



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

August 23, 2006  
REGISTERED MAIL

Kathleen Bartu  
Foster Creek Conservation District  
Post Office Box 428  
Waterville, WA 98858-0428

RE: Water Quality Certification Order 3803 for Corps Public Notice No. 200600271 to place 500 cubic yards of material waterward of the ordinary high water mark for the construction of an earthen dam reinforced with riprap. The proposed structure will create an impoundment of approximately 2.3 acres (6.9 acre feet). High volume runoff will pool behind the dam and deposit sediment. In addition, the dam will diffuse high volume flows to reduce scouring downstream of the dam. The applicant proposes to reslope and plant 1000 linear feet of stream bank. The project location is in Douglas County, Washington.

Dear Ms. Bartu:

On March 2<sup>nd</sup>, 2006, Foster Creek Conservation District, represented by Kathleen Bartu, submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice for a proposed water quality certification from Ecology was distributed by the U.S. Army Corps of Engineers for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on April 21<sup>st</sup>, 2006.

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' April 21<sup>st</sup>, 2006 Public Notice.



Kathleen Bartu  
August 24, 2006  
Page 2 of 2

If you have any questions, please contact Gary Graff at (509) 454-4260. 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:GG060827  
Enclosure

cc: Debbie Knaub - U.S. Army Corps of Engineers  
Connie Iten - WDFW

e-cc: Penny Keys – Ecology HQ  
Loree' Randall – Ecology HQ  
Gary Graff – Central Regional Shoreline Permit Coordinator  
John Merz – Central Regional Water Quality Unit Supervisor  
Rusty Post – Ecology Twisp field office

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER # 3803</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. 200600271</b>
<b>CERTIFICATION TO</b>	)	Place 500 cubic yards of material waterward of
Foster Creek Conservation District	)	the ordinary high water mark for the construction
in accordance with 33 U.S.C. 1341	)	of an earthen dam reinforced with riprap in
(FWPCA § 401), RCW 90.48.120, RCW	)	Douglas County, Washington.
90.48.260 and Chapter 173-201A WAC	)	
	)	
	)	

TO: Foster Creek Conservation District  
Post Office Box 428  
Waterville, WA 98858-0428

On March 2<sup>nd</sup>, 2006, Foster Creek Conservation District, represented by Kathleen Bartu, submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice for a proposed water quality certification from Ecology was distributed by the U.S. Army Corps of Engineers for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on April 21<sup>st</sup>, 2006.

The proposed project entails Place 500 cubic yards of material waterward of the ordinary high water mark for the construction of an earthen dam reinforced with riprap. The proposed structure will create an impoundment of approximately 2.3 acres (6.9 acre feet). High volume runoff will pool behind the dam and deposit sediment. In addition, the dam will diffuse high volume flows to reduce scouring downstream of the dam. The applicant proposes to reslope and plant 1000 linear feet of stream bank. The project location is in Douglas County, Washington, Section 2, Township 28N, Range 26 East of the Willamette Meridian, Water Resource Inventory Area (WRIA) Foster #50.

**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 Foster Creek Conservation District, and its 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. 3803 displayed.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on February 1<sup>st</sup>, 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. 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.

**No Impairment of Water Quality:**

- A1. Foster Creek (WRIA #50) is a Class A water 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-030(1) and WAC 173-201A-040 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.

Foster Creek has not been identified on the current 303(d) list as exceeding state water quality standards.

**B. Water Quality Standards:**

- B1. 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.
- B2. Certification of this project does not authorize the applicant to exceed the turbidity standard for Class A waters beyond the mixing zone described below at condition B3. Turbidity in Class A waters shall not exceed 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU.
- B3. Mixing Zone: Consistent with WAC 173-201A-100(7) and -110(3) a mixing zone is established within which the turbidity standard is waived. The mixing zone is established to allow only temporary exceedences of the turbidity criteria during and immediately after project construction. The temporary turbidity mixing zone shall be as follows:
- WAC 173-201A-100(7)(a) The maximum size of the mixing zone shall comply with the following:
    - (i) Not to extend in a downstream direction for a distance from the discharge port(s) greater than three hundred feet plus the depth of water over the discharge port(s), or extend upstream for a distance of over one hundred feet;
    - (ii) Not utilize greater than twenty-five percent of the flow; and
    - (iii) Not occupy greater than twenty-five percent of the width of the water body.

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

- C1. A water quality monitoring plan shall be developed and implemented that establishes performance standards for measuring compliance with the turbidity standard at the point of compliance for the project. Samples shall be taken 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 while construction activities are taking place.
- C2. The baseline data sampling will require two collection points, one point upstream of the construction area, and a second collection point at a distance not to exceed 300 feet downstream from the worksite. During any construction/dredging activity, additional samples shall be taken at three different collection points, one

upstream, and the following two in a distance not to exceed 300 feet downstream from the worksite. Of these two collection points, one will be in the near shore environment, and another at an adequate distance waterward of the shoreline, not to exceed twenty-five percent of the width of the water body.

- C3. The water quality monitoring plan shall be sent to and received by Ecology's Gary Graff for review and approval at minimum two weeks before construction is scheduled to begin.
- C4. Results of daily sampling shall be tabulated and forwarded to Department of Ecology at project completion, to Gary Graff, at e-mail [gagr461@ecy.wa.gov](mailto:gagr461@ecy.wa.gov), or fax at (509) 575-2809.
- C5. If sampling indicates that turbidity standards have been exceeded, the following actions will be taken:
  - (i) Work shall be halted.
  - (ii) Ecology's federal permit coordinator Gary Graff shall be immediately notified at (509) 454-4260.
  - (iii) 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.
  - (vi) 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.
- C6. 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. Construction fencing or flagging (using brightly colored tape at no less than twenty-five foot (25') intervals) of the existing wetlands and stream channels to be protected shall be completed prior to clearing.

All project staff shall be trained to recognize construction fencing or flagging that identifies wetland boundaries. 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.
- D4. No existing shoreline or riverbed material (i.e., logs, rocks, gravel, cobbles, woody debris or other riverbed material,) shall be relocated or used as bulkhead armor, as fill, or for any other purposes, **except** that riverbed material located exactly where the new construction is to be placed may be relocated.
- D5. Dredge spoils will be deposited upland, according to the plans provided to Ecology. Dredge spoils are not be allowed to enter OHWM or the wetted perimeter of Foster Creek.
- D6. Uncured concrete and concrete by-products shall be completely sealed off from the ordinary high water mark (OHWM) and wetted perimeter of Foster Creek, totally contained through the use of sealed forms or other leak proof containment systems, and not allowed to contaminate or enter the OHWM or wetted perimeter of Foster Creek.
- D7. 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.
- D8. 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.
- D9. Any wooden pier components, piling, pier support, and other materials composed of pressure treated wood shall be professionally and commercially produced and chemically fixed in accordance with all current best management practices as contained in the Western Wood Preservers Institute's latest edition of "Best Management Practices for the Use of Treated Wood in Aquatic Environments."
- D10. No wood, metal, or concrete preservatives, paints, sealers, glues, epoxies, chemicals, or other substances harmful or toxic to fish or shellfish shall be applied to the pier system once it has been placed within or over the OHWM of Foster Creek.
- D11. 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 The applicant shall precede with the proposed mitigation which includes the reslope and planting of 1000 linear feet of stream bank to mitigate for the impacts associated with the construction.
- E2. Documentation of the completed project and mitigation shall be submitted to the Department of Ecology in the form of photographs documenting all stages of mitigation, and a brief narrative describing the location and placement of the mitigation, shall be submitted no longer than one month after project completion.
- E3. Mitigation shall be monitored for a period of five (5) years. Annual monitoring reports shall be sent to Gary Graff, at e-mail [gagr461@ecy.wa.gov](mailto:gagr461@ecy.wa.gov), or fax at (509) 575-2809, or by mail at Department of Ecology, 15 West Yakima Avenue Suite 200, Yakima Washington, 98908.
- E4. Successful mitigation shall maintain a standard of 100% survival of all plant species during the first year. The applicant shall maintain an 80% survival rate of all plant species for the subsequent four years. The applicant is responsible for weed control and abatement during the five year monitoring period.
- E5. Planting spacing shall be at a minimum of three (3) foot on center for all shrub species, and ten (10) foot on center for all tree species.
- E6. All mitigation shall remain in perpetuity as long as the conditioned structures are in place.

**F. Notification Requirements**

- F1. Start of construction: The Applicant shall provide written notice to Ecology's Gary Graff at least 14 days prior to the start of placing fill in wetlands or other waters of the state.
- F2. Completion of project: The Applicant shall provide written notice to Ecology's Gary Graff within 14 days after completion of construction at each project site and mitigation site.

**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 Gary Graff at (509) 454-4260.
  - (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.

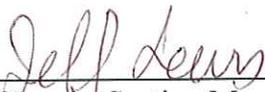
Order #3803, Corps No. 200600271,  
August 24, 2006  
Page 9 of 9

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 August 24, 2006 at Yakima, Washington.

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

JL:jt060827