



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

June 19, 2007

REGISTERED MAIL: 7003 1680 0007 3105

Bureau of Land Management
ATTN: Mr. Todd Thompson
OR/WA State Office, OR932
Post Office Box 2965
Portland, WA 97208

RE: Water Quality Certification Order No. 4489, for Corps Reference Number NWS-2007-~~412~~
CRE. The project will restore approximately 48 acres of depressional wetlands in the Lake
Creek Drainage, Lincoln County, Washington.

Dear Mr. Thompson:

On April 4, 2007, a Joint Aquatic Resource Permit Application (JARPA) was submitted to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed Lake Creek Hydraulic Restoration Project. The project proposes to construct ditch plugs and grade control structures at 5 different locations along Lake Creek to enhance the processes of capturing, storing and releasing water over time. Total surface area disturbance is estimated at 2.75 acres with total fill estimated at 13,250 cubic yards. Disturbed areas not subject to inundation will be reseeded with appropriate native species. A public notice soliciting comments was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on April 20, 2007.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and as modified by this Order, 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. This letter also serves as the State response to the Corps' July 14, 2005 public notice for this project.

If you have any questions, please contact Michael Maher of Ecology's Eastern Regional Office at (509) 329-3584 or mmah461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Brian G. Farmer, Section Manager
Shorelands and Environmental Assistance Program
Ecology Eastern Regional Office



Enclosures

cc: Army Corps of Engineers - Tim Erkel
Ecology, Eastern Region - Jeremy Sikes
Ecology, Eastern Region - Sara Hunt
Ecology, Eastern Region - Michael Maher
WDFW – Karin Divens
Ecology, HQ – Penny Keys

IN THE MATTER OF GRANTING A) ORDER # 4489
WATER QUALITY) Corps Reference No. NWS-2007-42-CRE
CERTIFICATION TO) Lake Creek Hydraulic Restoration Project
BUREAU OF LAND MANAGEMENT) located in Lincoln County, Washington.
in accordance with 33 U.S.C. 1341)
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)
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))

TO: Bureau of Land Management
ATTN: Mr. Todd Thompson
OR/WA State Office, OR932
Post Office Box 2965
Portland, WA 97208

On April 4, 2007 the Bureau of Land Management submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on April 20, 2007.

The proposed project entails restoration of approximately 48 acres of depressional wetlands in the Lake Creek Drainage within the Upper Crab Creek Management Area, Resource Inventory Area 43, Upper Crab Creek/Wilson. The work will take place about 14 miles southwest of the community of Davenport in Lincoln County, Washington in portions of Sections 25, 26, and 35 of Township 24N, Range 34E.W.M.

The project will include excavation, backfilling and recontouring with heavy equipment such as excavators, dump trucks and dozers to construct 4 ditch plugs and 5 grade control structures at 5 different locations. The locations are detailed in the Lake Creek Restoration Plan (US-WA-16-2) and Lake Creek Technical Specifications. Total surface area disturbance during project implementation is estimated at 2.75 acres with a total volume of fill estimated at 13,250 cubic yards. The majority of the fill required exists as linear piles of previously excavated native material located in close proximity to the proposed ditch plugs and control structures.

Following project completion the processes of capturing, storing and releasing water over time will be enhanced resulting in an increase or shift to wetland associated fish and wildlife species including small mammals, amphibians, waterfowl, shorebirds, and fish. Disturbed areas not subject to inundation will be reseeded with a native mix of appropriate grasses and forbs. Native woody species such as birch and willow will be planted on sites with appropriate soils and acceptable periods of inundation within 3 years of project completion. These species are an important component of Columbian sharp-tailed grouse which occur within the boundaries of the Twin Lakes Allotment.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, 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 Bureau of Land Management (Bureau), and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Eastern Regional Office, Shorelands and Environmental Assistance Program, Attn: Federal Permit Coordinator, 4601 N Monroe St, Spokane, WA 99205-1295. Any submittals shall reference Order No. 4489 and Corps No. NWS-2007-412-CRE.
3. Work authorized by this Order is limited to the work described or submitted with the JARPA received by Ecology on April 4, 2007. 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 does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
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 appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. **These statements shall be provided to Ecology before construction begins at the project.**

10. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
11. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000.00) per violation for each day of continuing noncompliance.

B. Water Quality

1. This Order does not authorize temporary exceedances of the turbidity standard beyond the limits established in WAC 173-201A.

C. Construction Conditions

1. The Applicant shall comply with all stormwater requirements within the National Pollutant Discharge Elimination System (NPDES) Stormwater General Permit for Construction Activity for this project.
2. All work in and near the water shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control Best Management Practices (BMP's) suitable to prevent exceedances of state water quality standards shall be in place before starting clearing, filling and grading work and shall be maintained throughout construction.
2. The project shall be clearly marked/staked prior to construction. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Sensitive areas and buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment operators. Equipment shall enter and operate within the marked clearing limits corridors and stockpile areas.

D. Wetland Mitigation and Monitoring:

1. As noted above the purpose of the project is to restore a more natural hydrologic regime to a segment of Lake Creek. Said restoration will be reflected by a series of perennial, flow-through depressional wetlands rather than the series of drained/ditched seasonal wetlands connected by deep channels which currently exist. The project is and has been designed as mitigation for past agricultural activities and therefore is the mitigation plan.
2. Monitoring will be conducted in accordance with the Bureau's Spokane District Monitoring Plan. Reports will be prepared each monitoring year and submitted to Ecology's Federal Permit Coordinator by the end of said monitoring year.

E. Reporting Requirements

1. A detailed "as built" report shall be prepared after construction showing and noting any variances from the submitted plan. The "as-built" shall be the baseline document used for all future monitoring of the mitigation project. It shall include but not be limited to:
 - comments from any wetland specialist present on site during construction;
 - final site plan showing site topography (both site plan view and typical sections);
 - photographs of the area taken from permanent photo points which will be designated on the site plan;
 - the installed planting scheme showing densities, sizes, and approximate locations of plants as well as plant sources and time of planting; and,
 - an analysis of any changes to plan that occurred during construction.

Two (2) copies of the "as-built" report and drawings shall be sent to Ecology's Eastern Regional Office, Shorelands and Environmental Assistance Program, Attn: Federal Permit Coordinator at 4601 N Monroe St, Spokane, WA 99205-1295, within 60 days of completing construction and planting, and in no case later than December 31, 2009.

F. Timing Requirements

1. This Order is valid until though April 13, 2009.

G. Notification Requirements

1. The Applicant shall provide written notification (FAX, e-mail or mail) to Ecology's Eastern Regional Office Federal Permit Coordinator in writing at least 7 days prior to the start of construction.
2. The Applicant shall provide written notification to Ecology's Eastern Regional Office Federal Permit Coordinator Federal Permit Coordinator in writing within fourteen (14) days after completion of construction.

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

H. 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 that are causing the compliance problem.
 - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
 - c. In the event of finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.
 - d. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
 - e. Immediately notify Ecology's Eastern Regional Spill Response Office at (509) 329-3400 of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.
3. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters, including wetlands.
 4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology's Eastern Regional Spill Response Office at (509) 329-3400.

I. Appeal Process:

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

The Department of Ecology

Order # 4489, Corps No. NWS-2007-312-CRE

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Appeals Coordinator

P.O. Box 47608

Olympia, Washington 98504-7608.

In addition, please send a copy of your appeal to:

Federal Permit Appeals Coordinator

Department of Ecology

P.O. Box 47600

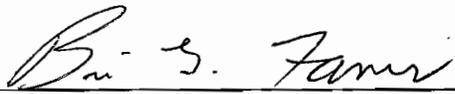
Olympia, Washington 98504-7600

For additional information: Environmental Hearings Office Website:

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

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

Dated 6/20/07 at Spokane, Washington.



Brian G. Farmer, Section Manager
Shorelands and Environmental Assistance Program
Eastern Regional Office
Department of Ecology
State of Washington