



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

March 12, 2009

REGISTERED MAIL
RB 670 356 909 US

Patrick Cagney
Department of the Army
Seattle District, Corps of Engineers
P.O. Box 3755
Seattle, WA 98124

RE: Water Quality Certification Order #6509 for U.S. Army Corps of Engineers (Corps) Reference #PL-09-01 to restore a portion of the Snohomish River estuary to improve habitat for fish and wildlife species, Ebey Slough, Marysville, Snohomish County, Washington

Dear Mr. Cagney:

On December 24, 2008, you submitted a letter request 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 project. A joint public notice was distributed by the Corps for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on February 04, 2009.

This project proposes:

- To restore a portion of the Snohomish River estuary to improve habitat for fish and wildlife species.
- Excavation and removal of 1800 linear feet of dike at Ebey slough, creation of new channels, stream improvements to Jones and Allen creeks, construction of internal berms and set back levees.
- Total excavation of approximately 186,000 cubic yards of material and fill of 275,000 cubic yards of material. Project will have a permanent loss of approximately 18 acres of palustrine emergent wetlands and improved function and value of over 340 acres of wetland.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the request for 401 Certification and the February 04, 2009, 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.

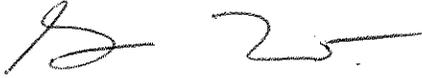


(Over)



If you have any questions, please contact Lori Lull at 425-649-7271, LENL461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Geoff Tallent
Section Manager
Northwest Regional Office
Shorelands and Environmental Assistance Program

GT:lcl:cja
Enclosure

cc: Jamie Bails, Washington Department of Fish and Wildlife
John Van Soest
Cheryl Dungan, City of Marysville

e-cc: JP Fontaine - jfontainevoid@aol.com
Mary Faure' - maryf@thebondshop.net
Elwyn Wood, edwood3@bellsouth.net
Tim Schlender - HQ
Loree' Randall - HQ
Erik Stockdale - Ecology NWRO
Barbara Nightingale - Ecology NWRO
ecyrefedpermits@ecy.wa.

IN THE MATTER OF GRANTING A) ORDER #6509
WATER QUALITY) Corps Reference No. PL-09-01
CERTIFICATION TO: U.S. Army) Qwuloolt Habitat Restoration Project, City of
Corps of Engineers) Marysville, Ebey Slough, Snohomish County,
 in accordance with 33 U.S.C. 1341) Washington.
 (FWPCA § 401), RCW 90.48.120, RCW)
 90.48.260 and Chapter 173-201A WAC)

TO: Patrick Cagney
 Department of the Army
 Seattle District, Corps of Engineers
 P.O. Box 3755
 Seattle, WA 98124

On December 24, 2008, the U.S. Army Corps of Engineers submitted a letter to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A joint public notice was distributed by the Corps for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on February 04, 2009.

The project proposes:

- To restore a portion of the Snohomish River estuary to improve habitat for fish and wildlife species.
- Excavation and removal of 1800 linear feet of dike at Ebey slough, creation of new channels, stream improvements to Jones and Allen creeks, construction of internal berms and set back levees.
- Total excavation of approximately 186,000 cubic yards of material and fill of 275,000 cubic yards of material. Project will have a permanent loss of approximately 18 acres of palustrine emergent wetlands and improved function and value of over 340 acres of wetland.

The project site is located near and within the City of Marysville (Longitude 48°02'33.82''N Latitude 122°09'28.55''), WRIA# 7, Snohomish Watershed.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 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 U.S. Army Corps of Engineers and their agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required as conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160th Ave SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #6509 and Corps Reference No. PL-09-01.
- A3. Work authorized by this Order is limited to the work described in the U.S. Army Corps of Engineers letter requesting 401 certification received by Ecology on December 24, 2008 and Public Notice issued February 4, 2009. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the 401 request and public notice 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. 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.
- A6. 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.
- A7. 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.
- A8. 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 site.
- 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. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

B. Construction Conditions

- B1. 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.
- B2. The project shall be clearly marked/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.

- B3. The applicant shall construct flood protection levees. Levees shall provide the same (or greater) level of flood protection that currently exists.
- B4. The Applicant shall obtain and comply with all stormwater requirements within the National Pollutant Discharge Elimination System (NPDES) Stormwater General Permit for Construction Activity for this project.

C. Water Quality Conditions

- C1. Because this project will cause a long term benefit for the water quality Ecology has determined that a larger mixing zone is appropriate. In granting this mixing zone, Ecology finds that the Applicant's supporting information clearly indicates that the mixing zone does not have reasonable potential to 1) cause a loss of sensitive or important habitat; 2) substantially interfere with the existing or characteristic uses of Ebey Slough; 3) result in damage to the ecosystem; and 4) adversely affect public health.
 - a. A turbidity mixing zone is granted for a distance of 400 feet for the activity of the breach of the dike on Ebey Slough for a maximum of one week.
- C2. At least 30 days prior to beginning in-water work, the Applicant shall submit a Water Quality Monitoring and Protection Plan (WQMPP) to the Federal Permit Coordinator for review and approval. In water work shall not begin until Ecology approves the WQMPP.
 - a. At a minimum the WQMPP shall include:
 - i. The name(s) and phone number(s) of the person responsible for onsite monitoring and reporting.
 - ii. The BMP's and procedures to be used to protect water quality during the specific proposed in-water activities.
 - iii. A water sampling plan for turbidity and dissolved oxygen.
 - iv. A map with numbered or named sampling locations associated with the in-water activities that require monitoring.
 - b. A background sample shall be collected at the beginning of each sampling event.
 - c. Ecology must approve, in writing, any changes or additions to the WQMPP.
 - d. Monitoring results shall be submitted weekly to the Ecology Federal Permit Coordinator, per condition A.2.
 - e. Additional monitoring may be required if the monitoring results indicate that the water quality standards have not been met.

D. Monitoring Requirements

- D1. Within 120 days of completing construction, the Applicant shall submit a final as-built report with maps to Ecology, unless additional time is requested in writing and approved by Ecology.

- D2. The Applicant shall submit final restoration monitoring plan to Ecology prior to construction.
- D3. The Applicant shall submit monitoring reports to Ecology documenting conditions at the restoration site for years 1 and 5, unless otherwise approved by Ecology.

E. Timing Requirements

- E1. This Order is valid until all compliance requirements in this document have been met.

F. Notification Requirements

- F1. Notification shall be provided to Ecology via phone 425-649-7271 or email to Ecology's Federal Project Coordinator.
 - a. At least ten (7) days prior to any pre-construction meeting.
 - b. At least three (3) days prior to the start of construction at the project site.
 - c. Within fourteen (14) days after completion of all construction phases.
 - d. Immediately following a violation of water quality standards or any condition of this Order

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

- G1. 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.
- G2. 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 24-Hour Spill Response Team at 1-800-258-5990 of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.
- G3. 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.
- G4. 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 24-Hour Spill Response Team at 1-800-258-5990.

H. 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

Deliver your appeal in person to:

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

OR

2. To serve your appeal on the Department of Ecology

Mail appeal to:

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

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: Lori Lull
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 March 12, 2009 at Bellevue, Washington.



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

ATTACHMENT A

**U.S. ARMY CORPS OF ENGINEERS
QWULOOLT HABITAT RESTORATION PROJECT
Water Quality Certification Order #6509**

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

I have read and understand the conditions of Order #6509 Section 401 Water Quality Certification for the U.S. Army Corps of Engineers Qwuloolt Habitat Restoration 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