



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

July 28, 2011

Mr. Steve Sego
East Fork Lewis Mitigation Partners, LLC
PO Box 354
Kirkland, WA 98033-0354

RE: Water Quality Certification Order #8635 for Corps Public Notice No. 200800215
to operate and construct the East Fork Lewis Wetland Mitigation Bank near La
Center in Clark County, Washington

Dear Mr. Sego:

On January 7, 2011, East Fork Lewis Mitigation Partners, 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 East Fork Lewis Wetland Mitigation Bank.

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.

Sincerely,

Paula Ehlers, Section Manager
Southwest Regional Office
Shorelands and Environmental Assistance Program

By certified mail 7010 0780 0002 3400 4527

Enclosure



cc: Gail Terzi – U.S. Army Corps of Engineers
Steve Manlow – U.S. Army Corps of Engineers
Yvonne Vallette – US EPA Region 10
Brent Davis –Clark County
David Howe– WDFW
Anne Friesz - WDFW
Francis Naglich – Ecological Land Services
Justin Clary – City of Ridgefield
John Williams – City of Battle Ground
Dale Miller – City of La Center

e-cc: Loree' Randall – HQ
Sheila Pendleton-Orme – VFO
Sally Toteff – SWRO
Perry Lund-SWRO
Kim Van Zwalenburg – SWRO
Rebecca Schroeder – SWRO
Lori Ochoa – SWRO
Alan Bogner - ORA
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A) ORDER # 8635
WATER QUALITY) Corps Reference #200800215
CERTIFICATION TO) East Fork Lewis Wetland Mitigation Bank
East Fork Lewis Mitigation Partners) Project construction and operation, tributary to
LLC) Rock Creek, located in Clark County,
in accordance with 33 U.S.C. 1341) Washington.
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)
)

TO: East Fork Lewis Mitigation Partners LLC
15600 NE 173rd Street
Woodinville, WA 98072

On January 7, 2011, Ecology received a Joint Aquatic Resources Permit Application (JARPA) from East Fork Lewis Mitigation Partners, LLC, requesting a 401 Water Quality Certification (WQC). 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 23, 2007. Ecology issued a public notice regarding the proposed certification of the project on December 8, 2010. Ecology issued a public notice concerning the request for a Section 401 Water Quality Certification on February 14, 2011.

The proposed project entails constructing and operating a 113-acre wetland mitigation bank. The project involves re-establishment of 108.20 acres of wetland, enhancement of 0.29 acres of wetland, and preservation of 4.77 acres of wetland and upland forest. The wetland re-establishment and enhancement activities involve contouring ditches, disrupting the existing tile system, and plugging and filling of ditches to restore hydrology to the site. Material for ditch filling activities will be generated by excavation of a shallow swale in the southwest corner of the site. A rock weir outfall structure in the southeast corner and an overflow rock spillway along the tributary in the northern portion of the site will be constructed to prevent erosion and to provide emergency overflow protection during high water events. After the site is graded, the site will be planted with a mix of native species appropriate for wetland conditions that will help stabilize the site, improve wetland water quality functions, and provide wildlife habitat.

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

- Approximately 0.05 acres of wetland will have temporary impacts by placement of up to 4,150 cubic yards of fill as a result of filling and plugging ditches on site in support of raising the groundwater elevations on the site.
- Installation of the spillway and weir will result in 1600 feet of impact to North and South ditch by placement of 912 cubic yards of fill and erosion control rock.
- The North ditch will be temporarily impacted by the removal and replacement of three fish passable culverts

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 and the entire project is protected in perpetuity by a conservation easement. The *East Fork Lewis Wetland Mitigation Bank Mitigation Bank Instrument* (MBI) dated March 7, 2011 and certified by Ecology on June 6, 2011, serves to outline and describe the legal agreements made by the permittee and signatories of this bank as well as the detailed implementation plan for the establishment and operation of the East Fork Lewis Wetland Mitigation Bank.

The East Fork Lewis Wetland Mitigation Bank is located at 14830 NE 379th Street, La Center, Washington. The site is bordered by agricultural land and NE Reid Road to the north, undeveloped forest borders to the west, agricultural land borders on the east, and rural residential homes border the Bank site to the south. The property is located in the southeast quarter of Section 23, Township 5 North, Range 2 East in the Rock Creek (north) Sub-basin of Water Resource Inventory Area 27 (Lewis Watershed)

AUTHORITIES

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed 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 comply with 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 quality 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 East Fork Lewis Mitigation Partners, LLC, and its agents, assignees and contractors.
2. All submittals required by this Order shall be sent to Ecology's HQ, Attn: Wetland Banking Specialist/Federal Permit Coordinator, Shorelands and Environmental Assistance Program, PO Box 47600, Olympia, WA 98504 or via-email: kate.thompson@ecy.wa.gov . Notifications shall be made via phone or e-mail, e-mail is preferred. All submittals and notifications shall be identified with Order No. 8635 and Corps Reference #200800215 and include the Applicant's name, project name, project location, the project contact and the contact's phone number.
3. Notification shall be made via phone or e-mail (e-mail is preferred) to Ecology's Wetland Banking specialist in accordance with condition A.2, for the following activities:
 - a. Immediately for any work that is out of compliance with the provisions of this Order, and
 - i. 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.
 - b. At least seven (7) days prior to the start of each construction season.
 - c. At least five (5) days prior to bypass removal and stream re-introduction.
 - d. At least seven (7) days after completion of construction for each season at the project site.
4. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on January 7, 2011, 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.
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 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.
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. 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.
9. The Applicant shall ensure that all project engineers, contractors, and other workers at the project site with authority to direct work 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 signatory that s/he has read and understands the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins.
10. 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.
11. Failure of any person or entity to comply with the Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

B. Water Quality

1. The sections of the tributaries of the Lewis River and East Fork, from and including Mason Creek to Multon Falls, that are within the project boundaries are classified as "Core Summer Habitat" 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).
2. In-Water Construction Water Quality Sampling and Monitoring: A Water Quality Monitoring and Protection Plan (WQMPP) shall be submitted to the Wetland Banking Specialist/Federal Permit coordinator for review and approval at least 20 days prior to commencing in-water work. **In-water work shall not begin until Ecology approves**

the WQMPP. "In-water construction" is defined as all work below the ordinary high water mark.

The Plan shall include the following minimum requirements:

- a. Locations of samples: 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 and procedures that will be used during construction to protect water quality.
- f. Detection of exceedances: Water quality standards for turbidity in "Core Summer Habitat" 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 in accordance with condition A.2. 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. Construction Activities

1. The Applicant shall construct the project as described in the East Fork Lewis Wetland Mitigation Bank Instrument (hereafter called the "MBI") prepared by East Fork Lewis Mitigation Partners, LLC and dated March 7, 2011, or as modified by this Order or revised and approved by Ecology.
2. The Applicant shall have a wetland professional at the site during construction and planting.
3. Applicant shall obtain and comply with the conditions of the current Construction Stormwater permit (National Pollutant Discharge Elimination System-NPDES) issued for this project.
4. 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.
5. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
6. 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.
7. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination to surface waters. All fueling areas will be provided with adequate spill containment. During fueling and servicing of cranes, BMP's shall be in place to contain any spill of petroleum products.

8. 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.
9. Clean Fill Criteria: Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.
10. The Applicant shall ensure that excess excavated site material is stockpiled only within those areas identified in the MBI Appendix B, Figure B-3.
11. 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.
12. The Applicant shall not use Polyacrylamide on exposed or disturbed soil at the mitigation site(s).
13. The Applicant shall not use hay or straw on exposed or disturbed soil at the project site(s).
14. If seeding is used at the bank site, the seed mix must contain native, non-invasive plant species.

Stream Bypass & Culvert Replacement

15. Culvert work shall be conducted in the dry or in isolation from waters of the state. Any temporary bypass or stream diversion system shall be in place prior to initiation of in-water work.
16. 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.
17. Prior to returning stream flow to the work area, all bank protection measures shall be in place.
18. 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.
19. 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.

20. 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 natural channel. Settled sediments shall not be allowed to enter state surface waters due to water or runoff flows that may occur after construction is completed.
21. Fresh concrete or concrete by-products shall not enter state waters at any time during the project. All forms used for concrete shall be completely sealed to prevent the possibility of fresh concrete entering state waters.
22. When possible, all concrete shall be poured during dry weather and in dry de-watered site. If this is not possible, the concrete process water shall not enter waters of the state. All concrete shall be completely cured prior to coming into contact with state waters. Any contact water discharged from a confined area with curing concrete shall be disposed of appropriately with no possible entry to state waters.

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 certified by Ecology, the Corps of Engineers, and Clark County 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. Emergency/Contingency Measures

1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
2. 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.
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.

4. 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 Coordinator at (360) 407-6749 or (360) 407-6000.
 - 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

1. This Order is valid until all compliance requirements as outlined in the MBI in this document have been met.
2. In-water work shall be subject to timing limitations imposed by Washington Department of Fish and Wildlife (WDFW). Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by WDFW that fisheries resources may be adversely affected.

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:

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



Paula Ehlers, Section Manager
Shorelands & Environmental Assistance Program
Southwest Regional Office

7.28.11

Date

ATTACHMENT A

**EAST FORK LEWIS WETLAND MITIGATION BANK PROJECT
Water Quality Certification Order #8635**

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

I have read and understand the conditions of Order #8635 Section 401 Water Quality Certification for the East Fork Lewis Wetland Mitigation Bank 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

