



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

October 13, 2009

**CERTIFIED MAIL**

**7009 1410 0002 4050 6584**

Great Western Lumber Company  
PO Box 159  
Everson, WA 98247

**RE:** Water Quality Certification Order #7148 for U.S. Army Corps of Engineers  
Public Notice #NWS-2006-106, Swift Creek Emergency Flood Protection  
Options Project, Everson, Whatcom County, Washington

Dear Sir or Madam:

On August 7, 2009, Great Western Lumber Company submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed Swift Creek Emergency Flood Protection Options project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Erik Stockdale, Unit Supervisor  
Northwest Regional Office  
Shorelands and Environmental Assistance Program

ES:rrp:cja  
Enclosure

cc: Randel Perry, U.S. Army Corps of Engineers  
Jeff Kamps, Washington Department of Fish and Wildlife



Tom Westergreen, Great Western Lumber Company  
Christopher Street, Ostrom Farms  
Krista Rave-Perkins, U.S. Environmental Protection Agency  
Michael Szerlog, U.S. Environmental Protection Agency  
John Hutchings, Whatcom County

e-cc: Barry Wenger – BFO  
Susan Meyer – NWRO  
Richard Grout – BFO  
Mak Kaufman – BFO  
Mary O’Herron – BFO  
Pete Kmet – HQ  
Loree’ Randall – HQ  
Raman Iyer – NWRO  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

**IN THE MATTER OF GRANTING A ) ORDER #7148**  
**WATER QUALITY ) Corps Reference #NWS-2006-106**  
**CERTIFICATION TO ) Swift Creek Emergency Flood Protection**  
**Great Western Lumber Company ) Options Project; Everson, Whatcom County,**  
in accordance with 33 U.S.C. 1341 ) Washington.  
(FWPCA § 401), RCW 90.48.120, RCW )  
90.48.260 and Chapter 173-201A WAC )

TO: Great Western Lumber Company  
PO Box 159  
Everson, WA 98247

On August 7, 2009, Great Western Lumber Company submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on September 4, 2009.

The proposal is to relieve aggradation and flooding problems and reduce downstream transport of naturally contaminated sediments. Proposed work includes:

- Relocation of the channel to a temporary bypass in order to divert flow around the work area.
- Repair of existing log stringer bridge rock footings.
- Repair of approximately 450 linear feet of existing levee and access road.
- Removal of approximately 20,000 cubic yards of accumulated sediment each year from behind the four instream structures. The removed material will be stored in already established adjacent secure gravel storage areas on site.
- Reinforcement of existing non-engineered gravel levees or channel banks with accumulated channel material and/or angular rock to increase effectiveness against avulsion.

The excessive sediment in Swift Creek is caused by a large, complex landslide in the upper watershed on Sumas Mountain. Approximately 150,000 cubic yards of material move into the creek system annually. The exposed slide material contains naturally-occurring elevated levels of asbestos, nickel, manganese, cobalt, chromium, and magnesium. These chemicals are present in amounts toxic enough to prevent vegetation from growing on the slide material, and Swift Creek has no resident fish.

The project is located at 7400 Goodwin Road, Everson, Whatcom County, Swift Creek, Washington, Section 34, T. 40 N., R. 4E., WRIA 1.

**AUTHORITIES:**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§ 1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. § 1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

**WATER QUALITY CERTIFICATION CONDITIONS:**

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will not violate applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. § 1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

**A. General Conditions:**

- A1. For purposes of this Order, the term "Applicant" shall mean Great Western Lumber Company and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #7148 and Corps Reference #NWS-2006-106.

- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on August 7, 2009. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
- A4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
- A5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual Section 404 permit.
- A6. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
- A7. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- A8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
- A9. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project or mitigation sites.
- A10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
- A11. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

**B. Water Quality Condition:**

- B1. This Order does not authorize a temporary turbidity exceedance beyond the limits established in WAC 173-201A-200(1)(e)(i) which allows a 100-foot temporary area of mixing for turbidity resulting from disturbance of in-place sediments in Swift Creek.

**C. Material Management:**

- C1. The Applicant shall maintain all dredged material on site unless otherwise authorized by Ecology.
- C2. The dredged material from Swift Creek shall be placed in an upland location so that it does not re-enter state waters, including but not limited to streams, wetlands, lakes, rivers, estuaries, marine waters, or any other waters of the state.
- C3. Material may be used onsite to repair the levee and access road damage from the January 2009 flood and to reinforce existing non-engineered gravel levees or channel banks within the project limits as illustrated in Figure 8 of the JARPA received on August 7, 2009.

**D. Conditions for In-Water Activities:**

- D1. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- D2. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- D3. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- D4. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- D5. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.

D6. All manmade debris that has been deposited below the Ordinary High Water Line within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Concrete blocks, metal debris, cables, submerged timbers and other debris in the construction work corridor that have washed into freshwater areas shall be removed from the project area.

**E. Emergency/Contingency Measures:**

E1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.

E2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.

E3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.

E4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:

a. Cease operations at the location of the violation or spill.

b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.

c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.

d. Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

**F. Timing Requirements**

- F1. This Order expires five (5) years from the date of issuance. A new 401 Certification must be obtained prior to expiration in order to continue excavation of sediments in Swift Creek beyond five years.

**G. Reporting and Notification Requirement Conditions**

- G1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction and each dredging season. Also the Applicant shall provide notice to Ecology within 14 days after completion of construction and dredging each season.. Notification, referencing Corps Reference #NWS-2006-106, Order #7148 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

**H. Appeal Process:**

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

**1. To file your appeal with the Pollution Control Hearings Board**

Mail appeal to:

The Pollution Control Hearings Board  
PO Box 40903  
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board  
4224 – 6th Ave SE Rowe Six, Bldg 2  
Lacey, WA 98503

**2. To serve your appeal on the Department of Ecology**

Mail appeal to:

The Department of Ecology  
Appeals Coordinator  
P.O. Box 47608  
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology  
Appeals Coordinator  
300 Desmond Dr SE  
Lacey, WA 98503

**3. And send a copy of your appeal to:**

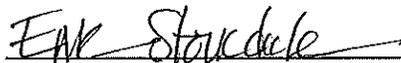
Department of Ecology  
Northwest Regional Office  
Attn: Rebekah Padgett  
3190 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008

For additional information visit the Environmental Hearings Office Website:  
<http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website:  
<http://www.l.leg.wa.gov/CodeReviser>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated October 13, 2009 at Bellevue, Washington.



Erik Stockdale, Unit Supervisor  
Northwest Regional Office  
Shorelands and Environmental Assistance Program  
Department of Ecology  
State of Washington

**ATTACHMENT A**

**GREAT WESTERN LUMBER COMPANY  
SWIFT CREEK EMERGENCY FLOOD PROTECTION OPTIONS PROJECT  
Water Quality Certification Order #7148**

**Statement of Understanding of  
Water Quality Certification Conditions**

I have read and understand the conditions of Order #7148 Section 401 Water Quality Certification for the Great Western Lumber Company Swift Creek Emergency Flood Protection Options Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company