



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
WALLA WALLA DISTRICT, CORPS OF ENGINEERS
BOISE REGULATORY OFFICE
304 NORTH EIGHTH STREET, ROOM 140
BOISE IDAHO 83702-5820

October 21, 2003

Operations Division

SUBJECT: NWW No. 042600005

RECEIVED

NOV 05 2003

WATER RESOURCES
WESTERN REGION

Ms. Nancy Hawkins
PO Box 624
Pine Valley, CA 91962

Dear Ms. Hawkins:

This concerns your proposed discharge of 99 cubic yards of fill material into the Weiser River, associated with relocating a water diversion system and armoring 100 linear feet of riverbank. This project is the subject of your September 7, 2003, Joint Application for Permit.

Section 404 of the Clean Water Act (33 U.S.C. 1344) requires a Department of the Army permit be obtained for the discharge of dredged or fill material into waters of the United States, including wetlands.

Based on the information provided in your application, the project appears to meet the terms and conditions of Nationwide Permits 13, 12, and 25 (33 CFR 330, Appendix A). However, because the project may affect species listed under the Endangered Species Act (ESA), your proposed project is not authorized and you may not proceed with construction until we have fulfilled our ESA responsibilities and we notify you that your project is authorized. I have provided a copy of our Biological Assessment to the U.S. Fish and Wildlife Service in Boise, Idaho and requested their review and comment by November 20, 2003.

You are advised that the discharge of dredged or fill material in waters of the United States, including wetlands without obtaining a Department of the Army permit constitutes a violation of Section 404 of the Clean Water Act and could result in legal action being taken by the Corps of Engineers. Please contact Eric M. Gerke at (208) 345-2286, if you have any questions.

Sincerely,


Gregory J. Martinez
Regulatory Project Manager



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BOISE REGULATORY OFFICE
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October 20, 2003

Operations Division

SUBJECT: NWW No. 042600005

Ms. Kendra Womack
US Fish and Wildlife Service
1387 South Vinnell Way, Room 368
Boise, Idaho 83709

Dear Ms. Womack:

We are providing you information regarding Ms. Nancy Hawkins' proposed project to discharge 95 cubic yards of fill material into the Weiser River. The project entails: decommissioning and constructing a new water diversion structure; restoring a section of the riverbank; and re-contouring a portion of a gravity-line ditch. The project is within proposed critical bull trout habitat. Based on our evaluation, we believe the project protects and enhances the aquatic environment. We are requesting your agency's review and concurrence under Section 7 of the Threatened and Endangered Species Act. In your telephone conversation with Mr. Gerke, of our staff, a letter format is acceptable for this level of activity in proposed critical bull trout habitat areas.

Project Location:

Weiser River. The project lies about 15 miles north of Council, Idaho (SE ¼, SW ¼, Sec. 2, T. 17 N, R. 1 W. B.M.). See Figure 1.

Purpose and Need:

Ms. Nancy Hawkins, applicant, has had a long-running dispute over water rights with the upstream adjacent neighbor. She holds a valid Idaho Department of Water Resources Non-Consumptive Water Use Permit, 67-07937, for diverting water from the Weiser River. (She also has an Idaho Department of Water Use license, 67-2053L, for diverting water from Lost Creek.) Permit 67-07937 grants her 15 acre-feet of water annually and legal right-of-entry onto the adjacent neighbor's property to maintain a water diversion structure and gravity line ditch. The permit, however, provides no legal rights for the adjacent neighbor to use the water or to maintain the structures on his property. Since 1997, the adjacent neighbor has built three ponds along the gravity-line ditch for livestock and aesthetic purposes. He constructed two ponds on his property and one pond on the applicant's property. These alterations occurred without the implied or

expressed permission of Ms. Hawkins. (The applicant worked as a full time police officer in San Diego, California, until 2000.) The Idaho Department of Water Resources has tried to resolve this situation, but with no success.

Ms. Nancy Hawkins proposes to relocate the diversion structure onto her property. This action will deny the adjacent neighbor access to the river water. Her proposal includes repairing 100 linear feet of riverbank damaged by a flooding event in 1997.

Land Use:

The property is a 7.5-acre lot with a single-family home on Fruitvale/Glendale Road. The lot contains a 2,500 square foot flow-through pond, which serves as a wildlife viewing area. The pond's source of water is the Weiser River and an unnamed creek. In the Weiser River, a 5-foot by 4-foot by 47-foot rock diversion dam directs water into the pond by way of a 36-inch by 700-foot gravity-line ditch. Water from the unnamed creek flows into the gravity-line ditch from a subsurface, 12-inch diameter culvert. The pond's outlet is a 36-inch by 200-foot gravity line ditch, which discharges water into the Weiser River. The diversion and pond are about seven years old. Prior to the home site development, land use consisted of irrigated pasturelands for horses and cattle. Cultivation practices, e.g., tilling removed much of the native vegetation. Grass cultivars, e.g., smooth brome and timothy dominates the landscape with Ponderosa Pine and various willow species scattered along the Weiser River floodplain.

Aquatic Environment/Fisheries:

At this location, the Weiser River is about 50 linear feet in width, with a depth ranging from 3 inches to 3 feet. The river is braided with numerous natural and manmade barriers. This section of the watercourse is subject to frequent and violent flash flooding events. The most recent event occurring in 1997, when a 500-year flash flood event caused the river to rise 15 feet above the normal flood stage level. This recent flood event severely impaired the waterway by placing vast quantities of rock, sediment, and debris into the active channel. Over the years, humans have altered the watercourse by creating diversion dams for irrigating pasturelands, and constructing bridges and cross culverts for rail lines and roadways.

The project location is in an area proposed as critical bull trout habitat. The designation however, is based on the possibility of bull trout using this section of waterway as a migration corridor. According to Mr. Dale Allen, Idaho Department of Fish and Game, no fishery studies have established the presence of a bull trout in the project area. He further stated there are no published research findings indicating the connectivity of bull trout subpopulations from the Hornet Creek Drainage, East Fork Weiser River and the headwaters of the Weiser River. Mr. Dale Allen speculated the numerous natural and manmade barriers in the area prevent bull trout

populations from migrating and intermixing. He recommended a timing window of September to January 31 to conduct work activities.

Scope of Work and Schedule:

The project entails decommission a water diversion structure, constructing a new water diversion structure, stabilizing a 100-foot section of riverbank, and rehabilitating a 30-foot section of ditch line. See Figures 2, 3, 4, and 5. Economic constraints require project construction in two phases; November 2003 to January 2004 and September 2004 to January 2005. The following is the proposed schedule of work activities in each phase of development.

Phase I (November 2003 to January 2004)

1. Remove the existing 5-foot by 4-foot by 47-foot rock diversion dam from the Weiser River.
2. Disable the existing 12-inch diameter by 40-foot long inlet culvert/head gate by pouring a minimum of 2 cubic yards of concrete inside the pipe.
3. Construct a 5-foot by 10-foot bank barb-style water diversion structure, approximately 500 linear feet downstream from the existing diversion structure.
4. Install a 12-inch diameter by 100-foot long subsurface gravity fed waterline from the Weiser River to the existing gravity-line ditch. (The waterline will include installation of a 2-foot by 3-foot steel head gate.)
5. Armor 15 linear feet upstream and downstream of the diversion structure.

Phase II (September 2004 to January 2005)

1. Armor 35 linear feet upstream and downstream of the diversion structure.
2. Restore the gravity flow ditch to original "as built conditions," inside the applicant's property boundary.
3. Reset the pond outlet/head gate elevation on the wildlife pond, to ensure flow to the Weiser River.

Project activities require using a backhoe, excavator and dump truck. All equipment will operate from the riverbank. Fill material will consist of unclassified gravel, 50 to 400-pound rock, and 2 cubic yards of concrete.

Affected Bull Trout Habitat (Proposed):

The project's purpose is to protect water resources. Therefore, the design of the project reflects an effort to limit construction impacts and create long-term aquatic benefits. The applicant's proposed design is the result of onsite field recommendations and suggestions provided by the Army Corps of Engineers. The proposed design minimizes the discharge of fill material and the size of the construction footprint. Table 1 is a breakdown of construction activities in relation to the area of impact and fill material below the ordinary high water mark. Table 2 is a breakdown of construction activities in relation to the area of impact and excavated material below the ordinary high water mark. The areas and quantities are the minimum necessary to complete the tasks successfully.

Table 1: Fill Placement Below the Ordinary High Water Mark of the Weiser River

Work Activity/Location	Fill Area	Material Type	Quantity
Construct Diversion Structure/ Weiser River	50 ft. ²	Riprap	4.00 yd ³
Armor Riverbank /Weiser River	600 ft. ²	Riprap	89.00 yd ³
Decommission Culvert/ Weiser River	6 ft. ²	Dry Concrete	2.00 yd ³
Re-contour Ditch Line/Diversion Ditch	36 ft. ²	Unclassified Gravel	4.00 yd ³
Reset Culvert Outlet/Wildlife Pond	3 ft. ²	Concrete	0.25 yd ³
Total	695 ft. ²	---	99.25 yd ³

Table 2: Excavation Below the Ordinary High Water Mark of the Weiser River.

Work Activity/Location	Excavatio n Area	Material Type	Quantity
Armor Riverbank/Wieser River	600 ft. ²	Unclassified Gravel	15 yd ³
Decommission Existing Diversion Dam	235 ft. ²	Boulders	35 yd ³
Total	835 ft. ²	---	50 yd ³

In evaluating the project against the primary constituent elements for bull trout (Federal Register, Volume 67, No. 230, November 29, 2002), water quality is the only adverse impact identified with the construction of the project. The impacts to water quality will be temporary. Minor sediment transport will occur in the waterway, when construction equipment removes the exiting diversion structure and, builds a new diversion structure and riprap blanket. (Sediment transport from other elements of the project can be controlled through the use of head gates, to

ensure protection of water quality.) Mitigation to minimize sediment transport include: constructing during periods of low flow; using clean angular rock to build the diversion structure and riprap blanket; prohibiting temporary stockpiling of dredge or fill material below the ordinary high water mark; and allowing equipment only to work on top of the river bank.

The project, long-term, is beneficial to the physical and biological features of the proposed critical bull trout migration corridor. A positive impact accrued by this project is the removal of a physical barrier from the watercourse---5-foot by 4-foot by 47-foot rock diversion dam. This action will allow the possibility of bull trout to migrate upstream or downstream from the point of obstruction. Another positive impact is the design of the new diversion dam, which will not impede fish migration during periods of low or high flows relative to the width of the stream channel. The new diversion dam will extend upstream in the active channel, approximately 7 to 10 feet; thereby, leaving up to 40 linear feet unobstructed for fish passage. Incorporating the diversion dam design with the 100-foot riverbank restoration design is an additional benefit. Restoring and rehabilitating the damaged section of the riverbank will reduce sediment load into the waterway. Project plans include adding geotextile fabric and native willow plantings into the riprap blanket design. Overtime, the vegetated riverbank could serve as cover for bull trout from predators such as birds and/or help reduce river temperature along this section of the watercourse. The major benefit of this project is halting the illegal consumptive and non-consumptive use from the Weiser River. Stopping the illegal usage of water will restore a water volume back into the waterway.

Proposed Mitigation Plan:

The mitigation measures proposed are intended to offset in-water construction activities. These measures will become special conditions in the Department of the Army Corps of Engineers Permit. They are as follows:

- In-water work shall occur from September 1 to January 31, to avoid possible bull trout migration.
- In-water work shall occur during periods of low water, to minimize sediment transport in the waterway.
- The existing rock diversion dam shall be removed, to provide fish passage upstream and downstream of the point of obstruction. Excavated material shall be placed in an upland location, away from waters of the United States.
- Concrete shall be poured inside the existing 12-inch diameter by 40-foot long inlet culvert/head gate. This action will prevent any future use of the pipe for water diversion.

- Fill material shall consist of clean, angular rock, to prevent sedimentation in the waterway.
- Bank stabilization work will occur from the top of the bank to minimize impact to the aquatic environment. No equipment shall operate in the stream.
- Riprap blanket and water diversion design shall incorporate native willow plantings, to provide additional bank stability and to promote cover for fish along the waterway.
- All head gates on the property shall consist of 3/16-inch steel mesh, to prevent fish entrapment.

Based on our evaluation, we have found that the proposed project, if completed in compliance with the proposed schedule and mitigation plan described above, may affect, but will not likely adversely affect bull trout. Please review our evaluation and let us know if you concur with our finding by November 20, 2003. Please contact Eric Gerke, Environmental Resource Specialist, at (208) 345-2286.

Sincerely,


Gregory J. Martinez
Regulatory Project Manager

Attachment

Agency Coordination:

The following agency representatives provided information and/or recommendations:

- ie Allen, Idaho Department of Fish and Game
- ne Gibson, Idaho Department of Water Resources
- / Ballou, Idaho Department of Water Resources

JOINT APPLICATION FOR PERMIT
U.S. ARMY CORPS OF ENGINEERS
IDAHO DEPARTMENT OF WATER RESOURCES
IDAHO DEPARTMENT OF LANDS

DO NOT START WORK UNTIL YOU
RECEIVE PERMITS FROM BOTH THE
CORPS AND THE STATE

This application may be used to apply for both a Department of the Army permit from the U.S. Army Corps of Engineers (Corps) and for State of Idaho permits. Department of the Army permits are required by Section 10 of the Rivers and Harbors Act of 1899 for any structures or work in or affecting navigable waters of the United States and by Section 404 of the Clean Water Act for discharges of dredged or fill material into waters of the United States, including their adjacent wetlands. State permits are required under the State of Idaho, Stream Channel Protection Act (Title 42, Chapter 38, Idaho Code) and the Idaho Lake Protection Act, Section 58-142 et. seq., Idaho Code. Route Uses: Information provided on this form will be used in evaluating the application. The State of Idaho's information is voluntary. If information is not provided, however, the permit application cannot be processed nor can permits be issued. Applicants should send this completed application, along with one set of good reproducible drawings showing the location and character of the proposed project, to both the Corps of Engineers and the State of Idaho. NOTE: DRAWINGS NO LARGER THAN 8-1/2 X 11 INCHES IN SIZE. The Applicant Information pamphlet provides instructions and a checklist for completing the drawings.

1. Corps of Engineers # <u>SEP 10 2003</u>		2a. Department of Water Resources # _____	2b. Department of Lands # _____
Date Received <u>Regulatory Branch</u>		Date Received _____	Date Received _____
BOISE		Fee Rec'd By: _____	Receipt # _____

PLEASE TYPE OR PRINT

3. a. Applicant NANCY E. HAWKINS 4. a. Authorized Agent _____

b. Mailing Address P.O. Box 624 b. Mailing Address _____

PINE VALLEY CA 91962

c. Work Phone (Area 619) 473-9776 Home (Area 760) 253-6429 c. Work Phone () _____ Home () _____

d. Fax Number 208-253-6429 d. Fax Number _____

e. Email Address NHAWK2584@AOL.COM e. Email Address _____

5. Location where proposed activity exists or will occur. 5. e. Tax Assessor's Description RP1701W025325A

a. Waterway CORNER RIVER 15 Miles N. OF COUNCIL ID 83612 17N 1W

b. Distance/Direction from nearest city or town County/State 83612 ADAMS COUNTY. f. 1/4 1/4 Section Township Range

c. Zip Code Local jurisdiction (city or county) _____ g. UTM Coordinate Grid _____

d. Directions to the site 3036 Fruitvale Glenale Road GLENDALE IDAHO Zone Northing Easting

6. a. Describe Project (Work below the ordinary high water mark or in wetlands). REPLACE EXISTING DAM (DIVEN.)
AND HEADGATE FOR EXISTING (PERMITTED) POND

b. Construction methods and equipment BACKHOE HAND WORK

c. Length of project along the stream or extension into lake or reservoir: 40'

d. Size and flow capacity of proposed bridge or culvert and area of drainage served (sq. miles): (Idaho Department of Water Resources requirement.)
CULVERT = 12"

COMPLETE THE FOLLOWING FOR DISCHARGES OF DREDGED OR FILL MATERIAL

7. a. Volume dredged or fill material to be placed waterward of the ordinary high water mark (BOTH TEMPORARY AND PERMANENT)? _____ (cubic yards)

b. Will fill be placed in wetlands? _____ If yes, area: _____ (acres) Type of fill material: _____ (i.e. sand, rock, clay, concrete, etc.)

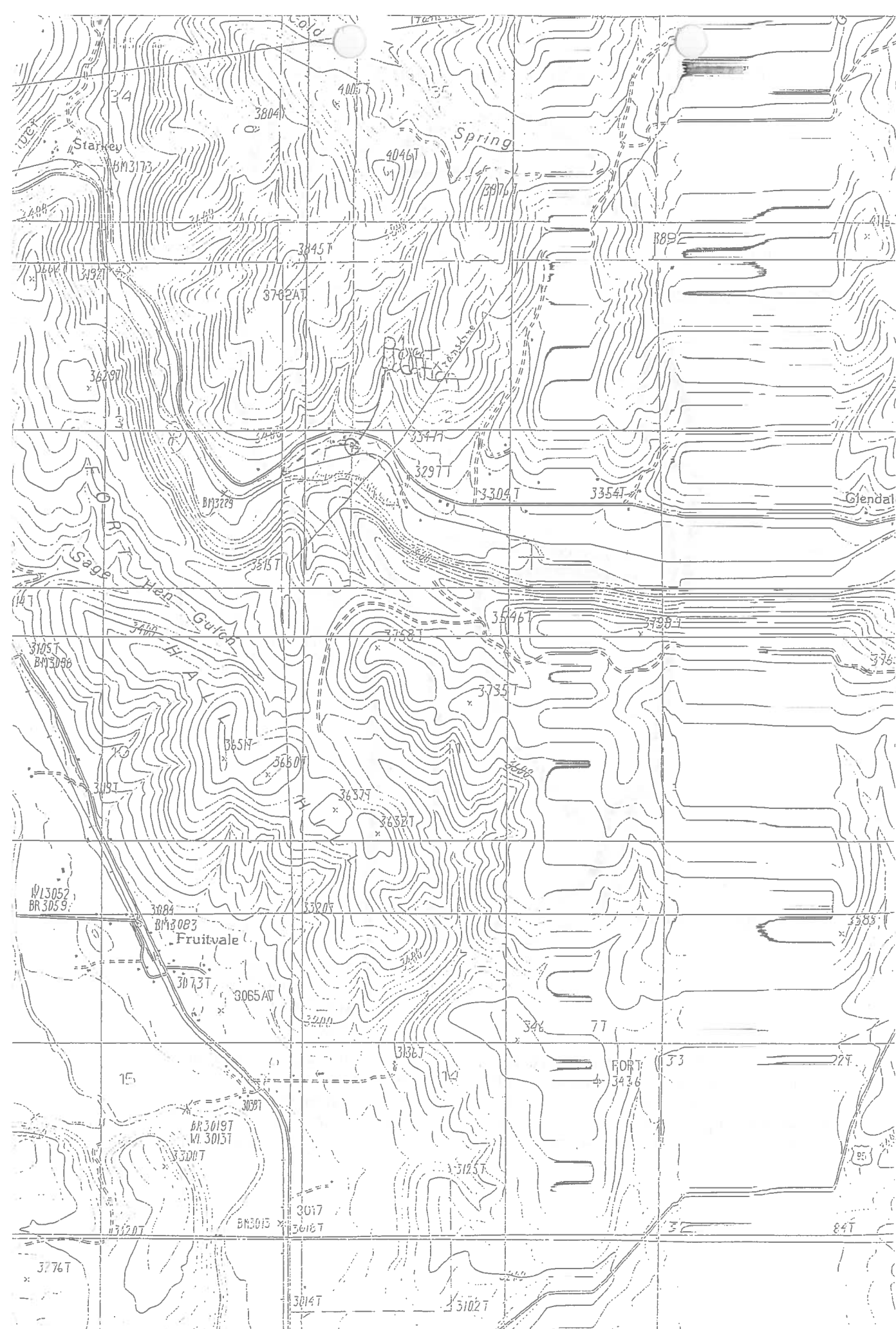
c. Will dredging be required waterward of the ordinary high water mark or in wetlands? _____ If yes, volume _____ (cubic yards)

d. Type of dredged material _____

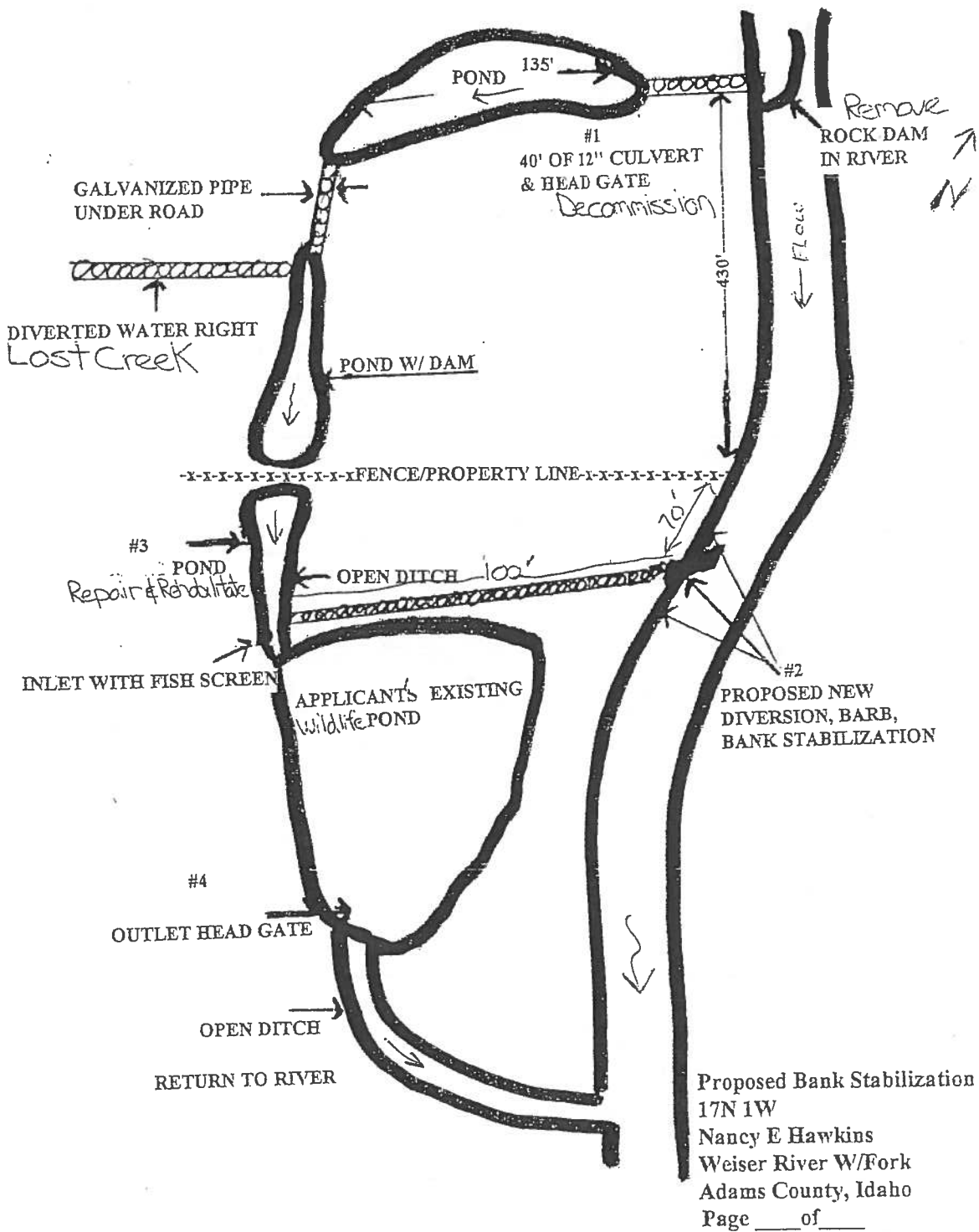
e. Disposal site for dredged material: _____ Method of dredging: _____

f. Method to control turbidity and sedimentation: _____

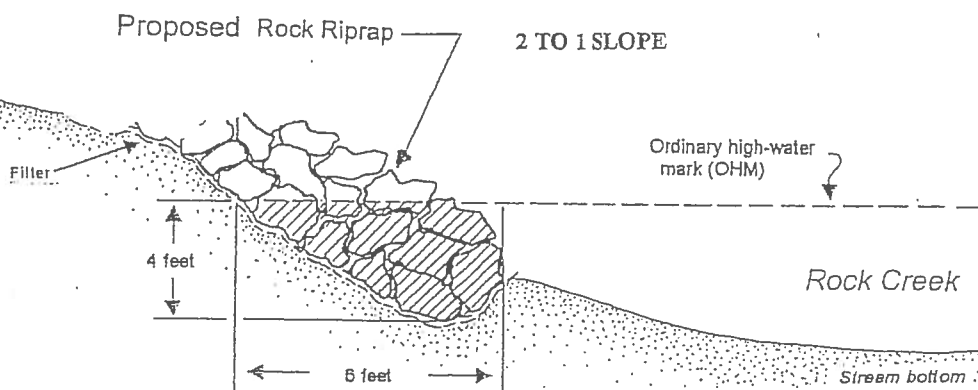
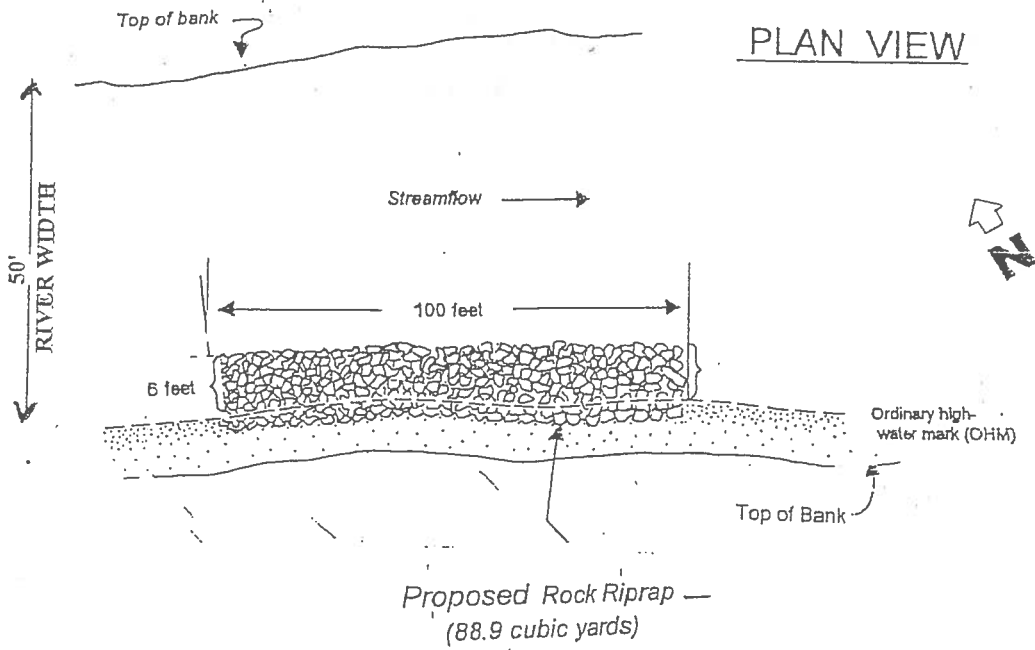
g. Is project located in a mapped floodway? _____ If yes, complete the Engineering "No-Rise" certification form.



PLAN VIEW OF EXISTING POND/DIVERSION



PROPOSED CHANGES: Location #1 Abandon water right decommission head gate and diversion structure. Location #2 stabilize bank/ provide new diversion/ head gate per application. Location #3 reduce pond by approximately 6' from side by redepositing dirt piled on the bank and revegetating. (5 yards of soil) Location #4 Possible lowering of outflow due to lower water level. (Approximately ½ yard of excavation)



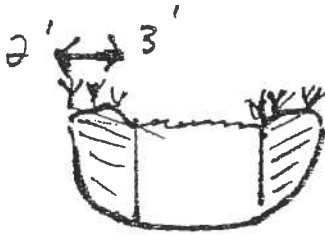
SECTION VIEW

Proposed Bank Stabilization
 17N 1W
 Nancy E Hawkins
 Weiser River W/Fork
 Adams County, Idaho
 Page ____ of ____

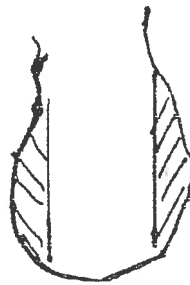
Decommissioning Head Gate Reducing Size of Sediment Pond

The head gate and pipe will be decommissioned by pumping two yards of cement and rock into the 12" diameter culvert.

Reduction in the size of the sediment pond will be accomplished by redepositing original excavated dirt banked on the sides back into the pond. The new banks will be revegetated.



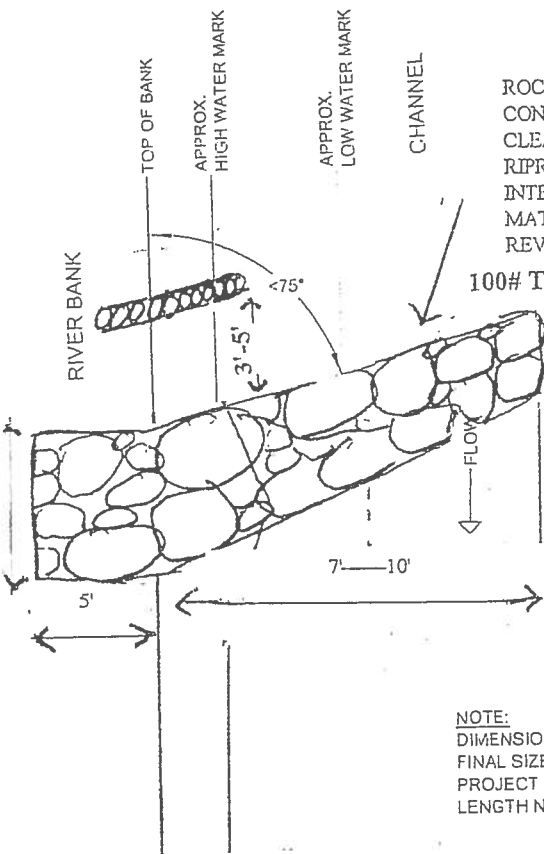
SEDIMENT POND
SIDE VIEW



SEDIMENT POND
TOP VIEW

SHADED AREA REPRESENTS REDEPOSITED DIRT
WITH APPROPRIATE REVEGETATION

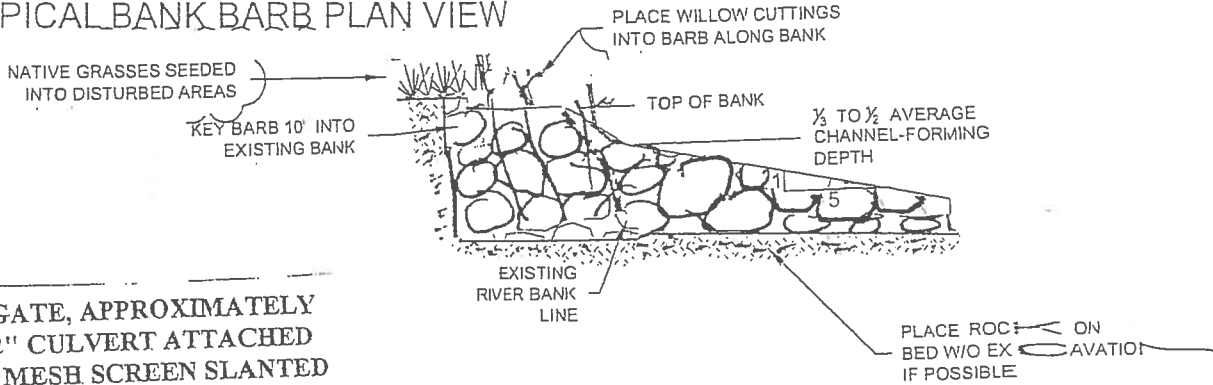
Proposed Bank Stabilization
17N 1W
Nancy E Hawkins
Weiser River W/Fork
Adams County, Idaho
Page ____ of ____



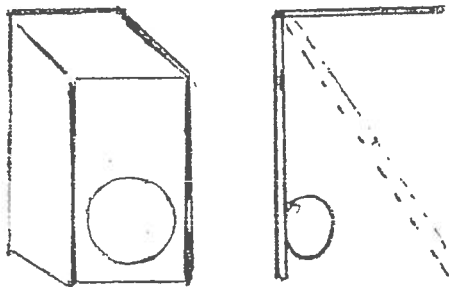
BARB RIP RAP TO UTILIZE APPROXIMATELY 4 YARDS OF 100# TO 200# ROCKS

NOTE:
DIMENSIONS AND ORIENTATION GIVEN ARE APPROXIMATE.
FINAL SIZE AND ORIENTATION TO BE DETERMINED BY
PROJECT MANAGER AT TIME OF CONSTRUCTION. BARB
LENGTH NOT TO EXCEED 20% OF WETTED CHANNEL WIDTH.

TYPICAL BANK BARB PLAN VIEW



TYPICAL BANK BARB CROSS SECTION



Proposed Bank Stabilization on
17N 1W
Nancy E Hawkins
Weiser River W/ Fork
Adams County, Idaho
Page ____ of ____