



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

July 10, 2008

REGISTERED MAIL

City of Cle Elum
Matt Morton
Community Development Director
119 West First Street
Cle Elum, WA 98922

RE: Order #5744 - Water Quality Certification for City of Cle Elum; Yakima River Water Supply Diversion Channel Maintenance

Dear Mr. Morton:

The request for certification for proposed work in wetlands and adjacent to the Yakima River has been reviewed. On behalf of the State of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This letter also serves as the State response to the Corps of Engineers.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Catherine Reed at (509) 575-2616. Written comments can be sent to her at the Department of Ecology, Central Regional Office or at craj461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Jeff Lewis, Section Manager
Shorelands and Environmental Assistance Program

JL:CR:jt

Enclosure

ecc: Corps of Engineers – Alisa Ralph

cc: WDFW – Brent Renfrow

Darryl Piercy, Kittitas County

Ecology SEA HQ



IN THE MATTER OF GRANTING A) ORDER #5744
WATER QUALITY) Corps Reference #NWS-2007-1623-CRC for
CERTIFICATION TO) Yakima River Water Supply Diversion Channel
City of Cle Elum) Maintenance (dredging and gravel moving)
in accordance with 33 U.S.C. 1341) located in the Yakima River in Kittitas County,
(FWPCA § 401), RCW 90.48.120, RCW) Washington.
90.48.260 and Chapter 173-201A WAC)

TO: City of Cle Elum
Matt Morton, Community Development Director
119 West First Street
Cle Elum, WA 98922

On July 7, 2008, the City of Cle Elum 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 December 27, 2007.

The proposed project entails excavation and placement of up to 25 cu yards of gravel annually for 10 years on a gravel bar in the Yakima River just upstream of the bridge over the Yakima River that is used to access South Cle Elum from Cle Elum. The project is located within the City of Cle Elum in Kittitas County, Washington 98922. The project is located in Section 27, Township 20 N, Range 15 E, WRIA# 39. The applicant proposes to enter the riverbed with a rubber-tired backhoe to excavate gravels from the north side of the gravel bar, at the location of the channel that conveys water over the gravel bar to the intake structure. Excavated material will be placed on the gravel bar below the diversion to be redistributed by the river during subsequent high flow events. It is estimated that the annual work will take less than one hour to accomplish.

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 the City of Cle Elum, and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Central Regional Office, Attn: Cathy Reed, Federal Project Coordinator, 15 West Yakima Avenue, Suite 200, WA 98902. Any submittals shall reference Order #5744 and Corps #NWS-2007-1623-CRC.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on July 7, 2008. 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.

- 7
- 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 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 for ten years from the date of this order.

C. 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 July 10, 2008 at Yakima, Washington.



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

ATTACHMENT A

**City of Cle Elum
Water Quality Certification Order #5744**

**Statement of Understanding of
Water Quality Certification Conditions**

I have read and understand the conditions of Order #5744 Section 401 Water Quality Certification for the Yakima River Water Supply Diversion Channel Maintenance Project. I have also read and understand all permits, plans, documents, and approvals associated with the Yakima River Water Supply Diversion Channel Maintenance Project referenced in this order.

Signature

Date

Title

Company