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

July 7, 2011

Jerome Ryan
Clear Valley Environmental Farms, LLC
P.O. Box 2281
Sebastopol, California 95473

RE: Water Quality Certification Order #8601 for Corps Public Notice No. 200600098 to operate and construct the Skagit Environmental Bank in and surrounding Nookachamps Creek and tributaries in Skagit County, Washington

Dear Mr. Ryan:

On July 12, 2006, Clear Valley Environmental Farms, LLC 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 Skagit Environmental Bank. A JARPA revision was submitted to Ecology on August 25, 2006. Requests to withdraw and re-apply for a 401 Certification were submitted on July 8, 2007, June 30, 2008, May 18, 2009, May 4, 2010, and April 11, 2011.

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 Christina Merten at 425-649-7007. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Geoff Tallent, Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program

By certified mail: 7009 1410 0001 5661 7077

cc: Gail Terzi – U.S. Army Corps of Engineers
Krista Rave-Perkins – US EPA Region 10
Betsy Stevenson – Skagit County PDS

Wendy Cole – WDFW
Mark Merkelbach – Herrera Environmental Consultants
Brent Carson – Gordon Derr, LLP
Allison Deets - Skagit County Farmland Legacy Program
Andrea Xaver
Bob Rose - Skagitonians to Preserve Farmland
Brad Ack - Puget Sound Action Team
Cairnyan Mower
Carolyn Kelly - Skagit Conservation District
Chal Martin - Skagit County PWD
Diana Davis
Diane Freethy - Skagit Citizens Alliance for Rural Preservation
Donald Bottles
Doris Brevoort
Ellen Bynum - Friends of Skagit County
Erick Aurand - Skagit County PWD
Gene and Marilyn Derig
Gene DiLabio
Howard Pellett - Friends of Skagit County
Jacque Gent - Skagit County PWD
Janice Mabee - Sauk-Suiattle Tribe
Jay Gordon - Washington State Dairy Federation
Jeff Eustis - Aramburu and Eustis
Jerry Jewett
Jim Comrada
Joe & Annette LeClair
John & Kim Mower
Katherine Chaplin
Kathryn Gardow - PCC Farmland Trust
Kenneth Johnson
Larry Gadbois
Larry Jensen
Larry Wasserman - Skagit River System Cooperative
Mary Heinricht - Ag Prospects
Mike Shelby - Western Washington Ag Assoc
Mike Rundlett - Western Washington Ag Assoc
Molly Doran - Skagit Land Trust
Murray Benjamin
Randall Brower - Skagit Co. PUD #1
Randy Good - Skagit County Cattlemen's
Stan Walsh - Skagit River System Cooperative
Steven Johnson
Suzanna Dentel
Tom Glade - Evergreen Islands
Virginia Darvill

e-cc: Loree' Randall – HQ
Raman Iyer - NWRO
Sally Lawrence – NWRO
Bob Fritzen – BFO
DeForest Arbogast - arbogast@fidalgo.net
Mark Feiro – feiro1@comcast.net
Paul Klein - p.klein@rijkzwaan.com
Sarah Hill - sboo@comcast.net
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO CLEAR VALLEY ENVIRONMENTAL FARMS, LLC in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)	**ORDER #8601** **Corps Reference #200600098** Skagit Environmental Bank Project construction and operation, Nookachamps Creek and tributaries, Skagit County, Washington.

TO: Clear Valley Environmental Farms, LLC
P.O. Box 2281
Sebastopol, California 95473

On July 12, 2006, Clear Valley Environmental Farms, LLC submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A JARPA revision was submitted to Ecology on August 25, 2006. Requests to withdraw and re-apply for a 401 Certification were submitted on July 8, 2007, June 30, 2008, May 18, 2009, May 4, 2010, and April 11, 2011. A joint public notice regarding the initial proposal of this project as a wetland mitigation bank was distributed by the U.S. Army Corps of Engineers (Corps) on March 10, 2006. A joint public notice regarding the Section 401 Water Quality Certification request was distributed by the Corps for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on January 7, 2009. Ecology held a public hearing for review of this request on June 4, 2009. A public notice concerning the hearing was distributed by Ecology on May 21, 2009. Ecology issued additional public notices concerning the request for a Section 401 Water Quality Certification on June 9, 2010 and April 22, 2011.

The proposed project entails constructing and operating a 396-acre wetland mitigation bank. The project will rehabilitate 13,000 feet of existing stream channel and riparian habitat; restore 6,500 feet of new high-flow back channels; enhance, re-establish, or rehabilitate 245 acres of wetlands; and enhance 142 acres of uplands. Approximately 80 percent of the site is expected to be wetland following completion of all phases of construction.

The overall project work will be done in three phases. During Phase 1, three engineered log jams will be placed in the main stem and east fork of Nookachamps Creek and drainage ditches will be filled. After monitoring the effects of Phase 1 activities on groundwater levels and surface flow patterns, Phase 2 will involve extensive grading and planting of the site to restore wetland, create the high-flow back channels, and enhance upland areas. Phase 3 will include minor grading and additional planting as needed.

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

- During Phase 1, approximately 5.65 acres of wetland will have temporary impacts by placement of up to 13,677 cubic yards of fill as a result of filling ditches on site in support of raising the groundwater elevations on the site.
- During Phase 1, the main stem and the east fork of Nookachamps Creek will be temporarily impacted by placement of up to 1,077 cubic yards of gravel and excavation of up to

240 cubic yards of material from below the ordinary high water mark. This work is associated with the installation of three engineered log jams.

- During Phases 2 and 3, a maximum of 1.2 million cubic yards of material will be removed from the site. This is the total amount of site excavation in both uplands and wetlands. Total wetland excavation will not exceed 64,817 cubic yards from up to 13 acres of wetland delineated in the *Skagit Environmental Bank Wetland Mitigation Bank - Wetland Delineation Report,* revised February 2006. This work will lower the ground elevations in those areas and establish wetland hydrology based on data collected after Phase 1 construction.

These impacts are expected to be mitigated by the bank project itself. The net gain of wetland and stream acreage and function will be significant. The entire project boundary is protected from current land use by buffers and the entire project is protected in perpetuity by a conservation easement and reserve easement.

The Skagit Environmental Bank Mitigation Banking Instrument (MBI), dated April 2011 and certified by Ecology on May 23, 2011 serves to outline and describe the legal agreements made by the project permittee and the Corps and Ecology as well as the detailed implementation plan for the establishment and operation of the Skagit Environmental Bank.

The Skagit Environmental Bank is located 1.5 miles northeast of Mount Vernon in Skagit County, Washington. The 396-acre site is bounded by State (SR) 538 on the south, SR 9 and Babcock Road on the east, and Swan Road on the north. The property lies within Sections 10, 11, 14, and 15, Township 34 North, Range 4 East on the Mount Vernon 7.5 minute U.S. Geologic Survey (USGS) quadrangle map, Skagit County at 48° 24' 26" N and 122° 19' 18" W. The Bank is located in the Washington State Water Resource Inventory Area (WRIA) 3 - Lower Skagit-Samish Watershed, and the Nookachamps sub-watershed, south of the confluence of the Skagit River and Nookachamps Creek.

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 Clear Valley Environmental Farm, LLC and its agents, assignees and contractors.

A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Headquarter Office, Attn: Wetland Banking Specialist/Federal Project Manager, P.O. Box 47600, Olympia, WA 98504-7600. Any submittals shall reference Order #8601 and Corps Reference #200600098.

A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on July 12, 2006 (revised on August 25, 2006) and supplemental materials reviewed and approved by Ecology and the Interagency Review Team (IRT). 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 site.

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. The sections of Nookachamps Creek, East Fork Nookachamps, and their tributaries that are within the project boundaries are classified as "Char Spawning and Rearing" areas and the criteria of that class apply except as specifically modified by this Order. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-200(1)(e)(i).

B2. <u>In-Water Construction Water Quality Sampling and Monitoring</u>: A Water Quality Protection and Monitoring Plan (Plan) shall be developed and implemented. "In-water construction" is defined as all work below the ordinary high water mark.

The Plan shall include the following minimum requirements:

a. <u>Locations of samples</u>: Locations of water quality sampling sites shall be identified and described in the Plan and on a map of the project area. At a minimum, sampling shall take place at the point of compliance as specified in WAC 173-201A-200(1)(e)(i). 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.

b. Number of samples: Number and frequency of water quality samples to be taken.

c. Parameter to be sampled: Turbidity shall be sampled for this project.

d. Equipment: Sampling for turbidity is to be accomplished using a turbidometer properly calibrated according to the operator's manual.

e. Best Management Practices (BMPs): A description of the BMPs that will be used during construction to protect water quality.

f. Detection of exceedances: Water quality standards for turbidity in "Char Spawning and Rearing" waters are as follows: turbidity shall not exceed 5 NTU over background conditions when the background is 50 NTU or less, or a 10 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.

g. 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.

h. 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 #8601, Attn: Wetland Banking Specialist/Federal Project Manager, by telephone at (425) 649-7007 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. The Applicant shall construct the project as described in the Skagit Environmental Bank Mitigation Banking Instrument (hereafter called the "MBI") prepared by Clear Valley Environmental Farms, LLC and dated April 2011, or as modified by this Order or revised and approved by Ecology.

C2. The Applicant shall have a wetland professional at the site during construction and planting.

C3. Applicant shall obtain and comply with a Construction Stormwater General Permit for this project.

C4. 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.

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

C6. All construction debris shall be properly disposed of on land so that it cannot enter a waterway, wetlands, or their buffers at any time or cause water quality degradation to state waters.

C7. Machinery and equipment used during construction shall be serviced, fueled, and maintained only in designated staging areas identified in the Appendices to the MBI, Exhibit 2, Drawing No. C-1, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.

C8. 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.

C9. Applicant shall ensure that all fill placed for the proposed project comes only from the wetland mitigation bank site.

C10. The Applicant shall ensure that excess excavated site material is stockpiled only within those areas identified in the Appendices to the MBI, Exhibit 2, Drawing No. C-18, or as modified by this Order or revised and approved by Ecology.

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. The Applicant shall not use Polyacrylamide on exposed or disturbed soil at the project site.

C13. The Applicant shall not use hay or straw on exposed or disturbed soil at the project site.

C14. When seeding is used at the bank site, the seed mix must contain native non-invasive plant species.

Engineered Log Jam Installation:

C15. Engineered Log Jams shall be constructed as approved in the Appendices to the MBI, Appendix B and Exhibit 2. No additional stabilization measures (e.g. cabling, chaining, ecology blocks, etc.) shall be implemented for these structures without prior approval from Ecology.

C16. The Applicant shall have a qualified and licensed design engineer at the site during construction of the Engineered Log Jams.

D. Operational Conditions

D1. 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.

D2. No mitigation credits associated with the work on this project will be released for sale or transfer until the MBI is certified by Ecology, the Corps of Engineers, and Skagit County and all performance standards associated with Objective 1 and 2 in the MBI are met.

D3. 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. 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 Wetland Banking Specialist/Federal Project Manager at (425) 649-7007 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 is valid for the term of the Corps permit that is issued for this project.

G. Reporting and Notification Requirement Conditions

G1. Applicant shall provide notice of the start and end of construction to Ecology's Wetland Banking Specialist/Federal Project Manager as follows:

- At least three (3) business days prior to the start of each construction season.
- At least three (3) business days prior to stream diversion removal and stream re-introduction for each engineered log jam.
- Within 10 business days after completion of construction for each season at the project site.

Notification, referencing Corps Reference #200600098, Order #8601 can take place by telephone to (425) 649-7007 or (425) 649-7000, fax to (425) 649-7098, or in writing via electronic mail or postal service.

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

CONTACT INFORMATION

Please direct all questions about this Order to:

Christina Merten
Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008
(425) 649-7007
christina.merten@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

7/7/11

Geoff Tallent, Section Manager
Shorelands and Environmental Assistance Program
Northwest Regional Office

July 7, 2011

ATTACHMENT A

SKAGIT ENVIRONMENTAL BANK PROJECT
Water Quality Certification Order #8601

Statement of Understanding of
Water Quality Certification Conditions

I have read and understand the conditions of Order #8601 Section 401 Water Quality Certification for the Skagit Environmental Bank project. I have also read and understand all permits, plans, documents, and approvals associated with the Skagit Environmental Bank project referenced in this Order.

_____ _____
Signature Date

_____
Title

_____
Company