



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

May 15, 2008

REGISTERED MAIL
RB 670 357 436 US

Drainage and Irrigation District #17
c/o Keith Morrison
19486 E. Johnson Road
Mount Vernon, WA 98274

Dear Mr. Morrison:

RE: Water Quality Certification Order #5256 and Coastal Zone Management Consistency Determination for U.S. Army Corps of Engineers Reference #NWS-2007-167-NO, 5-Year Skagit Drainage Maintenance Project, Martha Washington Creek, Flowers Creek, Maddox Creek, Big Ditch Slough, and Artificial Drainage Watercourses, Skagit County, Washington

On March 13, 2007, Drainage and Irrigation District #17 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 (CWA) for the proposed 5-Year Skagit Drainage Maintenance project. The Corps issued a joint public notice for a Section 404 and Section 10 Permit on March 9, 2007, for the proposed project.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the March 13, 2007, JARPA and the March 9, 2007, 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.

On March 14, 2007, Drainage and Irrigation District #17 submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). On September 12, 2007, Ecology and Drainage and Irrigation District #17 jointly requested a CZM extension from the Corps. Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with Drainage and Irrigation District #17's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon Drainage and Irrigation District #17's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.



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

Sincerely,


~~FOL~~ Geoff Tallent
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:rrp:cja
Enclosure

cc: Randel Perry, U.S. Army Corps of Engineers
Mike Rundlett, Western Washington Agricultural Association
Mike Shelby, Western Washington Agricultural Association
Patty Michak, Marine View Fisheries Consulting, Inc.
Brian Williams, Washington Department of Fish and Wildlife
Larry Wasserman, Swinomish Indian Tribal Community
Steve Hinton, Skagit River System Cooperative
Daniel Downs, Skagit County Planning and Development Services
Susan Dretke, Snohomish County Planning
Tom Sibley, NOAA Fisheries

e-cc: Alice Kelly – NWRO
Richard Grout – BFO
Mak Kaufman – BFO
Bob Fritzen – BFO
Paul Anderson – NWRO
Ralph Svrjcek – NWRO
Dave Garland – NWRO
Christina Maginnis – BFO
Raman Iyer – NWRO
Sheila Hosner, Governor's Office of Regulatory Assistance

IN THE MATTER OF GRANTING A)	ORDER #5256
WATER QUALITY)	Corps Reference No. NWS-2007-167-NO
CERTIFICATION TO)	5-Year Skagit Drainage Maintenance Project;
Drainage and Irrigation District #17)	Martha Washington Creek, Flowers Creek,
in accordance with 33 U.S.C. 1341)	Maddox Creek, Big Ditch Slough, and Artificial
(FWPCA § 401), RCW 90.48.120, RCW)	Drainage Watercourses, Skagit County,
90.48.260 and Chapter 173-201A WAC)	Washington.

TO: Drainage and Irrigation District #17
C/O Keith Morrison
19486 E. Johnson Road
Mount Vernon, WA 98274

On March 13, 2007, the Drainage and Irrigation District #17 submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A joint 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 of Chapter 173-225 WAC on March 9, 2007.

The proposed drainage maintenance work includes:

- Trash Racks: Removal of accumulated debris, replacement of worn or damaged trash rack components, structure replacement when necessary.
- Pump Facilities: Routine mechanical servicing of the pump and electrical connections and removal of any accumulated debris.
- Culverts: Dredging of ditch around culvert openings, occasional cleaning of culverts, and repair or replacement when necessary.
- Flood Gates: Removal of debris, repair and replacement when necessary.
- Tide Gates: Removal of accumulated debris and minor repairs. Tide gates will not be replaced under this proposal.
- Channel In-Water Bucket Mowing: Removal of vegetative material below the water line, not including the root system or soil.
- Channel Out-of-Water Mowing: Removal of vegetative material above the water line, not including the root system or soil.
- Dredging: Maintenance dredging of drainage and irrigation ditches to restore original depths and contours, including side slopes.

The project is located within Drainage and Irrigation District #17, within the Skagit River Delta of Skagit County, south of the City of Mount Vernon and north of Stanwood, Washington, in Section 32, T. 33 N., R. 4 E., WRIA 3.

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 Drainage and Irrigation District #17 and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals, notifications, and reporting requirements shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452, or provided by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. Any communications shall reference Order #5256 and Corps Reference #NWS-2007-167-NO.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on March 13, 2007. 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 U.S. Army Corps of Engineers does not issue an individual 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) per violation for each day of continuing noncompliance.

B. Water Quality Conditions:

- B1. This Order does not authorize a temporary turbidity exceedance beyond the limits established in WAC 173-201A-200(1)(e)(i) for Martha Washington Creek, Flowers Creek, Maddox Creek, Big Ditch Slough, and within 300 feet upstream of the confluence of any tributaries. Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup or surface waters or sediments occurring as a result of project construction or operations.
- B2. Water quality standards for turbidity in “Salmonid Spawning, Rearing, and Migration” waters are as follows: turbidity shall not exceed 5 NTU over background conditions when the background is 50 NTU or less, or a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. If exceedances of this standard at the point of compliance specified in WAC 173-201A-200(1)(e)(i) are detected through 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.
- B3. Notification of exceedances: Notification of three (3) successive exceedances that are detected through hourly visual water quality monitoring shall be made to Ecology within 24 hours of occurrence. Notification shall be made per Condition A.2. The Applicant shall, at a minimum, provide Ecology with the following information:

- a. A description of the nature and cause of non-compliance, including the quantity and quality of any unauthorized discharges;
 - b. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance; and
 - c. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
 - d. In addition, the Applicant shall submit a written report to Ecology upon request that describes in writing the information described in Condition B.3.a–c.
- B4. Reporting: If no exceedances are detected, results of water quality monitoring, as determined by the *General Supplement, Drainage and Irrigation Improvement District No. 17 Drainage Maintenance Plan (DMP) and Water Quality Guidance*, dated 2/14/08, shall be forwarded to Ecology at the end of each season, and no case later than March 1st of each year, in accordance to Condition A2.

C. Conditions for In-Water and Over-Water Construction Activities:

- C1. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- C2. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- C3. Work shall be accomplished per the best management practices described in the following documents, except as modified by this Order:
 - *Drainage & Irrigation Improvement District #17 Drainage Maintenance Agreement*, dated 5/26/05.
 - *Drainage & Irrigation Improvement District #17 Drainage Maintenance Plan*, including Addenda A-1 and B, dated 6/27/05.
 - *Drainage Maintenance Plan Supplement, Skagit County Drainage and Irrigation Improvement District #17*, dated 6/16/07.
 - *General Supplement, Drainage and Irrigation Improvement District No. 17 Drainage Maintenance Plan (DMP) and Water Quality Guidance*, dated 2/14/08.

If any of these documents are modified, they shall be submitted to Ecology for review and approval.

- C4. All debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- C5. Machinery and equipment shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- C6. 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.

D. Emergency/Contingency Measures:

- D1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- D2. The Applicant 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.
- D3. 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.
- D4. 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 or spill.
 - 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.

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.

E. Timing Requirements

- E1. This Order is valid until all compliance requirements in this document have been met.
- E2. In-water work shall be subject to timing limitations imposed by 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.

F. Reporting and Notification Requirement Conditions

- F1. Applicant shall provide notice per condition A.2. to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction and within 14 days after completion of construction at the project site.
- F2. Applicant shall provide notice to Ecology per Condition A.2. within 48 hours of any Force Majeure Event and/or any other unanticipated events as described in the *General Supplement, Drainage and Irrigation Improvement District No. 17 Drainage Maintenance Plan (DMP) and Water Quality Guidance*, dated 2/14/08. The Applicant shall, at a minimum, provide Ecology with the following information:
 - a. A description of the event, dates and duration of the event, and any steps taken, or to be taken, by the Applicant to address water quality issues related to this project.
 - b. In addition, within two (2) weeks of the Event, the Applicant shall submit a written report to Ecology that describes the nature of the Event, action taken and/or planned, photographs, and any other pertinent information.

G. Appeal Process:

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.

- Serve your appeal on the Department of Ecology within 30 days of the “date of receipt” of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). “Date of receipt” is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Department of Ecology
Northwest Regional Office
Attn: Rebekah Padgett
3190 160th Avenue SE
Bellevue, WA 98008

For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>

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 May 15, 2008 at Bellevue, Washington.



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

ATTACHMENT A

**DRAINAGE AND IRRIGATION DISTRICT #17
5-YEAR SKAGIT DRAINAGE MAINTENANCE PROJECT
Water Quality Certification Order #5256**

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

I have read and understand the conditions of Order #5256 Section 401 Water Quality Certification for the Drainage and Irrigation District #17 5-Year Maintenance Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

Signature

Date

Title

Company