



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

August 15, 2006

REGISTERED MAIL  
RB 252 974 011 US

Nisqually Indian Tribe  
Natural Resources Department  
ATTN: Mr. Florian Leischner  
12501 Yelm Highway SE  
Olympia, WA 98513

- RE: Water Quality Certification Order **3607** and Coastal Zone Management consistency determination for Corps Nationwide Permit 27, Stream and Wetland Restoration Projects, Reference No. 200600253 to remove approximately 9500 feet of dike and fill 14, 100 feet of ditches to restore tidal access and improve fish passage to approximately 100 acres in the Nisqually Delta at Red Salmon Slough, Pierce County, Washington.

Dear Mr. Leischner:

On March 2, 2006 The Nisqually Indian Tribe, Natural Resources Department, 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 for the proposed Red Salmon Slough Restoration project. The project proposes to restore approximately 100 acres of Tribal and Nisqually National Wildlife Refuge land in the Nisqually Delta through the removal of approximately 9500 feet of dike and by filling 14,100 feet of ditches to restore tidal access and improve fish passage. The Corps of Engineers issued a Nationwide Permit 27, on July 28, 2006. The Department of Ecology subsequently issued a Public Notice for the proposed project on August 3, 2006.

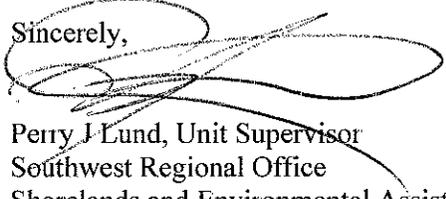
On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

On August 11, 2006 The Nisqually Indian Tribe, Natural Resources Department, submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Pursuant to Section 307(c) (3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the applicant's determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the CZMP, including Section 401 of the Federal Water Pollution Control Act



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,



Perry J. Lund, Unit Supervisor  
Southwest Regional Office  
Shorelands and Environmental Assistance Program

PJL:LO:th  
Enclosure

cc: Ron Wilcox U.S. Army Corps of Engineers  
Pierce County Planning and Land Services  
Mike Kain, Thurston County Planning Dept.  
Dave Molenaar, WDFW

e-cc: Penny Keys – HQ  
Loree' Randall, Ecology/HQ  
Karen Rogers, Ecology/SWRO/SEA  
Deb Cornett, Ecology/SWRO/WQ  
Kevin Farrell, SWRO/SEA  
Lori Ochoa, SWRO/SEA

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER # 3607</b>
<b>WATER QUALITY CERTIFICATION</b>	)	<b>Corps Reference No. 200600253</b>
<b>TO</b>	)	Red Salmon Slough Restoration Project within the
<b>Nisqually Indian Tribe</b>	)	Nisqually Delta, Nisqually River located in Pierce
<b>Natural Resources Department</b>	)	County, Washington.
in accordance with 33 U.S.C. 1341 (FWPCA	)	
§ 401), RCW 90 48.120, RCW 90 48.260	)	
and Chapter 173-201A WAC	)	
	)	

TO: Nisqually Indian Tribe  
 Natural Resources Department  
 ATTN: Florian Leischner  
 12501 Yelm Hwy SE  
 Olympia, WA 98513

On March 2, 2006 the Nisqually Indian Tribe, Natural Resources Department submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. The Corps issued a Nationwide Permit (NWP) #27, Stream and Wetland Restoration Activities, for the project on August 2, 2006. During review of the project, and the NWP, Ecology determined that an individual Section 401 water quality certification would be required. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on August 3, 2006.

The proposed project entails removing approximately 9500 feet of dike and filling 14,00 feet of ditches to restore unimpeded tidal access. The remnant historic tidal channel will be reconnected to the tidal channel in the salt marshes of Red Salmon Slough. Several tide gates will be removed and the access road from Mounts Road will be moved to the south to allow for the most unimpeded tidal restoration. The anticipated outcome will be that the estuarine processes will restore the area to a mosaic of low and high salt marshes and transitional salt-fresh wetlands.

The proposed project will take place in Red Salmon Slough within the Nisqually Delta at the end of Mounts Road, Pierce County, Washington, encompassing all of section 28, township 19 North, Range 1 West, WRIA 11, in the Nisqually 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 Nisqually Indian Tribe, 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 Regional Office Attn: Federal Permit Coordinator, P.O. Box 47775, Olympia, WA 98504-7775. Any submittals shall reference Order No. 3607 and Corps No. 200600253.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on March 2, 2006. 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. Water Quality:**

1. The Nisqually River (WRIA 11) is a Class A water of the state. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(2) and WAC 173-201A-040 shall apply to this project.
2. This Order does not authorize temporary exceedances of the turbidity standard 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. Timing Requirements:**

1. This Order is valid until all compliance requirements in this document have been met.
2. In-water work is subject to the fishery closure window determined by Washington State Department of Fish and Wildlife's (WDFW) Hydraulic Project Approval (HPA) Number 105173-1 issued for this project.

**D. Notification Requirements:**

1. The Applicant shall provide written notification (FAX, e-mail or mail) to Ecology's Southwest Regional Office Federal Permit Coordinator in writing at least three (3) days prior to the start of construction at the project site.
2. The Applicant shall provide written notification to Ecology's Southwest Regional Office Federal Permit Coordinator in writing within fourteen (14) days after completion of construction.

**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 Conditions:**

1. 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.
2. 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.
3. The Applicant shall establish a separate contained area for washing down equipment, which does not have any possibility of draining to surface waters and wetlands. No wash water containing sediments, oils, grease, or other hazardous materials resulting from wash down of the work area, tools, and equipment including concrete delivery trucks or other equipment used for concrete work shall not be discharged into state waters.
4. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in a confined area in order to prevent containment to waters of the state. Fueling areas will be provided with adequate spill containment.
5. Appropriate BMP's shall be implemented to minimize track-out during construction.

**F. Emergency/Contingency Measures:**

1. 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.
2. 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 Southwest Regional Spill Response Office at (360) 407-6300 and the Washington State Department of Fish and Wildlife of the nature of the problem, any

actions taken to correct the problem, and any proposed changes in operations to prevent further problems.

3. 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
4. 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.

**G. 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 15 August 2006 at Lacey, Washington.



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



**Attachment # A**

Red Salmon Slough Restoration Project  
Water Quality Certification Order # **3607**

Statement of Understanding  
Water Quality Certification Conditions

I, \_\_\_\_\_, state that, I will be involved as an agent or contractor for the Nisqually Indian Tribe in the construction of the Red Salmon Slough Restoration project located within the Nisqually River Delta at the end of Mounts Road, Pierce County, Washington. I further state that I have read and understand the relevant conditions of the Washington Department of Ecology Water Quality Certification Order #**3607** and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Company

