



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

April 5, 2006

REGISTERED MAIL  
RB 252 973 890 US

USDA Natural Resources Conservation Service  
ATTN: Mr. Greg Fisher  
1835 Black Lake Blvd. SW, Suite E  
Olympia, WA 98512-5623

- RE: Water Quality Certification Order **2906** for Corps Nationwide Permit 27, Stream and Wetland Restoration Projects, Reference No. 200500858 to conduct a restoration project on a 7.4 acre portion of the 40-acre northeastern parcel of the 144-acre Vetter property that is in the Wetland Reserve Program (WRP) easement area within the Chehalis River Floodplain, located approximately one mile east of the town of Montesano, Grays Harbor County, Washington.

Dear Mr. Fisher:

On July 25, 2005, the USDA Natural Resources Conservation Service submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act to conduct a restoration project in prior converted croplands on 7.4 acres of the 40-acre northeastern parcel of the 144-acre Vetter property that is in the Wetland Reserve Program easement area. The location of this project is within the Chehalis River Floodplain, located approximately one mile east of the town of Montesano, Grays Harbor County, Washington. The Corps of Engineers issued a Nationwide Permit 27, on September 22, 2005. The Department of Ecology subsequently issued a Public Notice for the proposed project on October 10, 2005.

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 Lori Ochoa at (360) 407-6926. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Perry J Lund", written over a circular scribble.

Perry J Lund  
Southwest Regional Office  
Shorelands and Environmental Assistance Program

PJL:LO:th  
Enclosure

cc: Jim Green, U.S. Army Corps of Engineers  
Mark Petrie, Ducks Unlimited  
Jane Hewitt, Grays Harbor County  
Janet Strong, Chehalis River Council

e-cc: Penny Keys, HQ  
Loree' Randall, HQ  
Jeff Stewart, SWRO/SEA  
Kevin Farrell, SWRO/SEA  
Lori Ochoa, SWRO/SEA

<b>IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO USDA Natural Resources Conservation Service</b> in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	) <b>ORDER # 2906</b> ) <b>Corps Reference No. 200500858</b> ) To conduct a restoration project within prior ) converted croplands on a 7.4 acre portion of the ) 40-acre northeastern parcel of the Vetter property ) that is in the Wetland Reserve Program (WRP) ) easement area in the Chehalis River floodplain ) located approximately one mile east of the town ) of Montesano in Grays Harbor County, ) Washington.
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TO: USDA Natural Resources Conservation Service  
ATTN: Mr. Greg Fisher  
1835 Black Lake Boulevard SW, Suite E  
Olympia, WA 98512-5623

On July 25, 2005 the USDA Natural Resources Conservation Service submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A Nationwide Permit 27, for Stream and Wetland Restoration Activities, was issued by the U.S. Army Corps of Engineers (Corps) for the above-referenced project on September 22, 2005. Pursuant to the provisions Chapter 173-225 WAC the Department of Ecology distributed a Public Notice for this project on October 10, 2005.

The proposed project involves restoration of prior converted croplands on 7.4 acres of the 40-acre northeastern parcel of the 144-acre Vetter property that is in the Wetland Reserve Program easement area. The restoration work entails excavation to an elevation of 9.0 feet to increase the depth and duration of flooding across this portion of the property. This would result in establishing a hydro-period that will support the establishment of native wetland plant communities. The project area would rely on surface runoff and groundwater for filling, as well as periodic over bank flooding of the Chehalis River. The project is located on the Vetter property in the Chehalis River floodplain, approximately one mile east of the town of Montesano in Grays Harbor County, Washington, Sections 8 and 9, Township 17 North, Range 7 West, WRIA 22, Lower Chehalis 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 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:**

1. For purposes of this Order, the term "Applicant" shall mean the USDA Natural Resources Conservation Service, and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Southwest Region, Attn: Federal Permit Coordinator, PO Box 47775, Olympia, WA 98504-7775. Any submittals shall reference Order No. 2906 and Corps No. 200500858.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on July 25, 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.
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 does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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 for each day of continuing noncompliance.

**B. No Further Impairment of Water Quality:**

1. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (173-201A WAC) or sediment quality standards (173-204 WAC). Water quality criteria contained in 173-201A-030(1) WAC and 173-201A-040 WAC 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 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. Timing:**

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

**D. Notification Conditions:**

1. The Applicant shall notify Ecology's Southwest Regional Office Federal Permit Coordinator (Lori Ochoa) in writing by Fax 360/ 407-6305, by E-mail [loch461@ecy.wa.gov](mailto:loch461@ecy.wa.gov), or by mail P.O. Box 47775, Olympia, WA 98504-7775) at least fourteen (14) days prior to the onset of any work on the site.
2. The Applicant shall notify Ecology's Southwest Regional Office Federal Permit Coordinator within fourteen (14) days after completion of construction.
3. The Applicant shall ensure that all appropriate project engineers and contractors at the project and mitigation sites shall have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicants 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 no less than seven (7) days before construction begins at the project 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.

**E. Construction Activity Conditions:**

1. The project site shall be clearly marked/staked prior to construction to protect adjacent wetlands and their buffers from construction impacts. 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. All project staff shall be trained to recognize construction fencing or flagging that identifies wetland boundaries. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be filled. Equipment shall enter and operate only within the marked clearing limits, corridors and stockpile areas.
2. The Applicant shall comply with the most current Construction Stormwater NPDES permit issued for this project.
3. Work in or near waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.

4. Erosion control devices (e.g., hay bales, detention areas, filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting project construction and shall be maintained throughout construction.
5. 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 good working condition. 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.
6. Appropriate Best Management Practices (BMP's) shall be implemented to minimize track-out during construction at the project sites.
7. All construction debris shall be properly disposed of in an upland area so that it cannot cause water quality degradation to state waters.
8. Turbid water generated from construction activities, including turbid de-watering water, shall not be discharged directly to waters of the state, including wetlands. Turbid water shall be routed to an upland location to allow removal of fine sediment and other contaminants.
9. 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 shall be provided with adequate spill containment. Fueling equipment and vehicles within 50 feet of state waters and wetlands is not allowed.
10. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall not be discharged into state waters.

#### **F. Reporting Conditions:**

1. An "As-Built" Report for the Vetter Restoration Area shall be submitted documenting the final design of the project area when site construction and all planting is completed. The "as-built" documents shall include the following:
  - Final site topography;
  - Photographs of the area taken from permanent reference points;
  - The installed planting scheme showing quantities, densities, sizes, and approximate locations of plants, as well as plant sources and the time of planting;
  - Types of habitat features (e.g., snags, large woody debris) and their locations; and,
  - An analysis of any changes to the mitigation plan that occurred during construction.

A copy of the "as-built" report and drawing shall be sent to Ecology within 60 days of completing construction and planting, and in no case later than December 31, of the year that construction is completed.

**G. Emergency/Contingency Measures:**

1. Any in-water work that is out of compliance with the provisions of this Order, 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 operator shall immediately take the following actions:
  - 1a. Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
  - 1b. Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-hour spill response team at (360) 407-6300, and within 24 hours to Ecology's Southwest Regional Office Permit Coordinator at (360) 407-6926.
  - 1c. Submit a 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 Applicants from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

2. 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.
3. 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 Southwest Regional Spill Response Office at 360 407-6300.

**F. 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 5 APRIL 2006 at Lacey, Washington.



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Perry J Lund, Unit Supervisor  
Shorelands and Environmental Assistance Program  
Department of Ecology  
State of Washington

