STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
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June 17, 2015

David Olson, Commissioner
Skagit County Diking District No. 3
PO Box 324
Conway, WA 98273

RE: Water Quality Certification Order #11463 for U.S. Army Corps of Engineers Public Notice #NWS-2008-1093, Skagit DD 3 Drainage Maintenance Project, Carpenter Creek, Sandy Creek, Johnson Creek, Fisher Creek, Hill Ditch, Fisher Slough, and Artificial Drainage Watercourses, Skagit County, Washington

Dear Commissioner Olson:

On March 3, 2015, Skagit County Diking District No. 3 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 above 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,

Paul Anderson, Unit Supervisor
Shorelands and Environmental Assistance Program
Northwest Regional Office

PA:rrp:ap

Enclosure

By certified mail: 7012 1640 0000 6245 9511

cc: Randel Perry, U.S. Army Corps of Engineers
Brandon Roozen, Western Washington Agricultural Association
Jenna Friebel, Washington Department of Fish and Wildlife
Stan Walsh, Skagit River System Cooperative
Tom Sibley, NOAA Fisheries
Betsy Stevenson, Skagit County Planning and Development Services

e-cc: Mak Kaufman – BFO
Doug Gresham – NWRO
Loree' Randall – HQ
Raman Iyer – NWRO
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO SKAGIT COUNTY DIKING DISTRICT NO. 3 in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)	**ORDER #11463** **Corps Reference #NWS-2008-1093** Skagit DD 3 Drainage Maintenance Project; Carpenter Creek, Sandy Creek, Johnson Creek, Fisher Creek, Hill Ditch, Fisher Slough, and Artificial Drainage Watercourses, Skagit County, Washington.

TO: Skagit County Diking District No. 3
Attn: David Olson, Commissioner
PO Box 324
Conway, WA 98273

On March 3, 2015, Skagit County Diking District No. 3 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 April 14, 2015.

Maintenance of drainage and irrigation facilities includes:

- Removal of accumulated sediments from drainage and irrigation ditches and streams;
- Removal of debris from channels, trash racks, culverts, etc.;
- Repair and replacement of culverts, pump facilities, bridges, trash racks, and floodgates;
- Maintenance of culverts, trash racks, floodgates, and pump facilities;
- Dike maintenance and repair;
- Beaver dam management; and
- Minor repair, but not major repair or replacement, of tidegates.

Note: Work will not involve construction of new facilities.

Per the details of the Drainage Maintenance Plan, the District has agreed to provide support for a series of habitat enhancement projects. Projects are to be undertaken in conjunction with the Washington State Department of Fish and Wildlife.

The project is located in Diking District No. 3, within the Skagit River Delta of Skagit County, west of the Skagit River, south of Mount Vernon, and including Conway, Washington, in Sections 04, 05, 06, 07, 08, 17, 18, 19, 20, 29, 30, 31, T. 33 N., R. 04 E., and Sections 29, 31, 32, T. 34 N., R. 04 E., WRIA 3.

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, 302, 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 meet the 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 Skagit County Diking District No. 3 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 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #11463 and Corps Reference #NWS-2008-1093.

A3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resources Permit Application (JARPA) received by Ecology on March 3, 2015, and Sheets 1 of 9 through 9 of 9 from the Joint Public Notice, dated April 14, 2015, unless otherwise authorized by Ecology.

A4. The Applicant will be out of compliance with this Order and must reapply with an updated application if additional activities and/or subsequent changes to the project not authorized by this Order are needed.

A5. 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.

A6. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual Section 404 permit.

A7. The Applicant shall send (per A2) a copy of the final Section 404 Corps permit to Ecology's 401/CZM Federal Permit Manager within two weeks of receiving it from the Corps.

A8. 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.

A9. 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.

A10. 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.

A11. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48), or the federal Clean Water Act, Ecology will issue an administrative order to incorporate any such changes or amendments applicable to this project.

A12. 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 David Olson, Commissioner,

and each contractor that will be working on the project. The statements shall indicate 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.

A13. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state (including wetlands) or related aquatic resources, except as specifically provided for in conditions of this Order.

A14. 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 Conditions:

B1. This Order does not authorize temporary turbidity exceedances beyond the limits established in WAC 173-201A-200(1)(e)(i) for Carpenter Creek, Sandy Creek, Johnson Creek, Fisher Creek, Hill Ditch, Fisher Slough, and within 300 feet upstream of the confluence of any tributaries.

B2. Water quality sampling and monitoring shall be conducted during in-water activities within Carpenter Creek, Sandy Creek, Johnson Creek, Fisher Creek, Hill Ditch, Fisher Slough, and within 300 feet upstream of the confluence of any tributaries, unless the flows can be restricted per Condition C2. Sampling and monitoring shall be conducted per the conditions below:

a. Locations of samples: At a minimum, sampling during in-water activities shall take place at:
   i. An early warning point 50 feet downstream from the in-water activity if no turbidity curtains are in place, or
   ii. 10 feet downstream from the last (most downstream) turbidity curtain.

b. Number of samples: Representative water quality samples shall be taken a minimum of three times per day during any in-water work.

c. Parameter to be sampled: Water samples shall be collected and analyzed for turbidity.

d. Equipment: A transparency tube shall be utilized to determine turbidity.

e. Recording samples: All sampling results shall be recorded.

B3. Benchmark Values: Using a transparency tube, if transparency is:

a. Less than 33 centimeters (cm), but equal to or greater than 6 cm at 50 feet downstream from the in-water activity with no turbidity curtains in place, or 10 feet

downstream from the last (most downstream) turbidity curtain, then additional BMPs shall be implemented.

b. Less than or equal to 6 cm at 50 feet downstream from the in-water activity with no turbidity curtains in place, or 10 feet downstream from the last (most downstream) turbidity curtain, then the Applicant shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, the Applicant shall assess the efficacy of the site BMPs and update or improve the BMPs used at the work site in an effort to reduce or prevent recurrence of the turbidity exceedance.

B4. Reporting: If no exceedances are detected per Condition B3, results of water quality monitoring/sampling shall be forwarded to Ecology at the end of the season in its annual report in accordance to Conditions A2 and F2.

B5. Notification of exceedances using a transparency tube: If turbidity transparency less than or equal to 6 cm is detected through water quality sampling, the Applicant shall notify Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #11463, Attn: 401/CZM Federal Project Manager, by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:

a. A description of the nature and cause of exceedance.

b. Watercourse name and approximate location of activity.

c. Transparency tube measurement (in centimeters).

d. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance.

e. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.

f. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the exceedance, turbidity results and location, photographs, and any other pertinent information.

C. General Water Quality Conditions:

C1. Maintenance activity shall be conducted during low-flow conditions and in the dry to the extent practicable.

C2. Whenever water is present, floodgates or tidegates shall be closed, and pumps turned off, to the extent practicable, in order to protect water quality.

C3. During dredging, culvert repair or replacement, floodgate replacement, and dike repair or maintenance activities, whenever water is present, sandbags, sheetpile, earth plugs, straw bales, or impermeable fabric fences (e.g., turbidity curtains) shall be installed and properly maintained both upstream and downstream of the in-water activity in order to protect water quality.

C4. When utilizing turbidity curtains, additional curtains shall be installed downstream of the first turbidity curtain as needed in order to minimize turbidity.

C5. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.

C6. All maintenance work shall be conducted in such a way as to minimize turbidity.

C7. 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.

C8. Applicant shall ensure that fill (soil) does not contain toxic materials in toxic amounts.

C9. Piling or lumber treated with creosote or pentachlorophenol shall not be utilized in project construction.

C10. All treated wood shall be professionally treated and completely cured prior to installation below the high water line to minimize leaching into the water or substrate.

C11. Machinery and equipment shall be serviced, fueled, and maintained upland a minimum of 50 feet and, where practical, 200 feet, from waters of the state including wetlands, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.

C12. 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.

C13. Mechanical equipment shall be operated from adjacent uplands, unless otherwise authorized by Ecology.

C14. Existing vegetation shall be retained on the sidewalls of the channel to the maximum extent practicable.

C15. Channel out-of-water mowing of woody stem riparian vegetation shall be minimized to the extent practicable and shall be limited to the banks of the watercourse necessary for equipment access to the channel.

C16. Dredged, excavated, or mowed materials shall not be stockpiled below the top of or adjacent to the channel bank.

C17. Exposed soils adjacent to the channel at risk of entering the watercourse shall be protected from erosion using vegetation or other means approved by Ecology.

C18. Work shall not be conducted in rain events of a magnitude of ¼ inches within 24 hours or predicted rain events of more than ¼ inch within 24 hours.

C19. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology that fisheries resources may be adversely affected.

C20. Replacement of infrastructure, including culverts, pump facilities, bridges, trash racks, and floodgates, shall be conducted in place and be in kind, unless otherwise approved by Ecology.

C21. Equipment shall only cross the watercourses during periods of low flow.

C22. Aquatic herbicides shall only be sprayed by operators licensed in the State of Washington.

Temporary Cofferdam Conditions:

C23. Temporary cofferdams shall be installed slowly and carefully in order to minimize turbidity.

C24. Temporary cofferdams shall remain in place until in-water work is completed and disturbed areas are stabilized.

C25. Temporary cofferdams shall be removed slowly in order to minimize turbidity, and upstream cofferdams shall be removed prior to downstream cofferdams.

C26. Dewatering water shall be routed to an area landward of the top of the channel bank for infiltration.

C27. Bypass pipes shall be of sufficient size to pass all flows and debris for the duration of the project.

C28. Upon completion of the project, all material utilized in construction of the cofferdams and bypass shall be removed from the site and the site returned to pre-project or improved conditions.

Dredging Conditions:

C29. All dredging shall be conducted to historical contours of the ditch, or up to a 2:1 slope for stability.

C30. Dredging shall be conducted with a dragline, excavator, and/or hand tools.

C31. Each pass with the dragline or excavator bucket in the channel shall be complete.

C32. Dredging shall be limited to the absolute minimum necessary to achieve the target channel width, depth, and gradient.

C33. Excavated sediments shall <u>not</u> be sidecast into wetlands or along the banks of the watercourse. Excavated materials may be deposited in adjacent agricultural fields in current production and reincorporated into the field soils or disposed of offsite.

Channel In-Water Bucket Mowing Conditions:

C34. Channel in-water bucket mowing shall be conducted utilizing a hydraulically-operated sickle bar mower mounted on the front edge of a dredging bucket.

C35. In-water bucket mowing shall only remove plant materials from the channel and shall not alter the channel bed profile or slope of the channel banks.

Dike Repair Conditions:

C36. Dike maintenance activities shall not expand or exceed the original footprint of the existing damaged dike.

C37. Dike repair and maintenance activities shall be conducted in the dry to the extent practicable.

C38. Dike repair and maintenance activities below the Ordinary High Water Line shall be isolated from the watercourse (e.g., cofferdam and water bypass).

C39. Dewatering water from dike repair and maintenance activities shall be discharged to an area landward of the dike for infiltration.

C40. Woody stem vegetation removal shall be limited to those shrubs and trees with stems greater than four inches in diameter.

C41. Disturbed areas of the shoreline shall be minimized and re-vegetated.

Bridge Conditions:

C42. Replacement bridge footings or foundations shall be constructed within the original footprint, unless otherwise authorized by Ecology.

C43. Excavation for bridge footings or foundations shall only occur landward of the Ordinary High Water Line of the channel.

C44. Armoring of channel banks to protect bridge footings or foundations with rock materials shall be limited to the bank area immediately under the footprint of the bridge.

C45. Any repainting of bridge structures shall be conducted utilizing tarps or other containment in order to prevent paint from entering the water.

C46. The Applicant shall use tarps or other containment methods when cutting or drilling over water to prevent debris, sawdust, concrete and asphalt rubble, and other materials from entering the water.

C47. If cast in place, wet concrete/grout shall be prevented from entering waters of the state. Forms for any concrete/grout structure shall be constructed to prevent leaching of wet concrete/grout. Impervious materials shall be placed over any exposed concrete/grout not lined with the forms that will come in contact with state waters. Forms and impervious materials shall remain in place until the concrete/grout is cured.

Culvert Repair and Replacement Conditions:

C48. Culvert repair and replacement shall be conducted by hand to the extent practicable.

C49. If cast in place, wet concrete/grout shall be prevented from entering waters of the state. Forms for any concrete/grout structure shall be constructed to prevent leaching of wet concrete/grout. Impervious materials shall be placed over any exposed concrete/grout not lined with the forms that will come in contact with state waters. Forms and impervious materials shall remain in place until the concrete/grout is cured.

Beaver Dam Conditions:

C50. Explosives shall not be utilized in removal of beaver dams.

C51. Beaver dam removal shall be conducted by hand, with hand tools, winches, and or motorized equipment.

C52. Beaver dam removal or modification shall be conducted slowly in order to minimize turbidity.

Floodgate Conditions:

C53. Floodgates shall be replaced in the same location and configuration as the existing damaged floodgate.

Trash Rack Conditions:

C54. Debris and logs shall be removed by hand to the extent practicable.

D. Emergency/Contingency Measures:

D1. 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.

D2. All machinery and equipment shall be in good repair and free of excess oil and grease.

D3. 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.

D4. 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.

E. Timing Requirements

E1. This Order expires five (5) years from the date of issuance of the Corps permit.

E2. Work shall be conducted during low discharge period, in late summer to early fall, when conducted within Carpenter Creek, Sandy Creek, Johnson Creek, Fisher Creek, Hill Ditch, Fisher Slough, and within 300 feet upstream of the confluence of any tributaries.

F. Reporting and Notification Requirement Conditions

F1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager:

- At least three (3) days prior to the start of construction each year; and
- Within 14 days after completion of construction at the project site each year.

Notification, referencing Corps Reference #NWS-2008-1093, Order #11463 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

F2. The Applicant shall submit per Condition A2 a written annual report. The report shall include:

a. A district map highlighting areas where drainage maintenance was completed in the previous year, along with a narrative description of work completed;
b. Results of water quality monitoring/sampling from the previous year, per Condition B4; and
c. A district map highlighting areas where drainage maintenance is planned for the upcoming year, along with a narrative description of anticipated work.

A preliminary report shall be submitted to Ecology each year, at least two (2) weeks prior to the annual meeting. Then, a final report shall be submitted to Ecology by March 31 of each year.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days of the date of receipt of this Order:

File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.

Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) Email is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503 **Pollution Control Hearings Board** 1111 Israel Road SW STE 301 Tumwater, WA 98501	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608 **Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

Rebekah Padgett
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008
(425) 649-7129
rebekah.padgett@ecy.wa.gov

MORE INFORMATION

Pollution Control Hearings Board Website
www.eho.wa.gov/Boards_PCHB.aspx

Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board
http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B

Chapter 371-08 WAC – Practice And Procedure
http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08

Chapter 90.48 RCW – Water Pollution Control
http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48

Chapter 173-204 WAC – Sediment Management Standards
www.ecy.wa.gov/biblio/wac173204.html

Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington
www.ecy.wa.gov/biblio/wac173200.html

Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington
www.ecy.wa.gov/biblio/wac173201A.html

SIGNATURE

Paul Anderson, Unit Supervisor
Shorelands and Environmental Assistance Program
Northwest Regional Office

June 17, 2015
Date

ATTACHMENT A

SKAGIT COUNTY DIKING DISTRICT NO. 3 DRAINAGE MAINTENANCE PROJECT
Water Quality Certification Order #11463

Statement of Understanding of Water Quality Certification Conditions

I have read and understand the conditions of Order #11463 Section 401 Water Quality Certification for the Skagit County Diking District No. 3 Drainage Maintenance 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