



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

July 22, 2010

BNSF Railway Co. (BNSF)
Attn: Donald Omsberg, BNSF Manager Engineering
2454 Occidental Avenue South, Suite 1-A
Seattle, WA 98134

WSDOT Rail Office
Attn: Kevin Jeffers, WSDOT Rail Engineering Manager
PO Box 47407 / 310 Maple Park Ave. SE
Olympia, WA 98504-7407

RE: Requested Amendment to Administrative Order #7238 for U.S. Army Corps of Engineers
Reference #NWS-2008-1520-NO, BNSF Stanwood Siding Project, Wetlands, Snohomish
County, Washington

Dear Mr. Omsberg and Mr. Jeffers:

Enclosed is an amendment to the Water Quality Certification issued on December 3, 2009, for
the above project.

The purpose of this amendment is to respond to the May 6, 2010 request by Pierre Bordenave to
change the wetland mitigation proposal. The mitigation was to occur onsite (0.18 of an acre) and
off-site (1.32 acres) at the Skagit River System Cooperative Milltown Island Restoration Project
site. In the revised proposal, impacts will be mitigated for with the same onsite work and
through purchase of credits from the Nookachamps Wetland Mitigation Bank.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed
Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,


Erik Stockdale, Unit Supervisor
Northwest Regional Office
Shorelands and Environmental Assistance Program

ES:rrp:cja

By certified mail # 7009 2820 0001 7154 4624 (Donald Omsberg)
By certified mail # 7009 2820 0001 7154 4631 (Kevin Jeffers)



cc: Ron Wilcox, U.S. Army Corps of Engineers
Pierre Bordenave, Intermountain Resources
Sue PaDelford, Intermountain Resources
Craig Ladiser, Snohomish County
Roxanne Pilkenton, Snohomish County
Elizabeth Phinney, WSDOT State Rail and Marine Office

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**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

IN THE MATTER OF GRANTING)	ORDER #7238 Amendment
A WATER QUALITY)	U.S. Army Corps of Engineers
CERTIFICATION TO)	#NWS-2008-1520-NO
BNSF Railway Co. (BNSF) and)	BNSF Stanwood Siding Project;
WSDOT Rail Office)	Wetlands, Snohomish County, Washington.

TO: BNSF Railway Co. (BNSF)
Attn: Donald Omsberg, BNSF Manager Engineering
2454 Occidental Avenue South, Suite 1-A
Seattle, WA 98134

WSDOT Rail Office
Attn: Kevin Jeffers, WSDOT Rail Engineering Manager
PO Box 47407 / 310 Maple Park Ave. SE
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As requested on May 6, 2010, the Department of Ecology (Ecology) is amending the above-referenced Administrative Order.

This amendment is issued under the provisions of Chapter 90.48 RCW and Chapter 173-201A WAC.

Administrative Order #7238 is hereby amended as follows:

1. Conditions B1 through B26 that read:

- B1. The Applicant shall mitigate wetland impacts as described in the *Waters of the U.S. Delineation, Impacts, Mitigation Report* (hereafter called the "Conceptual Mitigation Plan") prepared by InterMountain Resources, and dated April 30, 2009, or as modified by this Order or revised and approved by Ecology.

A Final Wetland Mitigation Plan shall be prepared and submitted to Ecology for review and approval within 60 days of the date of this Order. The Final Mitigation Plan shall include, at a minimum, as-built grading and planting, contingency, and monitoring plans along with goals, objectives, and verifiable performance standards.

- B2. The Applicant shall submit any changes to the Final Mitigation Plan in writing to Ecology (see A2) for review and approval before work begins.

- B3. The Applicant shall get review and written approval from Ecology of any plan changes required if problems arise during construction and planting of the wetland mitigation site.
- B4. The Applicant shall have a wetland professional at the wetland mitigation site during construction and planting.

Implementation

- B5. Unless otherwise approved by Ecology in writing, the Applicant shall begin the compensatory mitigation project before, or concurrent with, impacting wetlands or Ecology may require additional compensation to account for additional temporal loss of wetland functions.
- B6. If the mitigation site(s) can not be completed within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of
 - a) BNSF Stanwood Siding Project.
 - b) Milltown Island and onsite mitigation sites.With the:
 - c) Reason for the delay.
 - d) Expected date of completion.

The Applicant shall submit an updated written notification every 12 months thereafter until the BNSF Stanwood Siding Project and Milltown Island and onsite mitigation sites are complete.

- B7. The Applicant shall ensure that all excess excavated site material is disposed of in an appropriate location outside of wetlands and their buffers at the wetland mitigation sites and above the 100-year floodplain.
- B8. The Applicant shall ensure that no material is stockpiled within existing wetlands and their buffers at the wetland mitigation site(s) at any time, unless provided for in the Ecology-approved Mitigation Plan.
- B9. The Applicant shall ensure that no construction debris is deposited within existing wetland and their buffers at the wetland mitigation site(s) at any time, unless provided for in the Ecology approved Mitigation Plan.
- B10. The Applicant shall not use Polyacrylamide on exposed or disturbed soil at the mitigation site(s).
- B11. The Applicant shall not use hay or straw on exposed or disturbed soil at the mitigation site(s).
- B12. If seeding is used at the wetland mitigation site, the seed mix must contain native, annual, non-invasive plant species.

- B13. The Applicant shall place signs at the mitigation areas' boundaries, including buffers, every 75 feet to mark the areas as wetland mitigation site(s).
- B14. Upon completion of site-grading and prior to planting, the Applicant shall submit to Ecology written confirmation that the finished grades are consistent with the approved Final Mitigation Plan or subsequent Ecology-approved plan changes. Written confirmation can be in the form of a signed letter from the surveyor or project engineer indicating how final elevations were confirmed and whether those elevations are consistent with the Final Mitigation Plan.
- B15. Within 90 days of completing construction and planting of the mitigation sites, the Applicant shall submit to Ecology (see A2) one hard copy and one electronic file of the final as-built report including maps. The as-built report must:
- a) Document site conditions at Year Zero.
 - b) Include the information listed in Attachment B (Information Required for As-built Reports).
 - c) Include documentation of the recorded legal mechanism required in Condition B16.
- B16. Within 90 days of the date the Order was issued, the Applicant shall record a conservation easement for Milltown Island mitigation site, a copy of this Order, and a site map indicating the location of mitigation site and their buffers. These documents must be recorded with the County Recording Office, Registrar of Deeds, or other official responsible for maintaining records for, or interest in, real property.

Monitoring and Maintenance

- B17. The Applicant shall water and maintain all mitigation site plantings so as to meet the Final Mitigation Plan's performance standards.
- B18. The Applicant shall monitor the mitigation site for a minimum of 10 years. The Applicant shall use the monitoring methods described in the Final Mitigation Plan.
- B19. The Applicant shall submit to Ecology (see A2) one hard and one electronic copy of monitoring reports documenting mitigation site conditions for years 1, 2, 3, 5, 7, and 10. At a minimum, the reports must contain the information in Attachment C (Information Required for Monitoring Reports). The Applicant shall submit the first monitoring report 12 months after completing the mitigation site construction and planting.
- B20. The Applicant shall implement the Final Mitigation Plan's contingency measures if the Final Mitigation Plan's goals, objectives, or performance standards are not being met.

- B21. Prior to implementing contingency measures not specified in the Mitigation Plan, the Applicant shall consult with and obtain written approval from Ecology for the changes.
- B22. When necessary to meet the performance standards, the Applicant shall replace dead or dying plants with the same species, or an appropriate native plant alternative, during the first available planting season and note species, numbers, and approximate locations of all replacement plants in the subsequent monitoring report.
- B23. For monitoring years five (5) and ten (10) the Applicant shall use the 1997 or updated versions of the "Washington State Wetlands Identification and Delineation Manual" (or as updated) to delineate all compensatory wetlands and include delineation information (e.g. data sheets, maps, etc.) in the monitoring reports.
- B24. At the end of the monitoring period, the Applicant shall use the August 2004 or updated version of "Washington State Wetlands Rating System for Western Washington" to rate all wetlands (except those that have been preserved) and include the information in the monitoring report.
- B25. If the Applicant has not met all conditions and performance standards for the mitigation sites at the end of the monitoring period, Ecology may require additional monitoring, additional mitigation, or both.
- B26. Until the Applicant has received written notice from Ecology that the Final Mitigation Plan has been fully implemented, the Applicant's obligation under Condition B1 to mitigate for wetland impacts is not met.

Are replaced with:

- B1. The project proposes to fill a total of 1.50 acres of palustrine scrub-shrub (PSS) and emergent (PEM) wetlands (1.25 acres Category III and 0.25 acre Category IV wetland). The filling of 1.23 acres of PSS/ PEM wetland (0.25 acre Category IV and 0.98 acre Category III) and 0.09 acre of Category III PEM wetland will be mitigated through the purchase of 1.28 mitigation credits from the Nookachamps Wetland Mitigation Bank. The filling of 0.18 acre of Category III PEM wetland will be mitigated onsite. These measures are described in the following documents, except as modified by this Order, and including any approved revisions:
 - a. Mitigation Proposal for the Stanwood Siding Extension Project, by Wildlands, Inc, dated May 3, 2010.
 - b. On-site Compensatory Wetland Mitigation Plan (Mitigation Plan), by InterMountain Resources, dated July 12, 2010, with the exception of the wetland grass seed mix listed in Table 4.

c. Revised Seed Specifications, by InterMountain Resources, dated July 20, 2010.

B2. In addition to mitigation measures described in the above-referenced documents, the following requirements shall be conditions for the development and mitigation sites:

- a. Proof of Mitigation Bank Credit Purchase: Prior to impacting wetlands, including buffers, associated with the construction of the project, the Applicant shall submit the following to Ecology per Condition A2:
 - i. The Applicant shall obtain and submit registered documentation from the bank sponsor identifying the first permit requiring a minimum of 1.28 credits for the project to Ecology (see A.2). This documentation must be submitted to Ecology (see A.2) within 60-days of the issuance of this certificate (or before impacting wetlands, whichever is sooner). This documentation must be registered at the Skagit County Auditor's office and must include the permit number, permit issuance date, and the amount of credits required by the permit.
- b. Timing: On-site mitigation work shall begin before, or concurrent with, impacting wetlands.
- c. If the mitigation site cannot be completed within 13 months of the date of this Order, the Applicant shall inform Ecology, in writing, of the status of the BNSF/WSDOT Stanwood Siding Extension Project on-site mitigation with the:
 - i. Reason for the delay.
 - ii. Expected date of completion.
- d. The Applicant shall submit an updated written notification every 12 months thereafter until the BNSF/WSDOT Stanwood Siding Extension Project on-site wetland mitigation site is complete.
- e. Field Supervision: The wetland mitigation implementation shall be field-supervised by a qualified wetland ecologist to ensure that grading was completed as planned and plants are appropriately placed.
- f. As-Built Report: Submit a final As-Built Report for the wetland mitigation projects, with drawings, to Ecology (per condition A2) within 60 days of completing construction, including planting.
 - i. Provide one (1) electronic copy on compact disc and one (1) hard copy. Always prominently display the Corps Reference Number and Ecology Order Number.

ii. Include the following information in the As-Built Report:

- a) Final site topography.
 - b) Photographs taken from permanent reference points.
 - c) Installed planting scheme with quantities, densities, sizes and approximate locations.
 - d) Types of habitat features (snags, rootwads, etc.) and their locations.
 - e) Important dates including:
 - a. When the development project's construction began.
 - b. Starting and completion dates of the construction of the compensatory mitigation project, including grading and planting of the site.
 - f) Name and contact information of the parties responsible for the mitigation site, including the applicant, landowner, and wetland professional on site during construction.
 - g) Description of and reasons for any changes to the plan.
 - h) Description of any problems that occurred during construction.
 - i) List of any follow-up actions needed, with a schedule.
 - j) Copy of the deed notification.
- g. Permanent Protection: The Applicant shall provide documentation showing the means of permanent protection for the mitigation site (such as a deed restriction, conservation easement, or similar instrument) to Ecology's 401/CZM Federal Permit Manager along with the As-Built Report.
- h. Performance Standards: The performance standards for the wetland mitigation shall be as listed in the Mitigation Plan, which details standards for plant survival and plant cover except for the following changes:
- i. The wetland grass seed mix listed in Table 4 of the Mitigation Plan shall include species native to the Puget Sound lowlands (shall replace *Carex aperta*).
 - ii. Birdfoot trefoil (*Lotus corniculatus*), an aggressive non-native species, shall not be seeded on the mitigation site and if found may need to be controlled.
- i. Monitoring: Monitoring to ensure that the project performance standards are met shall be performed as described in the Mitigation Plan. In addition, all mitigation monitoring shall take place over a period of at least five (5) years, in years 1, 2, 3, and 5. If performance standards are not met in Year 5, additional monitoring shall be done in Year 7; and if performance standards are not met in Year 7, additional monitoring shall be done in Year 10. **Two (2) copies of all monitoring reports shall be submitted to Ecology per Condition A2.**
- j. Maintenance: Maintenance of the wetland mitigation sites is necessary to ensure that the required performance standards are met. Maintenance shall be performed as described in the Mitigation Plan.

- k. Year 5 Delineation: The mitigated wetlands shall be delineated using the 1997 Washington State Wetlands Identification and Delineation Manual (or as updated) during the 5th year monitoring period (or later as specified in B2.i. above) to determine the actual area of wetlands restored.
- l. Year 5 Rating: The 2004 Washington State Wetlands Rating System (or as updated) shall be applied to the mitigation area at the end of the monitoring period to determine the classification and rating of the restored wetlands.
- m. Contingency Measures: The Applicant is responsible for the success of the onsite mitigation and the maintenance of existing functions of wetlands to remain on the development site. The contingency measure described on page 14 of the Mitigation Plan shall be implemented as soon as monitoring shows that one or more performance standards have not been met.

No other conditions or requirements of the above-mentioned Order are affected by this Amendment. The Department of Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if it appears necessary to further protect the public interest.

Failure to comply with this amendment may result in the issuance of civil penalties or other actions whether administrative or judicial, to enforce the terms of this amendment.

Appeal Process

You have a right to appeal this Amendment. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the “date of receipt” of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the “date of receipt” of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). “Date of receipt” is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

Deliver your appeal in person to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Department of Ecology
Northwest Regional Office
Attn: Rebekah Padgett
3190 160th Avenue SE
Bellevue, WA 98008

For additional information visit the Environmental Hearings Office Website:

<http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website:

<http://www1.leg.wa.gov/CodeReviser>

Your appeal alone will not stay the effectiveness of this Amendment. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated July 22, 2010 at Bellevue, Washington.



Erik Stockdale, Unit Supervisor
Northwest Regional Office
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington