



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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May 25, 2016

Victor Woodward
Habitat Bank LLC
801 E 1st Street, Suite B 107
Cle Elum, WA 98922

RE: Water Quality Certification Order #13235 for Corps Public Notice No. NWS-2013-00794 to operate and construct the Coweeman River Mitigation Bank near Kelso in Cowlitz County, Washington

Dear Mr. Woodward:

On December 16, 2014, Victor Woodward 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 Coweeman River Mitigation Bank. A revised JARPA was submitted to Ecology on May 11, 2015.

The project proposes to construct and operate a 302-acre wetland mitigation and conservation bank by reestablishing, creating, rehabilitation, enhancing, and preserving wetland functions across the sites, as well as, restoring and creating riparian habitat and off-channel rearing and refuge habitat along this reach of the Coweeman River.

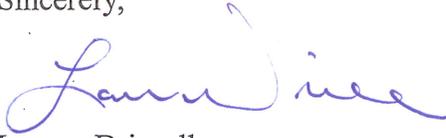
On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notices complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions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

If you have any questions, please contact Kate Thompson at 360-407-6749. The enclosed Order may be appealed by following the procedures described in the Order.



May 25, 2016
Mr. Woodward
Page 2

Sincerely,



Lauren Driscoll
Wetland Section Manager
Shorelands and Environmental Assistance Program

By certified mail 7015 0640 0001 0772 1436

Enclosure

cc: Gail Terzi – U.S. Army Corps of Engineers
Suzanne Anderson – U.S. Army Corps of Engineers
Linda Storm – US EPA Region 10
Jeff Fisher – NOAA Fisheries
Stephen Taylor – City of Kelso
E. Elaine Placido – Cowlitz County
David Howe – WDFW
Steve West – WDFW
Rudy Salakory – Cowlitz Indian Tribe
Francis Naglich – Ecological Land Services

e-cc: Loree' Randall – HQ
Sheila Pendleton-Orme – VFO, WQ
Sally Toteff – SWRO
Paula Ehlers - SWRO
Perry Lund-SWRO
Kim Van Zwalenburg – SWRO
Rebecca Rothwell – SWRO
Lori Kingsbury – SWRO
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A)	ORDER No. 13235
WATER QUALITY)	Corps Reference No. NWS-2013-00794
CERTIFICATION TO)	To construct the Coweeman River Mitigation
Victor Woodard)	Bank Project, Wetlands and Coweeman River,
in accordance with 33 U.S.C. 1341)	Cowlitz County, Washington
(FWPCA § 401), RCW 90.48.120, RCW)	
90.48.260 and Chapter 173-201A WAC)	

TO: Victor Woodward
Habitat Bank, LLC
801 E 1st Street, Suite B 107
Cle Elum, WA 98922

On December 16, 2014, Victor Woodward submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A Revised JARPA was submitted on May 11, 2015. A Joint Public Notice regarding the request was distributed by the Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on August 22, 2013. Ecology issued a public notice concerning the proposed certification of the Coweeman River Mitigation Bank Mitigation Instrument (MBI) October 14, 2015. Ecology issued a public notice concerning the request for the Section 401 Water Quality Certification on March 14, 2016.

The project proposes to construct and operate a 302-acre wetland mitigation and conservation bank. The project involves creation of 21.33 acres of wetland, rehabilitation of 14.68 acres of wetland, enhancement of 14.53 acres of wetland, preservation of 8.44 acres of wetland, enhancement of 28.89 acres of riparian upland, and preservation of 206.38 acres of old growth and second growth forested hillside.

The project also includes 7.75 acres of the Coweeman River. Within these areas the project proposes to:

- Create additional wetlands within the floodplain by excavating higher-elevation upland areas around existing wetland areas.
- Create off-channel/side-channel fish habitat areas along the Coweeman River.
- Rehabilitate and/or enhance existing wetland areas by removing cattle, removing drain tiles and ditches, and planting native vegetation.
- Increase mainstem channel complexity through the installation of woody debris and/or create bench/shelf habitat along the mainstem of the Coweeman River by reshaping the riverbank in key locations.
- Remove riprap and debris that was previously placed along and within the river to stabilize the riverbank.

Proposed alterations to the existing aquatic resources on the site are as follows:

- Approximately 0.49 acre of wetland will have permanent impacts by excavating existing wetlands in order to provide additional wetland area and excavating channels to promote fish access on the site.
- Approximately 0.04 acre of wetland will have permanent impacts by the placement of stream gravel within constructed channels and within the deltas of onsite tributaries.

These impacts are expected to be mitigated by the bank project itself. The net gain of wetland acreage and function will be significant. The entire project boundary is protected from current land use by buffers except for the northern section bordered by the Coweeman River. The entire project is protected in perpetuity by a conservation easement. The Coweeman River MBI, dated March 2016 and certified by Ecology on May 5, 2016, serves to outline and describe the legal agreements made by the permittee and signatories of the MBI, as well as the detailed implementation plan for the establishment and operation of the Coweeman River Mitigation Bank.

No physical address has been assigned for the property where the work is being performed. The general project location is the terminus of Valley View Drive within both the City of Kelso and Cowlitz County, Washington, and is adjacent to the Coweeman River, approximately three miles upstream of its confluence with the Cowlitz River. The bank site is located within portions of Section 36, Township 8 North, Range 2 West, and Section 31, Township 8 North, Range 1 West; in Water Resource Inventory Area 26 (Cowlitz Watershed).

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:

1. For purposes of this Order, the term "Applicant" shall mean Victor Woodward and his agents, assignees, and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Headquarters Office, Attn: Wetland Banking Specialist, P.O. Box 47600 Olympia, WA 98504-7600 and/or fednotification@ecy.wa.gov. Any submittals shall reference Order No. 13235 and Corps Reference No. NWS-2013-00794.
3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resources Permit Application (JARPA) received by Ecology on May 11, 2015. The Applicant will be out of compliance with this Order and must submit an updated JARPA if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
4. The Applicant shall construct the project as described in the MBI prepared by Habitat Bank, LLC and dated March 2016, or as modified by this Order or revised and approved by Ecology.
5. 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.
6. 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.
7. The Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
8. 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. Furthermore, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified, or if additional conditions are necessary to further protect water quality.

9. 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.**
10. 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.
11. 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:

1. This Order does not authorize the Applicant to exceed applicable state water quality standards for turbidity as described in WAC 173-201A-200 (1)(e).
2. The Applicant shall submit a Water Quality Monitoring Plan (WQMP) to the Wetland Banking Specialist for review and approval at least 20 days prior to beginning work below the ordinary high water line (OHWL), in-water and over-water. **Work is not authorized to begin until approval is received.** At a minimum, the WQMPP shall include:
 - a. A water sampling plan for turbidity which include sample locations and frequency;
 - b. Sampling locations for turbidity shall include, but are not limited to; background, half the distance to the point of compliance and at the point of compliance (see below), unless otherwise approved by Ecology.

Waterbody	Point of Compliance
Side Channels	100' down stream of activity
Coweeman River	300' down stream of activity

- c. A map with numbered or named sampling locations associated with the in-water work activities.
 - d. Contingencies during in-water work activities if a exceedance occurs.
3. Ecology must approve, in writing, any changes or additions to the WQMPP.

4. Monitoring results shall be submitted monthly to the Ecology Wetland Banking Specialist, per condition A.2.

C. Project-Specific Conditions

1. The Applicant shall have a wetland professional at the site to supervise during construction and planting.
2. Applicant shall obtain and comply with the conditions of the current Construction Stormwater permit (National Pollutant Discharge Elimination System—NPDES) issued for this project.
3. All work in and near waters of the state shall be conducted so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control best management practices (BMPs) suitable to prevent exceedances of state water quality standards shall be in place before starting clearing, filling, and grading work and shall be inspected and maintained throughout construction.
4. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
5. All work within the project limits shall be clearly marked/staked prior to construction. Clearing limits, travel corridors, stockpile locations, and staging areas shall be clearly marked prior to commencing construction activities and maintained until all work is completed for this project. Equipment shall enter and operate within the marked clearing limits, corridors, staging, and stockpile areas only.
6. Clean Fill Criteria: The Applicant shall ensure that fill (soil and stream gravel) placed for the proposed project does not contain toxic materials in toxic amounts.
7. All equipment operating within and over state waters shall utilize only vegetable-based biodegradable hydraulic fluid.
8. All construction equipment shall be clean and inspected daily before use to ensure that the equipment is free from external petroleum products and has no fluid leaks.
9. Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and undercarriage of equipment prior to its working below the OHWM.
10. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in a confined area in order to prevent contamination to waters of the state. Fueling areas shall be provided with adequate spill containment.

11. Staging area will be located a minimum of 50 feet, and where practical, 200 feet from waters of the state (including wetlands), unless otherwise authorized by Ecology.
12. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working area shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
13. All construction debris from this project shall be properly disposed of on upland so that it cannot enter a waterway (including wetlands) or cause water quality degradation to state waters, unless otherwise provided for in the MBI.
14. The Applicant shall ensure that all excess excavated site material is disposed of only within those areas identified in the MBI Appendix B, Figure B-4.
15. The Applicant shall not use polyacrylamide at the site.
16. The Applicant shall not use hay or straw on exposed or disturbed soil at the site.
17. Aquatic herbicides can be used or applied only by certified applicators or persons under the direct supervision of a certified applicator, and only for those uses covered by the certified applicator's license category. Applicators are required to be permitted under Ecology's Noxious Weed Control Permit. Applicators shall comply with all conditions of the Noxious Weed Control Permit.
18. If weed-barrier fabric is used on the site, the Applicant shall use only permeable, fully biodegradable, non-toxic weed-barrier fabric for entire-site and/or individual plant weed control. Non-biodegradable plastic weed-barrier fabric shall be used only at the base of individual plants and shall be removed before it starts to break down, before it interferes with plant growth, or before the end of the monitoring period, whichever comes first.
19. If seeding is used as a best management practice for temporary erosion control, it must be a seed mix consisting of native, annual, non-invasive plant species.
20. If solid or mesh plant protector tubes are used on the site, Ecology strongly recommends that the Applicant use fully biodegradable options. If non-biodegradable plant protection options are used, they shall be removed before they interfere with plant growth or before the end of the monitoring period, whichever comes first.

Stream Bypass & Culvert Removal

21. All culvert work shall be conducted in the dry or in isolation from waters of the state.
22. Any temporary bypass or stream diversion system shall be in place prior to initiation of in-water work.

23. Any stream diversion or bypass shall be designed and operated so that it does not cause erosion or scour in the stream channel or on the banks of the water where in-water work is being done.
24. The temporary diversion or bypass shall be of sufficient size, constructed of non-erosive materials, and installed to divert the entire flow through the bypass or around the isolated work area for the duration of the project.
25. Prior to returning stream flow to the work areas, all bank protection measures shall be in place.
26. Reintroduction of water to the channel shall be done gradually, and at a rate not higher than the normal stream flow, in order to minimize the mobilization of sediments and fines into downstream waters.
27. Upon completion of the in-water work in a given area within the project site, all materials used in the temporary bypass or stream diversion shall be removed from the site and placed in an approved upland site.
28. Temporary sediment traps shall be cleaned out and settled sediments removed from the stream channel before removing the stream diversion system and returning the flow of the surface waterbody to its channel. Settled sediments shall not be allowed to enter surface waters due to water or runoff flows that may occur after construction is completed.

D. Operational Conditions

1. Project operational and monitoring activities shall be achieved through measures described in the MBI, or as modified by this Order or revised and approved by Ecology.
2. No mitigation credits associated with the work on this project will be released for sale or transfer until the MBI is approved by Ecology, the Corps of Engineers, the National Marine Fisheries Service, Cowlitz County, and the City of Kelso, and all performance standards associated with Objective 1 in the MBI are met.
3. Monitoring and reporting of site conditions will be conducted and submitted in accordance with Appendix F of the MBI, or as modified by this Order or revised and approved by Ecology.

E. Timing Requirements:

1. All project related activities located within the wetted perimeter (aka "live water") shall be accomplished July 15 through September 30 for calendar years 2016, 2017, 2018, 2019, and 2020; all project related activities located above the wetted perimeter, but at or

below the ordinary high water line (OHWL) shall be accomplished June 15 through October 15 for calendar years 2016, 2017, 2018, 2019, and 2020. Any project change that requires a new or revised HPA shall also be sent to Ecology for review.

2. This Order shall remain in effect for the life of the Coweeman River Bank.

F. Notification Requirements:

1. The Applicant shall provide written notification (FAX, e-mail, or mail) to Ecology's Wetland Banking Specialist in accordance with condition A.2 above for the following activities:
 - a. At least ten (10) days prior to the onset of in-water work (including wetlands) for each construction season.
 - b. No more than ten (10) days after completion of in-water work for each project season.
 - c. Immediately following a violation of the state water quality standards or any condition of this Order.
 - d. Within fourteen (14) days after completion of project construction.

G. Emergency/Contingency Measures:

1. The Applicant shall develop a Spill Prevention and Containment Plan for this project and shall have spill cleanup materials and an emergency call list available on site.
2. 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 or operator shall immediately take the following actions:
 - a. Cease operations that are causing the compliance problem.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
 - d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.

- e. Immediately notify Ecology’s 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology’s Wetland Banking Specialist/401 Federal Permit Coordinator at (360) 407-6749.
 - f. 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.
3. 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, including wetlands.
 4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology using the above phone numbers.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearings 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 all 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
<p>Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503</p>	<p>Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608</p>
<p>Pollution Control Hearings Board 1111 Israel RD SW, STE 301 Tumwater, WA 98501</p>	<p>Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903</p>

CONTACT INFORMATION

Please direct all questions about this Order to:

Kate Thompson
Department of Ecology
Headquarters
PO Box 47600
Lacey, WA 98504
kate.thompson@ecy.wa.gov

MORE INFORMATION

Pollution Control Hearings Board Website

www.eho.wa.gov/Boards_PCHB.aspx

Chapter 43.21B RCW - Environmental 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

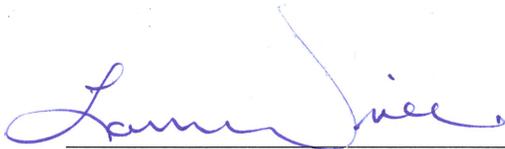
Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington

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



Lauren Driscoll
Wetland Section Manager
Shorelands & Environmental Assistance Program

May 25, 2016

ATTACHMENT A

**Victor Woodward
Coweeman River Bank
Water Quality Certification Order #13235**

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

I have read and understand the conditions of Order #13235 Section 401 Water Quality Certification for the Coweeman River Bank. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this order.

Signature

Date

Print Name

Company

Title

