



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 1466 3099**

Todd Tarbert  
PMB # 200, 5806 A-119<sup>th</sup> Ave  
Bellevue, WA 98006

RE: Water Quality Certification Order No. 4488, for Corps Public Notice 200600665. The project will include filling 1.103 acres of waters of the state to relocate a stream, Minnie Creek, in the City of Cheney, Spokane County, Washington.

Dear Mr. Tarbert:

On December 15, 2006, 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 Minnie Creek Relocation. The project proposes to fill the existing Minnie Creek channel and construct, maintain and monitor a new channel on the east side of the property to allow the property owner to plat the property into commercial lots. On October 11, 2006, the U.S. Army Corps of Engineers (the Corps) issued a public notice for the proposed project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the Corps' 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' 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](mailto: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: Danny L. Patterson, DCI Engineers  
Todd Stebbeds - Bi-Mart, 220 S Seneca, Eugene OR 97402  
Tom Richardson - City of Cheney  
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 # 4488**  
**WATER QUALITY CERTIFICATION ) Corps Reference No. 200600665**  
**TO ) Re-route Minnie Creek within the City of Cheney,**  
**TODD TARBERT ) Spokane 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 )  
) )  
) )

**TO: Todd Tarbert**  
**PMB# 200, 5806 A-119<sup>th</sup> Ave**  
**Bellevue, WA 98006**

On December 15, 2006, Todd Tarbert 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 the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on October 11, 2006.

The proposed project entails the relocation of Minnie Creek which currently flows in a narrow channel on the west side of the lot. The proposed new channel and associated buffer will be established in a 70-foot wide Riparian Zone along the east property line. The total area contained within the ordinary high water mark of Minnie Creek that will be impacted by the proposal is 1.103 acres. Mitigation will be accomplished on site by the construction, maintenance and monitoring of replacement riparian areas as detailed in the Tarbert/Bi-Mart Riparian Mitigation Plan. The Plan was developed and submitted on April 17, 2006 by Biology Soil & Water, Inc.

A small wetland will also be created near the outflow of the creek (within a part of the existing stream channel) at the southeast end of the property. The wetland will be designed to dissipate stream energy and allow flood attenuation and sedimentation to occur before Minnie Creek waters leaves the subject property. A 50-foot buffer will be assigned to the created wetland. A stormwater detention pond is proposed for the east end of the site. The entire Riparian Zone will be planted with native herbaceous species and patches of native trees and shrubs. The Plan also includes aggressive weed control in the entire riparian channel, wetland and buffer areas.

The subject property is located in the Northeast corner of the City of Cheney, Spokane County, WA in the NW ¼ of Sec 7, T23N, R42E in WRIA 56 the Hangman Creek Watershed.

**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 quality standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant, Todd Tarbert, 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 Todd Tarbert, and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required as conditions shall be sent to Ecology's Eastern Regional Office, Shorelands and Environmental Assistance Program, Attn: Federal Project Coordinator, 4601 N. Monroe St., Spokane, WA 99205. Any submittals shall reference Order No. 4488 and Corps No. 200600665.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on December 15, 2006 and the Tarbert/Bi-Mart Riparian Mitigation Plan. 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 shall be rescinded if the Corps does not issue a Section 404 Permit.
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. 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.
11. 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.
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 (\$10,000.00) per violation per day 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 and/or 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. The wetland mitigation shall be implemented as detailed in the Tarbert/Bi-Mart Riparian Mitigation Plan and Appendix 1: Responses to Jurisdictional Questions.
2. Monitoring will be conducted in accordance with Section 6.0 of the Mitigation Plan. A copy of the required monitoring report that is to be submitted to the City of Cheney on September 30 of each year will also be sent to Ecology's Federal Permit Coordinator per Condition A.2.

### **E. Reporting Requirements**

1. A detailed "as built" report shall be prepared after completion of the mitigation planting. 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. 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 of the mitigation site.
2. The Applicant shall provide written notification to Ecology's Eastern Regional Office Federal Permit Coordinator in writing within fourteen (14) days after completion of construction of the mitigation site.

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

#### **G. 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.

**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.

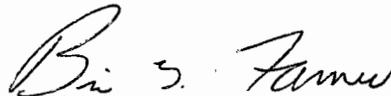
In addition, please send a copy of your appeal to:

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 6/20/07 at {city signed in}, Washington.



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