



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

August 27, 2012

Pierce County Surface Water Management
ATTN: Mr. Helmut Schmidt
2702 South 42nd Street, Suite 201
Tacoma, WA 98409-7322

Re: Water Quality Certification Order No. **9448**, Corps Reference No. **NWS-2012-233**; for the
Puyallup River at Kapowsin Creek Remnant Levee Removal Project, Pierce County,
Washington

Dear Mr. Schmidt:

On March 12, 2012 Pierce County Surface Water Management submitted a Joint Aquatic Resource 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 Puyallup River at Kapowsin Creek Remnant Levee Removal Project. The river currently flows between the left bank and the remnant levee. The purpose of this project is to help slow the flow velocities in this area, prevent further scour and erosion of the left bank, and increase fish habitat.

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

If you have any questions, please contact Lori Ochoa at (360) 407-6926. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,


Perry J Lund, Unit Supervisor
Southwest Regional Office
Shorelands and Environmental Assistance Program

PJL:LO:th
Enclosure

CERTIFIED MAIL: 7010 1670 0002 4158 1517



cc: Jacalen Printz, Corps of Engineers
Tim Rymer, NOAA
Linda Storm, EPA
Martin Fox, Muckleshoot Tribe
Trish Byers, Pierce County
Gina Piazza, WDFW

e-cc: ECY RE FED PERMITS
Loree' Randall, Ecology/HQ
Alex Callender, Ecology/SWRO/SEA
Deb Cornett, Ecology/SWRO/WQ
Lori Ochoa, Ecology/SWRO/SEA



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August 27, 2012

Pierce County
Surface Water Management
ATTN: Mr. Helmut Schmidt
2702 South 42nd Street, Suite 201
Tacoma, WA 98409-7322

Re: Coastal Zone Management Consistency Determination for the Puyallup River at Kapowsin Creek Remnant Levee Removal Project, Corps Reference No. **NWS-2012-233**, Orting, Pierce County, Washington

Dear Mr. Schmidt:

On August 9, 2012, Pierce County Surface Water Management submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP).

Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, the Department of Ecology (Ecology) concurs with the Narrows Marina's determination that the proposed work is consistent with Washington's CZMP.

If you have any questions regarding Ecology's consistency determination, please contact Lori Ochoa at (360) 407-6926.

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.



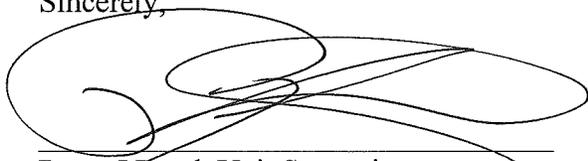
You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

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

SIGNATURE

Sincerely,



Perry J Lund, Unit Supervisor
Southwest Regional Office
Shorelands and Environmental Assistance Program

8/27/2012
Date

PJL:LO:th

CERTIFIED MAIL: 7010 1670 0002 4158 1517

- cc: Jacalen Printz, Corps of Engineers
Tim Rymer, NOAA
Linda Storm, EPA
Martin Fox, Muckleshoot Tribe
Trish Byers, Pierce County
Gina Piazza, WDFW
- e-cc: ecyrefedpermits@ecy.wa.gov
Loree' Randall, Ecology/HQ
Alex Callender, Ecology/SWRO/SEA
Deb Cornett, Ecology/SWRO/WQ
Lori Ochoa, SWRO/SEA

IN THE MATTER OF GRANTING A) ORDER # 9448
WATER QUALITY) Corps Reference # NWS-2012-233
CERTIFICATION TO) Puyallup River at Kapowsin Creek Remnant
Pierce County Surface Water) Levee Removal, Puyallup River, Pierce County,
Management) Washington.
in accordance with 33 U.S.C. 1341)
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)
)

TO: Pierce County Surface Water Management
ATTN: Mr. Helmut Schmidt
2702 South 42nd Street, Suite 201
Tacoma, WA 98409-7322

On March 12, 2012, Pierce County Public Works and Utilities submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A Joint Public Notice regarding the request was distributed by the Corps of Engineers on May 8, 2012 for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC.

The existing levee is approximately 600 feet in length and contains approximately 8400 cubic yards of toe rock, facing rock, and native material. The project proposes to:

- Entirely remove the upstream portion of the levee(measured 70 feet on the west side and 100 feet on the east side of the levee down to approximately one foot of the water elevation);
- Grade a ramp up the remaining portion of the levee;
- Remove approximately three feet of material from the center and right (east) side of the remaining portion of the levee;
- Remove existing 2-3 man facing rock from the right (east) side of the levee to a depth of approximately three feet.

The total amount of levee to be removed is approximately 1,500 cubic yards, along with 1,000 cubic yards of facing rock.

The proposed project is located along the left-bank of the Puyallup river channel between river-mile 26.1 and 26.4, Orting, Pierce County, Washington; NW quarter of Section 20, Township 18 North, Range 5 East; WRIA 10, Puyallup-White 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, 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 not violate 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 the Pierce County Surface Water Management, and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Southwest Regional Office Attn: Federal Permit Manager, P.O. Box 47775, Olympia, WA 98504-7775 or by e-mail to loch461@ecy.wa.gov. Any submittals shall reference Order No.9448 and Corps No. NWS- 2012-233.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on March 12, 2012 and in supplemental documentation submitted to the Federal Permit Manager via e-mail on August 2 and August 7, 2012. 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.

4. 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.
5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue a Section 404 permit.
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 permit, plans, documents, and approvals. These statements shall be provided to Ecology before construction begins at the project site.
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 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 temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-200(1)(e).
2. The Puyallup River at this location is classified as “Core Summer Salmonid Habitat” and the criteria of that class apply except as specifically modified by this Order.
3. For this project, the following is considered to be an exceedance of the standard:
 - a. 5NTU over background conditions when the background is 50 NTU or less; or a 10 percent increase in turbidity when the background is more than 50 NTU.
4. During and immediately after project construction, the Applicant or their contractor shall monitor for turbidity discharges at the point of compliance as specified in WAC 173-201A-200(1)(e)(i). A turbidimeter is recommended, however, visual gauging with photo documentation of turbidity is acceptable.
5. If water quality exceedances are detected outside of the point of compliance, work shall cease immediately and the Applicant or the contractor shall assess the cause of the water quality problem and take immediate action to stop, contain, correct the problem and/or prevent further water quality turbidity exceedances. If an exceedance occurs, the Applicant shall follow the protocols and notification procedures below:
 - a. Notification of exceedances that are detected through water quality monitoring shall be made to Ecology within 24 hours of occurrence. Notification shall be made per Condition A2 above. 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 the exceedance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance; and
 - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the exceedance.
 - 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(s), corrective action taken and/or planned, steps to be taken to prevent a recurrence, photographs, and any other pertinent information.
 - b. Mitigation and/or additional monitoring may be required as a result of the exceedance(s).

C. Timing Requirements:

1. This Order shall remain in effect for a period of five (5) years from the date of issuance of the Corps permit.
2. All in-water work shall be completed by the work window identified in the most current Hydraulic Project Approval (HPA) issued for this project. Any project change that requires a new or revised HPA should also be sent to Ecology for review.

D. Notification Requirements:

1. The Applicant shall provide a copy of the final Corps Permit to Ecology's Southwest Regional Office Federal Permit Manager, in accordance with condition A.2 above, within two (2) weeks of receipt of the permit.
2. Written notification (FAX, e-mail, or mail) shall be made to Ecology's Southwest Regional Office Federal Permit Manager 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) in each construction season.
 - b. Within ten (10) days after completion of construction for each project season.
 - c. Immediately following a violation of the state water quality standards or any condition of this Order.
3. If project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit a written construction status report. Status reports shall be submitted every 12 months thereafter until project construction is complete.

NOTE: These notifications shall include the Applicant's name, project name, project location, the number of this Order, contact and contact's phone number.

E. Construction Conditions:

1. All work in and near the water shall be done so as to minimize turbidity, erosion, and other water quality impacts.
2. The project area shall be clearly marked/staked prior to construction. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Equipment shall enter and operate within the marked clearing limits corridors and stockpile areas.
3. Construction stormwater, sediment, and erosion control Best Management Practices (BMP's) intended to trap sediment on site, shall be in place before starting project construction and shall be maintained throughout construction until the site is stabilized.
4. Staging areas will be located a minimum of 50 feet, and where practical, 150 feet from waters of the state, including wetlands. If a staging area must be located within 50 feet of waters of the state, then the applicant shall provide a written explanation and obtain approval from Ecology's Federal Permit Manager before placing the staging area within the setback area.
5. All machinery and equipment used for project construction shall be serviced, fueled, and maintained in a confined area in order to prevent contamination to waters of the state. Fueling areas shall be located a minimum of 100 feet from waters of the state, including wetlands and shall be provided with adequate spill containment. No petroleum products, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
6. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment shall be contained for proper disposal, and shall not be discharged

into waters of the state. The Applicant shall establish a separate contained area for washing down vehicles and equipment, which does not have any possibility of draining to surface waters and wetlands.

7. All equipment used below the ordinary high water line shall utilize bio-degradable hydraulic fluid and shall be checked daily for drips or leaks. Accumulation of soils or debris shall be removed from the drive mechanism (wheels, tires, tracks, etc.) and the undercarriage of equipment prior to its use around waters of the state, including wetlands.
8. No material shall be stockpiled within the OHWM of the river.
9. All construction debris, excess sediment, or deleterious material resulting from project construction shall be properly contained and disposed of at an approved upland location so that it cannot enter waters of the state.
10. All materials used for temporary construction access roads and bridges shall be removed upon completion of the project and the area restored to natural condition.
11. Under no circumstances shall a blockage to stream flow or fish passage be created.

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, including wetlands, 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 at the location of 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 Federal Project Manager at 360-407-6926.
 - 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 daily for drips or leaks, and shall be maintained and stored properly to prevent spills into waters of the state, 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

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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>Pollution Control Hearings Board 1111 Israel Rd SW STE 301 Tumwater, WA 98501</p>	<p>Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608</p> <p>Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903</p>

CONTACT INFORMATION

Please direct all questions about this Order to:

Lori Ochoa
Department of Ecology
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775
loch461@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 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



Perry J Lund, Unit Supervisor
Shorelands and Environmental Assistance Program
Southwest Regional Office
Department of Ecology

Date

8/27/2012

Attachment # A

Pierce County
Surface Water Management
Puyallup River at Kapowsin Creek Remnant Levee Removal Project
Order # **9448**
Corps Reference # **NWS-2012-233**
Statement of Understanding
Water Quality Certification Conditions

I, _____, state that, I will be involved as an agent or contractor for Pierce County Surface Water Management with the Puyallup River at Kapowsin Creek Remnant Levee Removal Project located between river mile 26.1 and 26.4, Orting, Pierce County, Washington. I further state that I have read and understand the relevant conditions of the Washington Department of Ecology Water Quality Certification Order #**9448** and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Phone

Company

