



DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, LOUISVILLE
CORPS OF ENGINEERS
P.O. BOX 59
LOUISVILLE, KENTUCKY 40201-0059

REPLY TO
ATTENTION OF: P. Grace-Jarrett

February 13, 2017

Operations Division
Mitigation, Compliance & Enforcement Regulatory Branch
ID No. LRL-2013-00336-pgj

Mr. Mike Hardin
Assistant Director, Division of Fisheries
Kentucky Dept. of Fish & Wildlife Resources
#1 Sportsman's Lane
Frankfort, Kentucky 40601

Dear Mr. Hardin:

This is in regard to your application for a Department of the Army (DA) permit for the Kentucky Department of Fish and Wildlife Resources' (KDFWRs') Old Trace Creek Stream Mitigation Project (Latitude: 38.37407 N; Longitude: -83.27853 W), I.D. No. LRL-2013-336. The project would preserve approximately 3,841 linear feet, enhance approximately 2,820 linear feet and re-establish approximately 19,938 linear feet of ephemeral, intermittent and perennial streams. The project would result in an estimated net gain of 7,277 Ecological Integrity Units (EIUs). The project would be permanently protected through the implementation of deed restrictions on the parcel, which would be utilized as a wildlife management area. No work or credit was proposed for the on-site wetland. Your application was also reviewed for compliance with the terms of the Old Trace Creek Stream Mitigation Project first credit release.

Your application also included a request for modification of the "Agreement Concerning In-Lieu Mitigation Fees Between U.S. Army Corps of Engineers & Kentucky Department of Fish and Wildlife Resources" ("ILF Instrument"), LRL-2010-325, for the purpose of adding this project to the ILF Instrument.

DA Permit for the Old Trace Creek Stream Mitigation Project:

We have reviewed your application and have made the following determinations: the work is minor in nature, it will not have a significant impact on the environment, it should encounter no opposition, and is consistent with the "Letter of Permission New Mitigation Projects Associated with Approved Compensatory Mitigation Banking and In-Lieu Fee Instruments", LRL-2010-323, announced on September 27, 2011.

Based on these determinations, your proposed work satisfies the Letter of Permission criteria, as specified in our regulations. Therefore, you are authorized, in accordance with 33 USC 1344 to discharge fill material into "waters of the U.S.", for the purpose of enhancing and re-establishing approximately 22,758 linear feet of ephemeral, intermittent and perennial streams, and the temporary impacts associated with these activities. This permission is granted with the following Special Conditions:

The Kentucky Department of Fish and Wildlife Resources shall:

1. Implement the approved project mitigation plan, titled:
"Mitigation Plan for the Old Trace Creek Stream Mitigation Project, Lewis County, KY," dated February 2016.
2. Implement the following actions to assure compliance with Section 7 of the Endangered Species Act:
 - Restrict tree clearing to the period between November 15 and March 31 or re-initiate consultation with the Corps' and the U.S. Fish and Wildlife Service if clearing cannot be accomplished during this time frame.
3. Utilize the enclosed Credit Release Schedule "Credit Release Schedule based on predicted net credits for the Old Trace Creek Stream Mitigation Project (LRL-2013-336)" as the basis for future credit release requests. Any deviations from the Predicted Number of Credits must be documented, along with a request to revise the Predicted Number of Credits, when the "As Built Report" is submitted. No changes to the Credit Release Schedule may occur without prior written authorization of the Corps.

In addition, you must comply with the enclosed General Conditions.

This authorization will be effective as soon as we receive your signed acceptance of these conditions. Please sign and date this letter in the space provided and return the signed copy to me. A PDF of the signed letter is acceptable. Please note that we also perform periodic inspections to ensure compliance with our permit conditions and appropriate Federal laws.

This letter contains a proffered permit for the KDFWR Old Trace Creek Stream Mitigation Project (LRL-2013-00336). If you object to this decision, you may request an administrative appeal under Corps' regulations at 33 CFR Part 331. Enclosed you will find a Notification of Administrative Appeal Options and Request for Appeal (RFA) form. If you request to appeal this decision, you must submit a completed RFA form to the Lakes and Rivers Division Office at the following address.

Appeal Review Officer
CELRD-PD-REG
550 Main Street, Room 10524
Cincinnati, Ohio 45202-3222
(513) 684-6212

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office **within 60 days of the date of the RFA**. Should you decide to submit an RFA form, it must be received at the above address by **April 14, 2017**. It is not necessary to submit an RFA form to the Division office if you do not object to the decision in this letter.

Also enclosed with this proffered permit is a preliminary jurisdictional determination (PJD). A PJD is not appealable and impacting "waters of the U.S." identified in the PJD will result in you waiving the right to request an approved JD at a later date. An approved JD may be requested (which may be appealed), by contacting me for further information.

The time limit for completing the work authorized ends on **March 1, 2020**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least two months before the above date is reached.

Upon completion of construction you are to notify the District Engineer. The enclosed Completion Report form must be completed and returned to this office.

First credit release for the Old Trace Creek Stream Mitigation Project:

We have also reviewed the Site Protection Instrument (Deed of Conveyance, Deed Number 243, pages 442-449, Lewis County, Kentucky, dated 28 March 2014) for the Old Trace Creek Stream Mitigation Project. Financial assurances and long-term management accounts were approved with your ILF Instrument. Please note that a summary of all financial assurances and long-term management activities should be reported each year as part of your annual program report. Based on these items, as well as the issuance of the Letter of Permission (DA permit) for the Old Trace Creek Stream Mitigation Project (LRL-2013-00336) contained in this letter, the first credit release of 1,412 EIUs is granted. Please update the monthly program service area ledger to reflect this release and submit to the Corps at the beginning of next month. The Old Trace Creek Stream Mitigation Project Credit Release Scheduled has been enclosed for your use. Should the predicted credits vary from the constructed credits, you will need to provide information with the As Built Report documenting any deviations from this Schedule.

Modification of the KDFWR ILF Instrument:

We have reviewed your request to modify your ILF Instrument and determined that it is consistent with the process outlined in your ILF Instrument, as well as with 33 CFR 332. Therefore, your request for modification to your ILF Instrument has also been approved. Please sign and date the attached "Approval of Instrument Modification" in the space provided and return the signed copy. A PDF of the signed Approval of Instrument Modification sheet is acceptable. Your modification will be effective as soon as we receive your signed acceptance of the modification. Please add this modification, Modification Number 7, to "Appendix D: List of Approved Compensatory Mitigation Projects". Enclosed for your use is an updated example Appendix D. Your annual program report should include the updated Appendix D, including all previously approved projects.

We look forward to tracking the progress of this project. Please notify me once construction has been initiated so that an inspection may be scheduled. Thank you for your participating in this process. We are providing a copy of this letter to the Interagency Review Team (see enclosure for addresses) via email.

FOR THE DISTRICT ENGINEER:



Patricia A. Grace-Jarrett, Ph. D.
Senior Project Manager
Mitigation, Compliance &
Enforcement Branch

Enclosures

(I accept the conditions of this authorization):



Kentucky Department of Fish and Wildlife
Resources

2/13/17

Date

Sent via email

Credit Release Schedule based on predicted net credits for the Old Trace Creek Stream Mitigation Project (LRL-2013-336)

Credit Release Schedule	Description	Percentage of Total Credits	Predicted number of Credits (EIUs)
First Credit Release	Site Protection Instrument, Financial Assurances, and Long-Term Management Account implemented. 404 authorization issued.	100% of preservation Credits plus	378
		15.0% of re-establishment and enhancement credits	1,034
Second Credit Release	"As Built Report"	5.0%	345
Third Credit Release	Year 1 Performance Standards	15.0%	1,035
Forth Credit Release	Year 2 Performance Standards	15.0%	1,035
Fifth Credit Release	Year 3 Performance Standards & Submittal of LTM funding review & funding plan	15.0%	1,035
Sixth Credit Release	Year 4 Performance Standards	15.0%	1,035
Final Credit Release	Year 5 Performance Standards, LTM Account fully funded, final JD or wetland delineation (if required)	20.0%	1,380

Appendix D: List of Approved Compensatory Mitigation Projects

Table of Corps Approved Mitigation Projects: Kentucky Department of Fish and Wildlife Resources (LRL-2010-325) Mitigation Program

PROJECT	County	Service Area	Instrument Mod. No.	Corps ID No.	Corps Approval Date	KDOW 401 ID No.	KDOW Approval Date
ILF-KDFWR Elm Fork/Kleber WMA Stream Restoration Project (MOA)	Owen	Lower Kentucky Service Area	2	LRL-2012-00263	22 February 2013	WQC# 2012-050-1	22 October 2012
ILF-KDFWR Indian Creek Stream Restoration Project (MOA)	Menifee	Upper Kentucky Service Area	3	LRL-2012-00273	9 July 2013	WQC # 2013-009-1	7 March 2013
ILF-KDFWR Rogers Gap Stream Restoration Project (MOA)	Scott	Lower Kentucky Service Area	4	LRL-2012-00134	4 December 2013	WQC # 2013-026-1	26 June 2013
ILF-KDFWR Eagle Creek Tributaries Restoration Project (MOA & ILFI)	Union	Green River Service Area	5	LRL-2012-00716	16 January 2015	WQC # 2014-18-1M	4 June 2014
ILF-KDFWR Meyer's Station Stream Restoration (ILF-I)	Nicholas	Lower Licking Service Area	6	LRL-2012-00637	20 April 2016	WQC# 2016-004-1	15 January 2016
ILF-KDFWR Old Trace Creek Restoration (ILF-I)	Lewis	Big Sandy Service Area	7	LRL-2013-00336	13 February 2017	WQC # 2016-029-1	26 April 2016

ADDRESSES FOR COORDINATING AGENCIES (SENT VIA EMAIL)

Ms. Stephanie Hayes, Supervisor
Kentucky Environmental and Public Protection Cabinet
401 Section
Division of Water
300 Sower Boulevard
Frankfort, Kentucky 40601

Ms. Jessie Miller
U.S. Fish & Wildlife Service
J.C. Watts Federal Building, Room 265
330 West Broadway
Frankfort, Kentucky 40601

Mr. Duncan Powell
U.S. Environmental Protection Agency, Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960