



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

December 3, 2004

REGISTERED MAIL
RR 359 893 346 US

Daniel Rasar
10191 Halloran Road
Bow, WA 98232

Dear Mr. Rasar:

RE: Order # 1615 – First Amendment
U.S. Army Corps of Engineers # 200400463
Water Quality Certification and Coastal Zone Management Consistency Determination to authorize restoration and rehabilitation of approximately 50 acres of farmed wetland south of Edison, Skagit County, Washington.

The request for certification for proposed work in wetlands adjacent to the Samish 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 Laura Casey at (425) 649-7148. Written comments can be sent to her at the Department of Ecology, 3190 – 160th Ave. SE, Bellevue, WA 98008. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Jeannie Summerhays
Section Manager
Shorelands and Environmental Assistance Program

Enclosure

JS:LC:rc

cc: Andrew Reasoner, Ducks Unlimited
Randel Perry, Corps of Engineers
Alice Kelly, Ecology
Laura Casey, Ecology



IN THE MATTER OF GRANTING A) **ORDER # 1615 – First Amendment**
WATER QUALITY) **Corps Reference # 200400364**
CERTIFICATION TO) Restoration and rehabilitation of approximately
Daniel Rasar) 50 acres of farmed wetland
in accordance with 33 U.S.C. 1341) Skagit County, Washington.
FWPCA § 401, RCW 90.48.260, RCW)
90.48.120 and Chapter 173-201A WAC)

TO: Daniel Rasar
10191 Halloran Road
Bow, WA 98232

On August 9, 2004, the U.S. Army Corps of Engineers issued a Nationwide Permit (NWP) 27 “Stream and Wetland Restoration Activities,” to allow placement of fill in waters of the United States to facilitate restoration of wetlands. During review of the project, the Department of Ecology (Ecology) determined that an individual Section 401 water quality certification would be required for this project. Ecology issued a public notice pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401) on July 16, 2004. No comments were received. This amended order is issued pursuant to resolution of an appeal of the initial order.

The project entails restoration and rehabilitation of approximately 50 acres of farmed wetland to improve wildlife habitat and wetland function. The project will shallowly excavate 0.75 of an acre of reed canary grass-dominated PEM wetlands; place fill/sod material (and additional upland soils) in 2.9 acres of same wetlands for water control berm and in 0.70 of an acre for planting mounds. Top of fill/sod planting mounds and majority of berm area will be kept at or below elevation of 102 feet to ensure that mounds remain seasonally saturated for sufficient duration to maintain hydric conditions. Peak seasonal inundation level is approximately 101 feet elevation. Project activities will alter microtopography to vary length of seasonal inundation in different areas on site and provide suitable topography for diverse wetland plant community. No wetland areas will be converted to permanently ponded areas. Project activities will convert 3.5 acres of uplands to wetlands, will not result in a net loss of wetland acreage and will result in an increase in wetland function.

For the purposes of this Order, the term “Applicant” shall mean Daniel Rasar, landowner, and his agents, assigns, and contractors.

AUTHORITIES:

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, and RCW 90.48.260, Ecology has investigated 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 as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; 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.

CONDITIONS OF AMENDED ORDER # 1615 AND WATER QUALITY CERTIFICATION:

In view of the foregoing and in accordance with 33 U.S.C. 1341, 90.48.260 RCW and Chapter 173-201A WAC, water quality certification is granted to Daniel Rasar, subject to the following conditions:

A. No Impairment of Water Quality:

- A1. 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 exceedances 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.

B. Project Restoration:

- B1. Aquatic resource restoration shall be achieved through measures described in the following documents, except as modified by this Order:
 - Joint Aquatic Resources Permit Application Form, March 31, 2003
 - Rasar Restoration Plans, Ducks Unlimited, revised June 21, 2004
- B2. In addition to conditions contained in the above-referenced documents, the following requirements shall be conditions of this Order:
 - Planting: Water control berms and upland mounds on the site shall be seeded with the following seed mix, as recommended by the Natural Resource Conservation Service: Annual rye, Red fescue, and Meadow Barley. Live willow stakes (*Salix* spp.) will be planted on some upland areas as designated by Ducks Unlimited.

- Timing: The wetland restoration site shall be seeded as described above following completion of site earthwork.
- Record Drawings: Record drawings documenting the final design of the restoration project area shall be prepared when site construction and planting is completed. The drawings shall include the following:
 - Vicinity map showing site access;
 - Approximate final site grading;
 - Drawings that shall clearly identify the boundaries of the restoration area;
 - The seed mixture used and the time of seeding;
 - Photographs of the area taken from permanent reference points;
 - Locations of photopoints;
 - A description of any changes to the restoration plan that occurred during construction.

A copy of the record drawings shall be sent to Laura Casey at Ecology within 60 days of completing construction.

- Protection of the wetland restoration area shall be as agreed between Ducks Unlimited and Daniel Rasar.
- Field Supervision: The wetland restoration grading activity and seeding shall be field-supervised by Ducks Unlimited or a qualified wetland consultant to ensure project is constructed according to plans.
- Monitoring and Access: Ecology staff will coordinate with Ducks Unlimited and Daniel Rasar to arrange a mutually-agreeable time to perform joint site visits to evaluate the success of the wetland restoration on this site, over a period of three years, with monitoring joint site visits performed in years 1, 2, and 3.
- Maintenance: The Applicant is responsible for maintenance of the wetland restoration site.

C. Stormwater Management:

- C1. The Applicant shall comply with the Stormwater Management Manual for Western Washington, August 2001. A Stormwater Pollution Prevention Plan shall be prepared and kept available on the site prior to commencing earthwork.

D. Construction:

- D1. Work in or near waters of the state shall be done so as to minimize turbidity, erosion, sedimentation, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (e.g., a perimeter erosion control silt fence, and biobag filters in the existing ditch, etc.), shall be in place before starting clearing, filling, and grading work at the restoration site.
- D2. 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.
- D3. 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.
- D4. The Applicant shall provide notice to Ecology's Laura Casey at least 3 days prior to the start of placing fill in wetlands or other waters of the state, and within 30 days after completion of construction at the project site. Notification can take place by e-mail to CALA461@ecy.wa.gov, telephone to (425) 649-7148, fax to (425) 649-7098, or in writing.

E. Emergency/Contingency Measures:

- E1. In the event the Applicant is unable to comply with any of the permit terms and conditions due to any cause, the Applicant shall:
- Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
 - Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000, and within 24 hours to Ecology's Laura Casey at (425) 649-7148.
 - 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.

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.

E2. 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 or wetlands.

F. General Conditions:

F1. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

F2. The Applicant will be out of compliance with this certification if the project is constructed and/or operated in a manner not consistent with the project description contained in the Public Notice for certification, or as otherwise approved by Ecology. Mitigation measures may be required through other local, state, or federal requirements.

F3. The Applicant will be out of compliance with this certification and must reapply with an updated application if five years elapse between the date of the issuance of this certification and the beginning of construction and/or discharge for which the federal license or permit is being sought.

F4. The Applicant will be out of compliance with this certification and must reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the Public Notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval prior to implementation of such action.

F5. 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 foremen, and state and local government inspectors.

To avoid violations or non-compliance with this Order, the Applicant shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects of this Order and any subsequent revision or Ecology-approved plans.

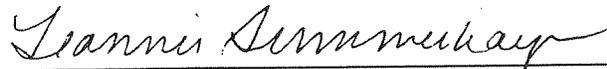
F6. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional 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 the public interest.

- F7. Liability: 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.

Appeal Process:

Any person aggrieved by this Order may obtain review thereof by appeal, within thirty (30) days of receipt of this Order, to the Washington Pollution Control Hearings Board, P.O. Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, P.O. Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated 12/3/04 at Bellevue, Washington.



Jeannie Summerhays, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

