairment, no permanent loss of shade-providing vegetation/trees is proposed. Rather, the project includes the installation of 300 cottonwood trees which will provide additional shade and reduce thermal inputs as they mature. Thus, temperature is not a pollutant of concern for this project, and the project is consistent with the goals of the TMDL.

If the project is conducted according to the provisions of the project plans, federal permit, and conditions of this certification, then it is reasonable for DEQ to conclude that 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 discussed above. 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 IDAPA 58.01.02.051.01 and 58.01.02.052.07.

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

The following conditions ensure the project complies with Idaho's water quality standards and other appropriate water quality requirements of state law applicable to all water bodies that may be affected.

3.1 General Conditions

This certification is based on the certification request submitted by Robert Thomson on 9/22/2022, and is conditioned upon the requirement that any modification (e.g., change in work windows, etc.) of the permitted activity will first be provided to DEQ for review to determine compliance with Idaho's water quality standards.

1. 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 water quality standards—there is no longer reasonable assurance of compliance with the water quality standards or other appropriate requirements of state law.

   Because DEQ is certifying only the activity described in the certification request based on information available at the time of certification, this condition ensures that discharges

from activities not described in the certification request, or where there has been a change in the characteristics of or water quality standards applicable to the receiving water body, will comply with 33 U.S.C. § 1341, 40 CFR 121, and other applicable water quality requirements, including without limitation 33 U.S.C. § 1311(a), Idaho Code § 39-108, IDAPA 58.01.02.051, IDAPA 58.01.02.052, IDAPA 58.01.02.080, IDAPA 58.01.02.200, IDAPA 58.01.02.210, IDAPA 58.01.02.250, IDAPA 58.01.02.251, IDAPA 58.01.02.252, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

2. If ownership of the project changes, the certification holder will notify DEQ, in writing, upon transferring this ownership or responsibility for compliance with these conditions to another person or party. The new owner/operator will request, in writing, the transfer of this water quality certification to the new name.

   This condition ensures that, if ownership changes, DEQ has the minimum information to support ongoing compliance with 33 U.S.C. § 1341, 40 CFR 121, this water quality certification, and other applicable water quality requirements, including without limitation Idaho Code § 39-108, IDAPA 58.01.02.080, and IDAPA 58.01.02.400.

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. The applicant shall provide access to the project site upon request by DEQ personnel for site inspections, monitoring, and/or to ensure that conditions of this certification are being met.

   This condition ensures all responsible parties, including on-site contractors, are aware of and comply with this water quality certification and other applicable water quality requirements, including without limitation Idaho Code § 39-108, IDAPA 58.01.02.080, and IDAPA 58.01.02.400.

4. 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 federal permit. Project areas shall be clearly identified in the field prior to initiating land-disturbing activities to ensure avoidance of impacts of waters of the state beyond project footprints.

   This condition ensures all responsible parties, including on-site contractors, comply with this water quality certification and applicable water quality requirements, including without limitation Idaho Code § 39-108, IDAPA 58.01.02.080, and IDAPA 58.01.02.400.

3.2 Fill Material

The following conditions 3.2.1 through 3.2.5 are necessary to protect beneficial uses in accordance with Idaho's water quality standards, including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.210, IDAPA 58.01.02.250, IDAPA 58.01.02.251, IDAPA 58.01.02.252, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

1. Fill material subject to suspension shall be free of easily suspended fine material. The fill material to be placed shall be clean material only.

2. Fill material shall not be placed in a location or in a manner that impairs surface or subsurface water flow.
3. All temporary fills shall be removed in their entirety on or before construction completion.
4. Excavated or staged fill material must be placed so it is isolated from the water edge and not placed where it could re-enter waters of the state uncontrolled.
5. Upland disposal of excess material must be done in a manner that prevents the material from re-entering waters of the state.

3.3 Erosion and Sediment Control

The following conditions 3.3.1 through 3.3.11 protect beneficial uses in accordance with Idaho's water quality standards, including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

1. BMPs for sediment and erosion control suitable to prevent exceedances of Idaho's water quality standards and align with TMDL goals will be selected and installed before starting construction at the site. One resource to evaluate appropriate BMPs is the *Idaho Catalog of Storm Water Best Management Practices* (DEQ 2020). Other resources may also be used for selecting appropriate BMPs.
2. 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.
3. Permanent erosion and sediment control measures will be installed in a manner that will provide long-term sediment and erosion control and prevent excess sediment from entering waters of the state.
4. Permanent erosion and sediment control measures will be installed at the earliest practicable time consistent with good construction practices and will be maintained as necessary throughout project operation.
5. 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.
6. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
7. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
8. All construction debris, scraps, particles, and other associated materials will be captured and properly disposed of so they cannot enter waters of the state or cause water quality degradation.

9. Disturbed areas suitable for vegetation will be seeded or revegetated to prevent subsequent soil erosion (EPA 2000).
10. Maximum fill slopes will be material that is structurally stable once placed and does not slough into the stream channel during construction, during periods before revegetation, or after vegetation is established.
11. 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.

3.4 Turbidity

The following conditions 3.4.1 through 3.4.3 protect beneficial uses according to Idaho's water quality standards, including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200.08, IDAPA 58.01.02.250.02.e, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

1. Sediment resulting from this activity must be mitigated to prevent violations of the turbidity standards stipulated in Idaho's water quality standards.
2. All practical BMPs on disturbed banks and within the waters of the state must be implemented to minimize turbidity.
3. Visual observation is acceptable to determine whether BMPs are functioning properly unless a plume is observed. If a plume is observed, the project may be causing an exceedance of water quality standards, and the permittee must inspect the condition of the project BMPs. If the BMPs appear to be functioning improperly, then corrective action must be taken, and the permittee must modify the activity or implement additional BMPs (this may also include modifying existing BMPs).

3.5 In-Water Work

The following conditions 3.5.1 through 3.5.3 protect beneficial uses according to Idaho's water quality standards, including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

1. Work in open water must 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, take appropriate measures to ensure disturbance to the waters of the state is minimized.
2. Construction affecting the bed or banks must occur only during periods of low flow.
3. Work in waters of the state is restricted to areas specified in the application.

3.6 Vegetation Protection and Restoration

The following conditions 3.6.1 through 3.6.4 protect beneficial uses according to Idaho's water quality standards, including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.200, IDAPA 58.01.02.250, IDAPA 58.01.02.253, and IDAPA 58.01.02.400.

1. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
2. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
3. Fencing and other protective barriers should be used to mark the construction areas.
4. If authorized work results in unavoidable vegetative disturbance, native riparian and wetland vegetation must be successfully reestablished to benefit water quality at pre-project levels or improved at the completion of authorized work.

3.7 Management of Hazardous or Deleterious Materials

The following conditions 3.7.1 through 3.7.8 protect beneficial uses according to Idaho's water quality standards, including without limitation IDAPA 58.01.02.051, IDAPA 58.01.02.080, IDAPA 58.01.02.200, IDAPA 58.01.02.400, IDAPA 58.01.02.800, and IDAPA 58.01.02.850.

1. Petroleum products and hazardous, toxic, and/or deleterious materials must not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of waters of the state. Adequate measures and controls must ensure that those materials will not enter waters of the state because of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third-party activities.
2. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
3. Daily inspections of all fluid systems on equipment to be used in or near waters of the state must ensure no leaks or potential leaks exist before equipment use. A logbook of daily equipment inspections must be kept on site and provided to DEQ upon request.
4. Equipment and machinery must be removed from the vicinity of the waters of the state before refueling, repair, and/or maintenance.
5. Equipment and machinery must be steam cleaned of oils and grease in an upland location or staging area with appropriate wastewater controls and treatment capability before entering waters of the state. Any wastewater or wash water must not enter waters of the state.
6. Emergency spill response procedures must be in place and include a spill response kit (e.g., oil absorbent booms or other equipment).
7. If an unauthorized release of hazardous material to state waters or to land occurs and there is a likelihood 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 so 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).
d. Contact Coeur d'Alene Regional Office: (208) 769-1422.

8. Collect, remove, and properly dispose of spill and cleanup materials in a manner approved by DEQ.

4 Right to Appeal Final Certification

The Final § 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

References

DEQ (Idaho Department of Environmental Quality). 2020. *Idaho Catalog of Storm Water Best Management Practices*. Boise, ID: DEQ. https://www.deq.idaho.gov/water-quality/wastewater/storm-water/

EPA (US Environmental Protection Agency). 2000. *National Menu of Best Management Practices (BMPs) for Stormwater. https://www.epa.gov/npdes/national-menu-best-management-practices-bmps-stormwater*

RSET (Northwest Regional Sediment Evaluation Team). 2018. *Sediment Evaluation Framework for the Pacific Northwest*. Prepared by the RSET Agencies.