



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000  
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February 12, 2014

Belinda Rotton  
Washington Department of Fish and Wildlife  
21961 Wylie Road  
Mount Vernon, WA 98273

RE: Water Quality Certification Order #10493 for U.S. Army Corps of Engineers  
Reference #NWS-2013-757, Island Unit Ditch Maintenance Project, in Conway,  
Skagit County, Washington

Dear Ms. Rotton:

On October 3, 2013, Washington Department of Fish and Wildlife submitted a Joint Aquatic Resources 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 Island Unit Ditch Maintenance 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, Section Manager  
Northwest Regional Office  
Shorelands and Environmental Assistance Program

ES:rrp:mrw  
Enclosure

By certified mail 7011 0470 0003 3720 7905



cc: Jim Green, U.S. Army Corps of Engineers  
Chris Gourley, Washington Department of Fish and Wildlife  
Wendy Cole, Washington Department of Fish and Wildlife  
Brian Williams, Washington Department of Fish and Wildlife

e-cc: Paul Anderson – NWRO  
Mak Kaufman – BFO  
Loree' Randall – HQ  
Raman Iyer – NWRO  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

**IN THE MATTER OF GRANTING A ) ORDER #10493**  
**WATER QUALITY ) Corps Reference #NWS-2013-757**  
**CERTIFICATION TO ) Island Unit Ditch Maintenance Project; Wetlands**  
**WASHINGTON DEPARTMENT OF ) and Unnamed Ditches, Conway, Skagit County,**  
**FISH AND WILDLIFE ) Washington.**  
in accordance with 33 U.S.C. 1341 )  
(FWPCA § 401), RCW 90.48.120, RCW )  
90.48.260 and Chapter 173-201A WAC )

TO: Belinda Rotton  
Washington Department of Fish and Wildlife  
21961 Wylie Road  
Mount Vernon, WA 98273

On October 3, 2013, Washington Department of Fish and Wildlife submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on November 15, 2013.

The project would maintain drainage structures, including clearing and grubbing debris and removing impounded sediment from drainage ditches and partially blocked culverts, as well as replacement of up to eight culverts. Approximately 3,000 cubic yards of sediment would be removed over 30,350 linear feet of drainage ditch that would be maintained.

This Water Quality Certification is being issued after the fact, as a portion of the drainage maintenance work occurred without prior authorization from Ecology and apparently without installation of best management practices (BMPs) to protect water quality (13,771 linear feet completed on East Lobe; no work completed on West Lobe). Additional in-water work and wetland fill not included in the JARPA also was apparently completed (approximately 965 linear feet on the East Lobe, 350 linear feet near the tide gate, and 615 linear feet near the south end of the East Lobe). Based on revised calculations, the unidentified work that was completed will not increase the total length of drainage ditch maintenance and the entire project will be under the originally proposed 30,350 linear feet.

The project is located at the Washington Department of Fish and Wildlife Island Unit, on the South Fork of the Skagit River between Freshwater Slough and Steamboat Slough, and is divided into two lobes by Deepwater Slough, wetlands and unnamed ditches, Conway, Skagit County, Washington, Sections 25 and 26, T. 33 N., R. 3E and Section 30, T. 33 N., R. 4E., 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 Washington Department of Fish and Wildlife 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 #10493 and Corps Reference #NWS-2013-757.

- A3. Work authorized by this Order is limited to the work described in the following documents:
- JARPA received by Ecology on October 3, 2013.
  - E-mail and attached figures from Belinda Rotton, Washington Department of Fish and Wildlife, to Rebekah Padgett, Ecology, *RE: Island Unit Ditch Maintenance Project*, dated October 25, 2013.
  - E-mail and attachments from Belinda Rotton, Washington Department of Fish and Wildlife, to Rebekah Padgett, Ecology, *RE: Response to letter dated November 6 Reference #NWS-2013-757*, dated January 8, 2014.

The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the documents above 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. 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.
- A6. 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.
- A7. 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.
- A8. 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.

A9. 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.

A10. 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 temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-200(1)(e)(i).

B2. The Applicant shall implement in-water construction water quality sampling and monitoring per the *Island Unit—Skagit Wildlife Area Monitoring Plan*, prepared by Washington Department of Fish and Wildlife, dated January 8, 2014, or as modified by this Order or revised and approved by Ecology.

B3. Locations of samples: At a minimum, sampling shall take place at the point of compliance as specified 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 the unnamed ditches. Background samples shall be collected outside the area of influence of the in-water work. Background samples shall be collected at the same frequency as the point of compliance samples.

B4. Detection of exceedances:

a. Water quality standards for turbidity in “Salmonid Rearing and Migration Only” waters are as follows: turbidity shall not exceed 10 NTU over background conditions when the background is 50 NTU or less, or a 20 percent increase in turbidity when the background turbidity is more than 50 NTU. If exceedances of this standard at the point of compliance specified in WAC 173-201A-200(1)(e)(i) is detected through water quality sampling and monitoring, 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.

B5. Reporting: If no exceedances are detected, results of water quality sampling, as determined by the Plan, shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.

B6. Notification of exceedances: Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification

shall be made with reference to Order #10493, 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:

- i. A description of the nature and cause of exceedance.
- ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance.
- iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
- iv. 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. Conditions for Construction Activities:**

**General Conditions:**

- C1. 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.

**Upland Conditions:**

- C2. 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.
- C3. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- C4. Equipment shall be operated from the top of the channel bank.
- C5. Existing vegetation shall be retained on the sidewalls of the channel to the maximum extent practicable.
- C6. 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.
- C7. Disturbed soils along the shoreline shall be stabilized by replanting with native vegetation or other means as approved by Ecology.

**In-Water Conditions:**

- C8. All debris or deleterious material resulting from drainage maintenance activities shall be removed from the watercourse and prevented from re-entering the channel.
- C9. 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.
- C10. 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.
- C11. 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.
- C12. All manmade debris that has been deposited below the Ordinary High Water Line (OHWL) within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Concrete rubble, metal debris, and other debris in the construction work corridor that have washed into freshwater areas shall be removed from the project area.
- C13. The Applicant shall not conduct in-water work within 300 feet of the tide gate structures.
- C14. The Applicant shall utilize best management practices in order to ensure that no dredge spoil materials re-enter the waters during excavation.
- C15. Work shall be conducted during low discharge period, in late summer to early fall.
- C16. All maintenance work shall be conducted in such a way as to minimize turbidity.
- C17. When working on the west lobe, the Applicant shall close the water control structure between Lorenzen and Ole Thompson fields in order to isolate this segment of the project.
- C18. Boards shall be placed in front of the tidegate structure to block and minimize outflow during in-water work.
- C19. Clean Fill Criteria: Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.

**Temporary Cofferdam Conditions:**

- C20. Whenever water is present, temporary cofferdams composed turbidity curtains shall be installed and properly maintained both upstream and downstream of the activity in order to protect water quality.
- C21. Temporary cofferdams shall be installed slowly and carefully in order to minimize turbidity.
- C22. When utilizing turbidity curtains, additional curtains shall be installed downstream of the first turbidity curtain as needed in order to minimize turbidity.
- C23. Temporary cofferdams shall remain in place until in-water work is completed and disturbed areas are stabilized.
- C24. Temporary cofferdams shall be removed slowly in order to minimize turbidity, and upstream cofferdams shall be removed prior to downstream cofferdams.
- C25. Dewatering water shall be routed to an area landward of the top of the channel bank for infiltration.
- C26. Upon completion of the project, all material utilized in construction of the cofferdams shall be removed from the site and the site returned to pre-project or improved conditions.

**Dredging Conditions:**

- C27. All dredging shall be conducted to historical contours of the ditch.
- C28. Each pass with the excavator bucket in the channel shall be complete.
- C29. The channel banks shall be sloped such that the resulting channel banks are stable.
- C30. Dredging shall be limited to the absolute minimum necessary to achieve the target channel width, depth, and gradient.
- C31. Excavated sediments shall not be sidecast into wetlands. Excavated materials may be deposited in adjacent agricultural fields in current production and reincorporated into the field soils or disposed of offsite.
- C32. Dredged, excavated, or mowed materials shall not be stockpiled below the top of or adjacent to the channel bank.
- C33. Any sediment that has been sidecast into wetlands or stockpiled adjacent to the channel bank as a result of conducting work prior to this Order shall be removed during the next work season or by August 1, 2014.

**Culvert Repair and Replacement Condition:**

- C34. Culvert repair and replacement shall be conducted by hand to the extent practicable.
- C35. Damaged culverts and associated fill shall be removed from the watercourse and deposited upland in order that it cannot re-enter the watercourse.
- C36. Replacement of culverts shall be conducted in place and be in kind.
- C37. Fill associated with the culvert installation and approach material shall be structurally stable and be composed of material that, if eroded into a waterbody will not be detrimental to fish life.
- C38. Fill associated with the culvert installation and approach material shall be protected from erosion to the 100-year peak flow.

**Beaver Dam Conditions:**

- C39. Explosives shall not be utilized in removal of beaver dams.
- C40. Beaver dam removal shall be conducted by hand, with hand tools, winches, and or motorized equipment.
- C41. Beaver dam removal or modification shall be conducted slowly in order to minimize turbidity.

**D. Emergency/Contingency Measures:**

- D1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- D2. 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.
- 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 March 18, 2018.

**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 season, and
  - Within 14 days after completion of construction at the project site each season.
- Notification, referencing Corps Reference #NWS-2013-757, Order #10493 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.
- F2. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per Condition A2 a written construction status report and submit status reports every 12 months until construction is complete. The report shall include:
- a. A map highlighting areas where in-water activities were completed in the previous year, along with a narrative description of work completed. This should include the spreading of dredged material into adjacent fields.
  - b. A map highlighting areas where in-water activities are planned for the upcoming year, along with a narrative description of anticipated work.

Reports shall be submitted to Ecology by February 1 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.) E-mail 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
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW STE 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> 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 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008  
(425) 649-7129  
[rebekah.padgett@ecy.wa.gov](mailto:rebekah.padgett@ecy.wa.gov)

**MORE INFORMATION**

**Pollution Control Hearings Board Website**

[www.eho.wa.gov/Boards\\_PCHB.aspx](http://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](http://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](http://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](http://www.ecy.wa.gov/biblio/wac173201A.html)

**SIGNATURE**



Erik Stockdale, Section Manager  
Shorelands and Environmental Assistance Program  
Northwest Regional Office

2-12-2014

February 12, 2014

**ATTACHMENT A**

**WASHINGTON DEPARTMENT OF FISH AND WILDLIFE  
ISLAND UNIT DITCH MAINTENANCE PROJECT  
Water Quality Certification Order #10493**

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

I have read and understand the conditions of Order #10493 Section 401 Water Quality Certification for the Washington Department of Fish and Wildlife Island Unit Ditch 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