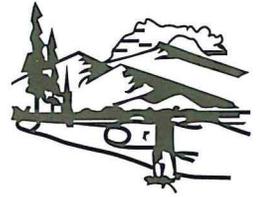




Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Mark Gordon, Governor



Todd Parfitt, Director

March 3, 2020

Mike Happold
U.S. Army Corps of Engineers
Wyoming Regulatory Office
2232 Dell Range Blvd., Suite 210
Cheyenne, Wyoming 82009

RE: Section 401 Certification of Department of the Army Regional General Permit 198226002, Version 7 (RGP 8202-07) for the authorization of small-scale aquatic species habitat restoration and enhancement projects in Wyoming.

Dear Mr. Happold,

The Department of the Army Regional General Permit 198226002, Version 1 (RGP 8202-01) was originally issued in June 1982 for authorization of small-scale aquatic species habitat restoration and enhancement projects in Wyoming. Since that time, RGP 8202 has been re-authorized five times. The current version of this general permit (RGP 8202-06) expired on December 31, 2019.

In accordance with the provisions of Section 401 of the Clean Water Act, the Wyoming Department of Environmental Quality (WDEQ) has reviewed Department of Army Regional General Permit 198226002, Version 7 (RGP 8202-07) and has made the following determinations:

Certification Decisions:

1. Certification is denied for RGP 8202-07 where authorized activities would occur on Class 1 waters. Certification for activities on Class 1 waters must be deferred to the WDEQ for individual 401 certification and public notice. The following list of Class 1 waters in Wyoming can also be found in Chapter 1 of the Wyoming Water Quality Rules and Regulations, Appendix A.
 - i. All surface waters located within the boundaries of national parks and congressionally designated wilderness areas as of January 1, 1999;
 - ii. The main stem of the Snake River through its entire length above the U.S. Highway 22 bridge (Wilson Bridge);
 - iii. The main stem of the Green River, including the Green River Lakes from the mouth of the New Fork River upstream to the wilderness boundary;

- iv. The main stem of the Wind River from the Wedding of the Waters upstream to Boysen Dam;
 - v. The main stem of the North Platte River from the mouth of Sage Creek (approximately 15 stream miles downstream of Saratoga, Wyoming) upstream to the Colorado state line;
 - vi. The main stem of the North Platte River from the headwaters of Pathfinder Reservoir upstream to Kortez Dam (Miracle Mile segment);
 - vii. The main stem of the North Platte River from the Natrona County Road 309 bridge (Goose Egg bridge) upstream to Alcova Reservoir;
 - viii. The main stem of Sand Creek above the U.S. Highway 14 bridge;
 - ix. The main stem of the Middle Fork of the Powder River through its entire length above the mouth of Buffalo Creek;
 - x. The main stem of the North Fork of the Tongue River, the main stem of the South Fork of the Tongue River and the main stem of the Tongue River above the U.S. Forest Service boundary;
 - xi. The main stem of the Sweetwater River above the mouth of Alkali Creek;
 - xii. The main stem of the Encampment River from the northern U.S. Forest Service boundary upstream to the Colorado state line;
 - xiii. The main stem of the Clarks Fork River from the U.S. Forest Service boundary upstream to the Montana state line;
 - xiv. All waters within the Fish Creek (near Wilson, Wyoming) drainage;
 - xv. The main stem of Granite Creek (tributary to the Hoback River) through its entire length;
 - xvi. Fremont Lake;
 - xvii. Wetlands adjacent to the above listed Class 1 waters.
2. Certification is approved for RGP 8202-07 where authorized activities occur on all non-Class 1 waters (all other waters).
 3. In all instances where the Corps is proposing “after-the-fact” verification for completed activities authorized by RGP 8202-07 per Certification Decision #2 of this letter; the WDEQ shall be notified of the Corps intent and provided an opportunity to grant, grant with special conditions, deny or waive certification for the “after-the-fact” permit verification.
 4. Certification is denied for RGP 8202-07 where authorized activities would occur on waterbody segments placed on Wyoming’s 303(d) list of impaired waters or that have approved total maximum daily loads (TMDLs). A list and associated geospatial

coverages of impaired waters and those with TMDLs can be found on WDEQ's website at: <http://deq.wyoming.gov/wqd/water-quality-assessment/resources/reports/>.

Conditions of Certification

All certifications authorized under RGP 8202-07 include the following standard conditions:

1. Vegetation must be protected except where its removal is absolutely necessary for completion of the work. Re-vegetate disturbed soil in a manner that optimizes plant establishment for that specific site. Revegetation may include topsoil replacement, planting, seeding, fertilization and weed-free mulching as necessary. Native material shall be used where appropriate and feasible. Re-vegetate cut and fill slopes with appropriate species to prevent erosion.
2. This certification requires all equipment to be inspected for oil, gas, diesel, anti-freeze, hydraulic fluid and other petroleum leaks. All such leaks will be properly repaired and equipment cleaned prior to being brought on-site. Leaks that occur after the equipment is on-site will be repaired within one day or removed from the project area. The equipment is not allowed to continue operating upon discovery of a leak. In addition, compliance with all State and Federal requirements for storage of petroleum products and solvents is required.
3. Construction equipment should not operate below the existing water surface except as follows:
 - a. Fording at one location is acceptable; however, vehicles should not push or pull material along the bed or banks below the existing water level. Impacts from fording must be minimized.
 - b. Work below the waterline which is essential must be carried out in a manner which minimizes impacts to the aquatic system and water quality.
4. Activities associated with this certification shall not increase turbidity by more than 10 nephelometric turbidity units (NTUs) in all cold-water fisheries and/or drinking water supplies (Classes 1, 2AB, 2A and 2B) or by more than 15 NTUs in all warm water or nongame fisheries (Classes 1, 2ABww, 2Bww and 2C). However, in accordance with Section 23(c)(2) of Chapter 1 of the Wyoming Water Quality Rules and Regulations, the administrator of the Water Quality Division may authorize temporary increases in turbidity above the limits described above in response to an individual application for a waiver. The waiver must be approved before the authorized activity may elevate turbidity above these limits.
5. For activities that occur within ten stream miles of a downstream public water supply intake, the responsible parties for the public water supply intake shall be notified and all concerns addressed prior to the commencement of the activities. Documentation of this notification and how concerns were addressed shall be kept on file and be made available upon request.

6. Any temporary crossings, bridge supports, cofferdams or other structures must be designed to handle high flows/water anticipated to occur while these structures are present. All temporary structures must be completely removed from the waterbody at the conclusion of the permitted activity and the area restored to a natural appearance.
7. All excess stockpiled, dredged or excavated material shall be disposed of at an upland site, not in a wetland or watercourse. All measures and precautions shall be taken to prevent entry of said material into a watercourse or wetland during high water/flow events.
8. All fill material should be placed and compacted and subsequently protected from erosion. Where applicable, areas proposed for fill should be cleared of all vegetation, debris and other materials that may destabilize the fill.
9. No activities implemented as part of this project shall result in accelerated bed or bank/shoreline erosion or excessive aggradation beyond pre-construction conditions within or downstream of the project area.
10. The tops of rock structures, boulder placements, log revetments, cross/rock/log vanes, benches or any other similar treatments shall not exceed the bankfull elevation.
11. With the exception of authorized fish barriers, all other in-stream/lake structures authorized by this certification shall not substantially disrupt movements of aquatic life indigenous to the waterbody, including those species that normally migrate through the area.
12. Placement of structures in the channel shall be done in a way that minimizes lateral convergence scour on streambanks and bar formation.
13. Adequate bank/shoreline stabilization and associated erosion control measures are required. Stabilization and erosion control measures shall include only native materials where appropriate and feasible.
14. Structures used for bank protection must meet the following criteria: 1) where applicable the hydraulic drop over the structure crest should not exceed 0.5 feet to maintain fish passage, 2) where applicable header rocks should be spaced at least 1/4 to 1/3 of the average head rock diameter, 3) the tops of all in-stream structures shall not exceed the bankfull elevation, 4) the tops of toe wood and vanes should intercept the bank at approximately 0.5 of the bankfull elevation, and 5) structure vane angle should not exceed 30 degrees as measured upstream from the vane arm to the tangent line where the vane intercepts the bank.
15. Projects must enhance or restore existing or expected stable stream characteristics and allow for effective transport of flow and sediment while maintaining a stable channel without excessive channel degradation or aggradation relative to pre-construction conditions.

16. No activities authorized by this certification shall cause the non-attainment of a narrative surface water quality standard identified in Chapter 1 of the Wyoming Water Quality Rules and Regulations, including but not limited to discharges of substances in amounts, concentrations or combinations which:
- a. Can settle to form sludge, bank or bottom deposits detrimental to designated uses; or
 - b. Form floating or suspended solids detrimental to designated uses; or
 - c. Produce color, odor, or other conditions detrimental to designated uses; or
 - d. Are toxic to humans, animals, aquatic life, plants; or
 - e. Produce a predominance of undesirable aquatic life; or
 - f. Adversely alter the structure and function of indigenous or intentionally introduced aquatic communities.
17. Adequate best management practices to prevent, control or reduce pollutant entry from the project area into waterways and wetlands is required. Appropriate best management practices include but are not limited to those described in the WDEQ/WQD's Stream and Lake Best Management Practices Manual (http://deq.wyoming.gov/media/attachments/Water%20Quality/Nonpoint%20Source/Best%20Management%20Practices/2014_wqd-wpp-Nonpoint-Source_Stream-and-Lakeshore-Restoration-Best-Management-Practice-Manual.pdf).
18. The timing and duration of construction must minimize conflicts with fish spawning. Site specific information on spawning seasons and spawning areas for all fish species can be obtained from fisheries supervisors at Wyoming Game and Fish Department (WGFD) Regional Offices.

Other Water Quality Permitting Requirements

19. A WYPDES storm water permit for construction activities is required from the Wyoming Department of Environmental Quality (WDEQ) before any surface disturbance takes place for any project that will clear, grade or otherwise disturb **one or more acres**. A general permit has been established for this purpose and either the project sponsor or general contractor is responsible for complying with the provisions of the general permit if total disturbance exceeds one acre, and for filing a Notice of Intent (NOI) if total disturbance exceeds five acres. The NOI should be filed no later than 30 days prior to the start of construction activity. Please contact the WDEQ Stormwater Permitting Program at 307-777-7570 for additional information.

The major requirements of the storm water general permit pertain to the development and implementation of a pollution prevention plan along with regular inspection of pollution control activities. The permit is required for the surface disturbances associated with construction of the project, access roads, construction of wetland mitigation sites, borrow and stockpile areas, and equipment staging and maintenance areas.

20. A WYPDES discharge permit from the WDEQ may be required for point source discharges to surface waters not related to storm water runoff such as discharges from

gravel crushing and washing operations, cofferdam or site dewatering, vehicle or machinery washing, or other material processing operations if they are conducted. Depending on the type of operation, the length of operation, and the type of discharge, either a general temporary discharge permit or an individual discharge permit may be required. Please be advised that if an individual permit is required, processing will require at least 90 days. Please contact the WDEQ WYPDES Program at 307-777-7090 for additional information.

21. If above ground storage of petroleum products exceeds 1,320 gallons in total or more than 660 gallons in a single tank, a Spill Prevention Control and Countermeasures plan may have to be developed as provided for in the Environmental Protection Agency's Oil Pollution Prevention regulations (40 CFR 112). The Region 8 EPA office in Denver should be contacted for guidance.

This letter constitutes State certification of Department of Army Regional General Permit 198226002, Version 7 (RGP 8202-07). This letter does not provide an exemption from any other federal, state or local laws or regulations, nor does it provide exemption from legal action by private citizens for damage to property that the activity may cause. The WDEQ also reserves the right to amend this certification and any of its terms and conditions, for any relevant project, as may be appropriate or necessary to protect water quality and associated designated uses.

Sincerely,



Todd Parfitt
Director
Department of Environmental Quality

TP/KDF/EGH/CF

cc: Kevin Frederick – WDEQ Water Quality Division Administrator, Cheyenne
David Waterstreet – WDEQ Watershed Protection Program Manager, Cheyenne
Paul Dey, Wyoming Game & Fish Department, 5400 Bishop Blvd., Cheyenne, WY
82006
Julia McCarthy, U.S. Environmental Protection Agency – Region 8, 1595 Wynkoop St.,
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