



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000
March 2, 2006

REGISTERED MAIL
RR 359 893 638 US

Whatcom County Public Works
River & Flood Division
Attn: James Lee
322 N. Commercial Street, Suite 120
Bellingham, WA 98225

**RE: Water Quality Certification Order #2543 for U.S. Army Corps of Engineers (Corps)
Reference #200401127 for Everson Overflow Bank Stabilization, Whatcom County,
Washington**

Dear Mr. Lee:

On March 4, 2005, Whatcom County Public Works submitted a Joint Aquatic Resources 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 Everson Overflow Bank Stabilization. The project proposes to install 2,500 cubic yards of angular rock and 100 pieces of large woody debris for bank stabilization along 1,400 lineal feet of the Nooksack River near Everson, Washington. The Corps issued a public notice on December 20, 2004, 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.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129 or rpad461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Geoff Tallent
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:rrp:cja
Enclosure

cc: Randel Perry, U.S. Army Corps of Engineers
Richard Johnson, Washington Department of Fish and Wildlife
John Grettenberger, U.S. Fish and Wildlife Service
Dan Tonnes, National Oceanic and Atmospheric Administration
Penny Keys, Ecology
Loree' Randall, Ecology
Patricia Olson, Ecology
Barry Wenger, Ecology



IN THE MATTER OF GRANTING A) ORDER # 2543
WATER QUALITY) Corps Reference #200401127
CERTIFICATION/MODIFICATION) Installation of 2,500 cubic yards of angular rock
TO Whatcom County Public Works) and 100 pieces of large woody debris for bank
in accordance with 33 U.S.C. 1341) stabilization along 1,400 lineal feet of the
(FWPCA § 401), RCW 90.48.120, RCW) Nooksack River located in Whatcom County,
90.48.260 and Chapter 173-201A WAC) Washington.

TO: Whatcom County Public Works
Attn: James Lee
River & Flood Division
322 N. Commercial Street, Suite 120
Bellingham, WA 98225

On March 4, 2005, Whatcom County Public Works 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 the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on December 20, 2004.

The proposed project entails installation of 2,500 cubic yards of angular rock along 1,400 lineal feet of the Nooksack River, reshaping and vegetation of the upper bank, installation of approximately 75 pieces of large woody debris into the toe of the bank, and incorporation of 25 pieces of large woody debris into timber pile structures constructed in the protected areas created by two existing scour holes.

The proposed work will take place off the west end of Massey Road on the east side of the Nooksack River, near Everson, Whatcom County, Washington, southeast quarter of Section 31, T 40N., R. 4E., WRIA 01, Nooksack River Watershed.

Mitigation includes revegetation of a 4.8 acre area adjacent to the South Fork Nooksack River near Acme, Whatcom County, Washington.

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 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 Whatcom County Public Works, and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #2543 and Corps Reference #200401127.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on March 4, 2005. 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 shall be rescinded if the Corps does not issue a Section 404 permit.

- A6. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
- A7. 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.
- A8. 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.
- A9. 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.
- A10. 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 or mitigation sites.
- A11. 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.
- A12. 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. No Impairment of Water Quality

- B1. 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.

C. Short Term Modification to Water Quality Standards

- C1. Construction activities may cause water quality effects that will exceed the state water quality criteria specified in Chapter 173-201A WAC. Per WAC 173-201A-110, Ecology may grant a modification to the standards to allow for exceedances of the criteria on a short-term basis when necessary to accommodate essential activities. The Nooksack River is classified as Class A and the criteria of that class apply except as specifically modified by this Order. The turbidity in Class A waters shall not exceed 5 NTU over background 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.
- C2. Mixing zones (or zones of disturbance) can be authorized to allow for temporary exceedances of certain water quality standards in state waters immediately adjacent to a permitted project, after all known, available, and reasonable methods of prevention, control and treatment have been implemented. The mixing zone is allowed for the disturbance of in-place sediments during and immediately after necessary in-water construction activities. For this project, a mixing zone of 600 feet from the downstream edge of the in-water activities is considered reasonably sufficient to allow for temporary water quality exceedances. Within the mixing zone, the Class A standard for turbidity is waived. All other applicable water quality standards shall remain in effect within the mixing zone and all other water quality standards are to be met outside of the authorized mixing zone.
- C3. This modification shall remain in effect for the entire duration of time necessary to complete the work. However the waiver of specified standards within the mixing zone is intended for brief periods of time (such as a few hours or a day) and is not an authorization to exceed those standards for the entire duration of construction. In no case does the waiver authorize degradation of water quality that significantly interferes with or becomes injurious to characteristic water uses, including fisheries habitat, or causes long-term harm to the Nooksack River.
- C4. In-Water Construction Water Quality Sampling and Monitoring: An in-water construction Water Quality Monitoring Plan shall be developed and implemented. "In-water construction" is defined as all work below the ordinary high water mark of the Nooksack River. **The Water Quality Monitoring Plan shall be submitted to Ecology for review and approval at least 60 days before construction is scheduled to begin.** Ecology may require changes and modifications to the plans. The plan shall include the following minimum requirements:

- a. Locations of samples: Locations of water quality sampling sites shall be identified and described in the plan and on a map. At a minimum, sampling shall take place at the point of compliance as specified in WAC 173-201A-110(3), which allows a temporary mixing zone for turbidity resulting from disturbance of in-place sediments. The allowed mixing zone is 600 feet downstream from activity in the Nooksack River. Background samples shall be collected outside the area of influence of the in-water work. These samples shall be collected at the same frequency as the point of compliance samples.
- b. Number of samples: Samples shall be collected a minimum of every two (2) hours throughout the first day of in-water construction activity. Subsequent sampling is dependent on monitoring results, but shall be a minimum of three (3) times per day during in-water activity if no exceedances are detected. Sampling shall increase if turbidity exceedances are observed or measured to be above the WAC 173-201A-110(3) temporary mixing zone criteria.
- c. Parameters to be sampled: Turbidity shall be sampled for this project.
- d. Equipment: Sampling for turbidity is to be accomplished using a turbidometer properly calibrated according to the operator's manual.
- e. Detection of exceedances: Water quality standards for turbidity in Class A waters are as follows: turbidity 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. If exceedances of this standard at 600 feet are detected as a result of water quality sampling and monitoring, the Applicant shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, the Applicant shall assess the efficacy of the site Best Management Practices (BMPs) and update or improve the BMPs used at the work site in an effort to reduce or prevent recurrence of the turbidity exceedance.
- f. Notification of exceedances: Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #2543, Attn: 401/CZM Federal Project Manager, by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:
 - i. A description of the nature and cause of non-compliance, including the quantity and quality of any unauthorized discharges;

- ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance;
- iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance; and

In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology 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, photographs, and any other pertinent information.

- g. Submittal of reports: The results of all turbidity sampling shall be forwarded to Ecology weekly. Turbidity sampling results can be included in a weekly "status report" of information regarding completed construction for the previous week and proposed construction for the upcoming week. Status reports shall be submitted to the 401/CZM Federal Project Manager by mail or fax (425) 649-7098, with reference to Order #2543. The weekly reports shall be submitted no later than the Tuesday of the week following the week samples were collected. Reports shall summarize the scope of inspections, personnel conducting the inspection, results of turbidity sampling, date of the inspection and/or sampling event, summary of any non-compliance, and actions taken as a result of the inspections/sampling.

D. Project Mitigation

- D1. Impacts affecting salmonid habitat shall be mitigated through measures described in the following documents, except as modified by this Order:
 - Site Plan: Everson Overflow Bank Stabilization Project, South Fork Riparian Restoration Work Details, Sheet 5 of 5, dated 2/28/05
 - Mitigation Plan contained within the letter dated March 1, 2006, to Rebekah Padgett, Department of Ecology, from James Lee, Whatcom County Public Works Department, RE: Everson Overflow Bank Stabilization Project.
- D2. In addition to conditions in the above-referenced documents, the following requirements shall be conditions of this Order:
 - Timing: Construction and installation of compensatory mitigation must occur within six months following project construction.
 - As-Built Report: An As-Built Report documenting the final design of the mitigation area must be prepared when site construction and planting are completed. The report shall include the following:

- a) Vicinity map showing site access.
- b) The installed planting scheme showing densities, sizes, and approximate locations of plant communities (this may include several typical planting schemes), as well as plant sources and the time of planting.
- c) Photographs of the area taken from permanent reference points.
- d) Locations of photopoints, transects, and sampling sites.
- e) A description of any changes to the mitigation plan that occurred during construction.

A copy of the as-built report shall be sent to the 401/CZM Federal Project Manager within 60 days of completing plantings, and in no case later than October 31, 2007.

- Deed Restriction: Permanent protection of the restoration area shall be recorded on the appropriate property deed. Documentation that this requirement has been fulfilled, including copies of permanent restrictive easements, shall be provided to Ecology at the same time as the as-built report.
- Field Supervision: Plant installation shall be field-supervised by a qualified plant ecologist to ensure that plants are appropriately placed.
- Monitoring: Monitoring shall be completed as described in Mitigation Plan contained within the letter dated March 1, 2006, to Rebekah Padgett, Department of Ecology, from James Lee, Whatcom County Public Works Department, RE: Everson Overflow Bank Stabilization Project.
- Monitoring shall take place over a period of 10 years, with monitoring performed in years 1, 2, 3, 5, 7, and 10. Copies of all monitoring reports shall be submitted to Ecology's 401/CZM Federal Project Manager no later than December 31 of each monitoring year.
- Maintenance: The Applicant is responsible for maintenance of the mitigation site such that the performance standards outlined in the mitigation plan are met. Maintenance may include mechanical removal of invasive species, mowing, or herbicide treatments in order to ensure success of planted material.

E. Construction

- E1. Construction Stormwater and Erosion Control: 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 Best Management Practices suitable to prevent exceedances of state water quality standards (e.g., a perimeter erosion control silt fence, etc.), shall be in place before starting clearing, filling, and grading work

at the site, and shall also comply with all requirements of the NPDES Construction Stormwater Permit, if applicable.

- E2. All construction debris and overburden material shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- E3. 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.
- E4. The Applicant shall implement all specifications for erosion and sediment control specified in the March 2005 Temporary Erosion and Sediment Control (TESC) Plan and all contract documents. Adjustments to planned erosion and sediment control may be necessary to successfully control off-site movement of materials. The following will be incorporated as part of the TESC Plan:
- Bare earth areas shall be protected from erosion using mulch or vegetation within seven days of project completion.
- E5. Periodic inspection and maintenance of all erosion control structures shall be conducted no less than every 7 days from the start of the project to site stabilization. Additional inspections shall be conducted prior to and after expected rainfall events to ensure erosion control measures are in working conditions. Any damaged structures shall be immediately repaired. If it is determined at the inspection that additional measures are needed to control stormwater and erosion, they shall be implemented immediately.
- E6. A contingency plan shall be developed detailing actions to be made in the event of adverse weather conditions or other foreseeable undesirable conditions.
- E7. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination to surface waters. All fueling areas will be provided with adequate spill containment. During fueling and servicing of cranes, BMPs shall be in place to contain any spill of petroleum products.
- E8. Turbid water generated from construction activities and/or removed from the work area shall not be discharged directly to waters of the state and shall be routed to an upland location above the ordinary high water line to allow removal of fine sediment and other contaminants.
- E9. Riprap material shall be clean, angular rock, and shall be installed to withstand 100-year peak flows. River gravels or other round cobbles shall not be used as exterior armor. Riprap shall be placed by machine in the river, and shall not be end-dumped into the river.

E10. All wood, including pilings, used in this project shall be untreated.

F. Timing Requirements

F1. This Order is valid until all compliance requirements in this document have been met.

F2. In-water work shall be subject to timing limitations imposed by Washington Department of Fish and Wildlife (WDFW). Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by WDFW that fisheries resources may be adversely affected.

G. Notification Requirements

G1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Coordinator at least 3 days prior to the start of construction. Notification can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing to Ecology Northwest Regional Office, 3190 – 160th Avenue SE, Bellevue, WA 98008.

H. Emergency/Contingency Measures

H1. The Applicant shall develop a spill prevention and containment plan for all aspects of this project.

H2. The facility shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.

H3. 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.

H4. 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, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:

a) Cease operations at the location of the violation.

b) Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.

- c) Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.
 - d) Submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
- H5. 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.
- H6. 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 or WDFW on what to do with them. Ecology or WDFW may require analyses of these samples before allowing the work to resume.
- H7. 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.

I. 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 March 2, 2006, at Bellevue, Washington.

Geoff Tallent, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

**EVERSON OVERFLOW BANK STABILIZATION PROJECT
Water Quality Certification Order #2543**

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

I have read and understand the conditions of Order #2543 Section 401 Water Quality Certification for the Everson Overflow Bank Stabilization Project. I have also read and understand all permits, plans, documents, and approvals associated with the Everson Overflow Bank Stabilization Project referenced in this order.

Signature

Date

Title

Company