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

August 14, 2007

REGISTERED MAIL
RB 670 439 152 US

Marty Peoples
Washington Department of Fish and Wildlife
600 Capitol North
Olympia, WA 98501-1091

RE: Water Quality Certification Order #5023 and Coastal Zone Management Consistency Determination for U.S. Army Corps of Engineers (Corps) Reference #NWS-2007-589-NO, Cedar River Rack, Cedar River King County, Washington

Dear Mr. Peoples:

On July 9, 2007, the Washington State Department of Ecology (Ecology) received a Joint Aquatic Resources Permit Application (JARPA) from Washington Department of Fish and Wildlife requesting a Section 401 Water Quality Certification for the Cedar River Rack Project. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on July 19, 2007.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the original JARPA submitted on July 9, and in the public notice (July 19) 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.

On July 9, Ecology received a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP) form from Washington Department of Fish and Wildlife for this project. Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with Washington Department of Fish and Wildlife's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon Washington Department of Fish and Wildlife's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.

If you have any questions, please contact Lori Enlund at (425) 649-7271 or LENL461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Geoff Tallent
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:LCE:cja

Enclosure

cc: Amy Klein, U.S. Army Corps of Engineers

e-cc: Penny Keys – Ecology, HQ
Loree' Randall – Ecology, HQ

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Washington Department of Fish and Wildlife in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)))))))	**ORDER #5023** **Corps Reference #NWS-2007-589-NO** To install and operate fish collection rack for the purpose of harvesting sockeye salmon brood stock for hatchery research program.

TO: Marty Peoples
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501

On July 9, 2007 the Washington Department of Fish and Wildlife submitted a Joint Aquatic Resources 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 of Chapter 173-225 WAC on July 19, 2007.

The proposed project entails installing and operating a fish collection rack for the purpose of harvesting sockeye salmon brood stock for hatchery research program in the Cedar River, 1 mile east of Renton, King County, Washington. Section 24, Township 23N, Range 5E, WRIA# 8, Cedar-Sammamish.

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:

A1. For purposes of this Order, the term "Applicant" shall mean Washington Department of Ecology, and their agents, assignees and contractors.

A2. For purposes of this Order, all submittals required by its conditions shall be sent to the Washington State Department of Ecology, Northwest Regional Office, Attn: Lori Enlund, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order No. 5023 and Corps No. NWS-2007-589-NO.

A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on July 9, 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.

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 does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

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. 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 the conditions of this Order.

A10. 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. Timing Requirements

B1. This Order is valid until though June 1, 2009.

C. Appeal Process:

You have a right to appeal this Order. 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:

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

OR

Deliver your appeal in person to:

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:

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

OR

Deliver your appeal in person to:

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: Lori Enlund
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 Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated August 14, 2007 at Bellevue, Washington.

Geoff Tallent, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington