



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

15 West Yakima Avenue, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490

June 29, 2006  
REGISTERED MAIL

Jeff Brunson  
1585 Tjossem Road  
Ellensburg, WA 98926

RE: Water Quality Certification Order 3413 for Corps Public Notice No. 200500167  
to relocate a stream and place 550 feet of the relocated stream in a culvert in  
Kittitas County, Washington

Dear Mr. Brunson:

On February 8, 2006, Jeff Brunson, 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 Lyle Creek Relocation. The project proposes to place fill in 0.22 acres of wetland in an unnamed stream near Ellensburg, relocate the stream and place 550 feet of the relocated stream (within uplands) in a culvert. The U.S. Army Corps of Engineers issued a public notice on August 26, 2005 for the proposed project.

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.

This letter also serves as the State response to the Corps of Engineers' August 26, 2005 Public Notice.

We have provided a copy of Table 200 (1) (e) as found in WAC 173-201 A, which includes information on turbidity compliance for your convenience (see condition C. in the enclosed Order). If you have any questions, please contact Catherine Reed at (509)



Jeff Brunson  
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575-2616. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Jeff Lewis  
Central Regional Office  
Shorelands and Environmental Assistance Program

JL:CR:jt060620  
Enclosure

cc: Jason Lehto - US Army Corps of Engineers, Seattle  
Brent Renfrow, WA Dept. of Fish and Wildlife

e-cc: Penny Keys - HQ  
Loree' Randall - HQ

**IN THE MATTER OF GRANTING A  
WATER QUALITY  
CERTIFICATION TO**

**Jeff Brunson**

in accordance with 33 U.S.C. 1341  
(FWPCA § 401), RCW 90.48.120, RCW  
90.48.260 and Chapter 173-201A WAC

) **ORDER # 3413**  
) **Corps Reference No. 200500167**  
)

) To place fill in 0.22 acres of wetland in an  
) unnamed stream near Ellensburg, relocate the  
) stream and place 550 feet of the relocated stream  
) (within uplands) in a culvert. The project is in  
) Lyle Creek, a tributary to Wilson Creek in  
) Kittitas County, Washington.

TO: Jeff Brunson  
1585 Tjossem Road  
Ellensburg, WA 98926

On August 26th, 2005, Ecology received a public notice for a proposed project by Mr. Jeff Brunson to place fill in 0.22 acres of wetlands contained within an existing stream channel (Lyle Creek). The channel will be rerouted through a new channel excavated in uplands. The first 950 feet of the new channel will be an open channel and the northern 550 feet will be piped. The purpose of the project is to consolidate farm fields to efficiently use a new linear sprinkler system. A joint public notice for a 401 water quality certification from Ecology was distributed by the U.S. Army Corps of Engineers on August 26<sup>th</sup>, 2005 for the above-referenced project pursuant to the provisions Chapter 173-225 WAC.

Mitigation for the project includes planting native riparian vegetation along the first 950 feet of the new stream channel, which will be tributary to Wilson Creek. The plantings will include native grasses, large woody debris, and some trees and shrubs. The project will occur in Kittitas County, Washington, Section 13, Township 17 North, Range 18 East of the Willamette Meridian, Water Resource Inventory Area (WRIA) Upper Yakima #39.1234.

**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. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 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 Jeff Brunson, and his agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Central Regional Office, Attn: Federal Permit Coordinator, 15 West Yakima Avenue Suite #200, Yakima, WA 98902. Any submittals shall be identified with Order No. 3413 displayed.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on February 08, 2006. 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 a modification to this Order is required.
5. This Order shall be withdrawn if the Corps of Engineers does not issue a 404 permit. It shall also be withdrawn if the project is revised in such a manner or purpose that Ecology determines the revised project requires a new authorization and public notice. The Applicant will then be required to reapply for a 401 Water Quality Certification by submitting a new JARPA to Ecology.
6. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

7. 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.
8. 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.
9. 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.
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. 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 to Ecology a signed statement 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.***
12. 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) per violation for each day of continuing noncompliance.

**B. Water Quality Standards:**

**No Impairment of Water Quality:**

- B1. Wilson Creek and its tributary, Lyle Creek (WRIA #39) are fresh waters of the state. Certification of this proposal does not authorize the applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-200 and WAC 173-201A- shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedences of water quality standards beyond the limits established in WAC

173-201A-110(3). Furthermore, nothing in this certification shall absolve the applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

Wilson Creek has been identified on the current 303(d) list as exceeding state water quality standards for temperature and fecal coli form. This proposed project shall not result in further exceedences of these standards.

B2. Conditions listed below are issued under the authority of Chapter 90.48 RCW and Chapter 173-201A WAC. Except as specifically authorized by this Order, all applicable provisions of Chapter 173-201A WAC shall be met.

B3. Certification of this project does not authorize the applicant to exceed the turbidity standard for Wilson Creek waters.

**C. Water Quality Sampling and Monitoring:**

C1. **A water quality monitoring plan shall be developed and implemented that measures compliance with the turbidity standard** at the point of compliance for the project. (For flows of less than 10 cfs, the compliance point is 100 feet downstream from the construction zone. For flows of between 10 cfs and 100 cfs, the compliance point is 200 feet downstream from the construction zone. (Compliance will depend on background NTU values: see table 200 (1) (e) in WAC 173-201A.)

The plan shall include taking baseline samples (see C2 below) and taking samples a minimum of three times per day during any in-water activity: once each day before work begins to collect baseline data and twice during the day at the point of compliance while construction activities are taking place.

C2. Before in-stream activities occur (for example, the opening of the new stream channel to accept Lyle Creek flows), baseline data sampling will be required. Two collection points, one point not more than 100 feet upstream of the construction area, and a second collection point downstream at a distance not to exceed 200 feet from the worksite shall be taken.

C3. Daily sampling as described in C1 above shall continue until three consecutive samples taken during any in-water work and after the creek has been shifted to the new channel do not exceed 5 NTU beyond original background conditions.

C4. Results of daily sampling shall be forwarded to Department of Ecology at project completion, to Cathy Reed, at e-mail [craj461@ecy.wa.gov](mailto:craj461@ecy.wa.gov), or faxed to (509) 575-2809. One week's worth of results can be consolidated in one report submittal.

If sampling indicates that turbidity standards have been exceeded (more than 5 NTUs beyond background at the point of compliance unless otherwise dictated in Table 200 (1) (e) in WAC 173-201A), the following actions will be taken:

- (i) Work shall be halted and BMPs evaluated. Additional measures shall be taken to protect water quality.
- (ii) Sampling shall be increased to a minimum of once per hour, until water quality standards are restored, to determine the duration of time of the violation.
- (iii) A detailed written incident report shall be submitted to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

**C5. Work activities occurring landward of the wetted perimeter, or “in the dry”, do not require sampling and monitoring contained in Section C of this order.**

**D. Construction:**

- D1. Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control, and best management practices suitable to prevent exceedences of state water quality standards (e.g., hay bales, detention areas, silt fences, etc.), shall be in place before starting clearing, filling, and grading work at the impact sites.
- D2. Prior to clearing and grading in wetlands, the adjacent wetlands shall be protected from construction impacts. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be filled.
- D3. During clearing and filling at the various project sites, the Applicant shall take all necessary measures to minimize the alteration or disturbance of existing wetland and upland vegetation outside of the authorized project area
- D4. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.

- D5. 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.
- D6. Clean Fill Criteria: The Applicant shall ensure that fill placed for the proposed project does not contain toxic materials in toxic amounts.

**E. Mitigation Requirements:**

- E1. Excavation of the new channel shall be done in isolation from the flowing water of the creek by retaining earthen plugs or equivalent controls at each end of the new channel. Excavation to remove the earthen plugs/controls in order to divert the stream from the old channel into the new channel may be done in the flowing water, provided care is taken (BMPs are applied) to minimize the discharge of earth and sediment to the stream during this work.
- E2. If dewatering of a work area is necessary, during initial dewatering the turbid water shall be pumped to an upland area to allow fines to settle out before the water re-enters the stream.
- E3. Filling of the old channel area shall begin from the upstream end and progress downstream.
- E4. The shoreline of the new channel shall be graded and planted as per plan of work and typical drawings submitted on February 8, 2006.
- E5. The applicant shall construct and revegetated the stream in conformance with the mitigation plans attached to the February 08, 2006 revegetation plan as updated by an April 11, 2006 supplemental revegetation plan submitted to Jason Lehto of the US Army Corps of Engineers on April 11, 2006.
- E6. At year 3 from the time of planting, 80 percent survival and 60 percent aerial coverage is required. Additional plantings shall be made if these goals are not achieved, with an additional evaluation report/field review due at year 5 from planting to assure that success measures have been achieved. If percent cover goals are achieved at year 3, then no further monitoring is required.
- E7. Documentation of the completed project and mitigation shall be submitted to the Department of Ecology in the form of photographs documenting initial planting and at year 3 and 5 (if success is not achieved at year 3). This documentation shall be submitted no longer than three months after initial planting and three months after monitoring at year 3.

- E8. All mitigation shall remain in perpetuity as long as the new stream channel is in place.

**G. Emergency/Contingency Measures:**

- G1. In the event the Applicant is unable to comply with any of the permit terms and conditions due to any cause, the Applicant shall:
- (i) Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
  - (ii) Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (509) 575-2490, and within 24 hours to Ecology's Catherine Reed at (509) 575-2616.
  - (iii) Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
- G2. 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.
- G3. 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. No refueling of equipment shall occur over, or within 50 feet of creeks, rivers, lakes, or wetlands.

**H. 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  
Appeals Coordinator  
P.O. Box 47608  
Olympia, Washington 98504-7608.

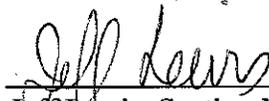
In addition, please send a copy of your appeal to:

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 June 29, 2006 at Yakima, Washington.



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Jeff Lewis, Section Manager  
Shorelands and Environmental Assistance Program  
Department of Ecology  
State of Washington