



US Army Corps
Of Engineers
Walla Walla District
201 North Third Avenue
Walla Walla, WA 99362-1876

Public Notice:

Application for Permit

APPLICATION NO.: NWW-2011-296

WATERWAY: Kootenai River

APPLICANT: Burlington Northern Santa Fe Railway

DATE ISSUED: April 5, 2012

END DATE: May 5, 2012

30-Day Notice

Interested parties are hereby notified that this District has received an application for a Department of the Army permit for certain work in waters of the United States, including wetlands, as described below and shown on the attached drawing, entitled Cross Section/Plan View, dated March 2012.

APPLICANT: Burlington Northern Santa Fe Railway, 2454 Occidental Avenue South, Suite 2-D, Seattle, WA 98134-1451. Point of Contact: Mr. Glen Gaz, Manager Engineering, (206) 625-6150.

AGENT: J.L. Patterson – Environmental, PO Box 1724, Sandpoint, ID 83864. Point of Contact: Mr. Pierre Bordenave (208) 263-9391.

USACE PROJECT MANAGER CONTACT: Ms. Beth Reinhart, Coeur d’Alene Field Office, 2065 W. Riverstone Drive, Ste 201, Coeur d’Alene, ID 83814.

PURPOSE: Applicant requests after-the-fact authorization to retain approximately 5,000 cubic yards of rock fill discharged into the Kootenai River to construct a permanent work platform adjacent to the railroad tracks. The platform was constructed to facilitate the removal of slide material. Material to construct the platform acquired was from a discreet rock slide event. This area is subject to and will likely continue to be subject to slides in the future. Applicant states that having a side pull out will allow future clean-ups to be conducted in a more efficient manner.

WATERWAY: Kootenai River

LOCATION: The Kootenai River (canyon section) approximately 3 miles downstream of the Idaho-Montana border within Section 9, Township 61 North, Range 3 East, near latitude 48° 39’ 12” N and longitude -116° 4’ 47” W, in Bonner County, near Moyie Springs, Idaho.

DRIVING DIRECTIONS: Site can only be reached by rail line or by boat.

AUTHORITY: This permit will be issued or denied under the authority of Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers & Harbors Act of 1899 (33 U.S.C. 403). The Clean Water Act requires a Department of the Army permit for the discharge of dredged or fill material into waters of the United States, including wetlands. The Rivers and Harbors Act requires a Department of the Army permit for work or structures waterward of the ordinary high water mark located in or over navigable waters of the United States, including the excavation, dredging or deposition of material in navigable waters, or any alteration obstructing or affecting the course, location, condition, or capacity of the navigable waterway.

WORK: Application discharged 5,000 cubic yards of rock below the ordinary high water mark of the Kootenai River. Work was done in conjunction with the removal of rocks from a rock slide that blocked the BNSF tracks. Slide material was utilized to create a base for safe equipment pull-out adjacent to the tracks. The slide was 350-400 linear feet, resulting in 7,000 square foot impact in water of the US. Material grading and removal to repair the damage to the tracks and restore rail service was done by excavators and bulldozers brought to the work site by rail. Work was completed within three days of the rock slide.

ADDITIONAL INFORMATION: On or about June 13, 2011 a rock slide occurred adjacent to the BNSF rail line approximately 3 miles south of the Idaho-Montana border. The rock slide was 350-400 linear feet in length and deposited approximately 9,000 cubic yards of rock covering and sliding beyond the tracks, into the river. Approximately 5,000 cubic yards was discharged into the river during the clearing of the tracks, the remaining 4000 cubic yards was removed by rail car to a BNSF facility in Troy, Montana. This area has had numerous rock slide events in the past. BNSF has requested the material be left in place to facilitate clearing future slides without having to discharge rock into the river.

CONSTRUCTION PERIOD: Work was performed from June 12-14, 2011. No additional work is proposed besides the mitigation measures listed below.

PROPOSED MITIGATION: While there is no formal mitigation plan, mitigation measures proposed are the restoration of the new embankment with native riparian grasses and planting willow stakes. This revegetation would stabilize the rock slope, provide some shade for near shore aquatic species, provide habitat for small passerine bird species and would aesthetically blend with existing riparian shoreline up and down the river.

WATER QUALITY CERTIFICATION: This notice will also serve as public notice that the Idaho Department of Environmental Quality (IDEQ) is evaluating whether to issue an after-the-fact certification that the discharge of dredge and/or fill material proposed for this project did not violate existing water quality standards. A Department of the Army permit will not be issued until water quality certification has been issued or waived by the IDEQ, as required by Section 401 of the Clean Water Act. If water quality certification is not issued, waived or denied within sixty (60)-days of this public notice date, and an extension of this period is not requested by and granted to the IDEQ, certification will be considered waived. Additionally, within thirty (30)-days of this Public Notice, any person may provide written comments to IDEQ, as request in writing that IDEQ, provide them notice of their preliminary 401 Certification decision. Comments concerning Water Quality Certification for this project should be mailed to: Idaho Department of Environmental Quality, Coeur d'Alene Regional Office, 2100 Ironwood Parkway, Idaho, 83814.

AQUATIC RESOURCE DESCRIPTION: The Kootenai River runs 485 miles from its origins in the Kootenay Ranges of the Canadian Rockies, exiting British Columbia's East Kootenay region via northwestern Montana and the northernmost Idaho Panhandle to return to Canada in the West Kootenay region, where it ends at the city of Castlegar, British Columbia. The area where the impact occurred is approximately 3 miles from the Idaho-Montana border in a remote section of the river referred to as the "canyon reach". This reach is designated critical habitat for bull trout; it is a migratory corridor, no suitable spawning habitat is located near-by. The Kootenai River is inhabited by Kootenai River white sturgeon; however the density of sturgeon between Bonners Ferry and Kootenai Falls is extremely low.

IMPACTS ON AQUATIC ENVIRONMENT: At the time of the natural slide and subsequent discharge of additional material there may have been short term localized turbidity. The majority of the discharged material was rock; any fines would have been dispersed quickly by the current. There may

have been some impact to aquatic insects and macrophytes within the 7000 square foot impact area. Preliminary assessment of the impacts and after coordination with the US Fish and Wildlife Service that impacts to bull trout or sturgeon was determined would have been insignificant or discountable given the location of the slide.

OTHER AUTHORIZATIONS: NA

CULTURAL RESOURCES: Coordination is currently being conducted with the office of the Idaho State Historic Preservation Officer to determine if this activity may have had an effect on a site that is listed on the National Register of Historic Places, or a site that may be eligible for listing on the Register.

TRIBAL TREATY RIGHTS and INTERESTS: Federal agencies acknowledge the federal trust responsibility arising from treaties, statues, executive orders and the historical relations between the United States and American Indian Tribes. The Federal Government has a unique trust relationship with federally recognized American Indian Tribes. We are coordinating with the appropriate Tribal entity or the Tribal Historic Preservation Offices for the Kalispel, Kootenai, and Confederated Salish Kootenai Tribes in this area, to determine if there are any tribal historic or cultural interests within the project area. The Corps has a responsibility and obligation to consider and consult on potential effects to Tribal rights, uses and interests. The Corps further recognizes there may be a need for additional and on-going consultation.

ENDANGERED SPECIES: The project is within the known or historic range of Kootenai River white sturgeon and bull trout and is bull trout critical habitat. Emergency consultation was initiated with the U.S. Fish and Wildlife Service (USFWS) at the time of the rock slide. The USFWS declined to consult on project impacts after-the-fact.

ESSENTIAL FISH HABITAT: NA

ENVIRONMENTAL IMPACT STATEMENT: Preliminary review indicates the proposed activities will not require preparation of an Environmental Impact Statement. Comments provided will be considered in preparation of an Environmental Assessment.

EVALUATION: The decision whether to issue an after-the-fact permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. This decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered, including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and in general, the needs and welfare of the people. In addition, our evaluation will include application of the EPA Guidelines (40 CFR 230) as required by Section 404(b)(1) of the Clean Water Act.

CONSIDERATION OF PUBLIC COMMENTS: The Corps of Engineers is soliciting comments from the general public; Federal, State and local agencies and officials, Tribal entities and other interested parties in order to consider and evaluate the impacts of the activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for the completed work. To make this decision, comments are used to assess impacts on

endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

PUBLIC HEARING: Any person may request in writing, within the comment period specified in this notice, that a public hearing be held to consider this proposed activity. Requests for a public hearing shall state specific reasons for holding a public hearing.

COMMENT & REVIEW PERIOD: Interested parties are invited to provide comments on the proposed activity, which will become a part of the record and will be considered in the final decision.

Please mail all comments to:

U.S. Army Corps of Engineers
Ms. Beth Reinhart
Coeur d'Alene Regulatory Field Office
2065 W. Riverstone Drive, Ste 201
Coeur d'Alene, Idaho 83814

Comments should be received no later than the comment due date of **May 2, 2012**, as indicated on this notice, to receive consideration.

Ms. Beth Reinhart
Sr. Project Manager, Regulatory
Walla Walla District

Enclosures