



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

July 30, 2007

REGISTERED MAIL
RB 252 945 103 US

Jamestown S'Klallam Tribe
ATTN: Mr. Byron Rot
1033 Old Blyn Highway
Sequim, WA 98382

RE: Water Quality Certification Order No. **4477** and Coastal Zone Management consistency determination for Corps Nationwide Permit 27, Aquatic Habitat Restoration, Establishment, and Enhancement Activities, reference Number NWS-2006-1337-SO, to install engineered log jams within the Dungeness River in Clallam County, Washington.

Dear Mr. Rot:

On November 1, 2006, the Jamestown S'Klallam Tribe 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 placement of seven to nine engineered log jams and to augment one existing log jam in the railroad bridge reach of the Dungeness River. The purpose of the project is to create high flow refugia for salmonids and improve channel complexity. The U.S. Army Corps of Engineers issued a Nationwide Permit 27 on July 26, 2007, 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.

On April 3, 2007, the Jamestown S'Klallam Tribe 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,



Paula Ehlers, Section Manager
Southwest Regional Office
Shorelands and Environmental Assistance Program

PE:LO:dn
Enclosure

cc: Koko Ekindez, U.S. Army Corps of Engineers
Theresa Powell, WDFW
Selinco Properties, Inc.
Donald & Anna Woods Trust

e-cc: Lori Ochoa – SWRO, SEA
Penny Keys – HQ
Loree' Randall – HQ
Jeff Stewart – SWRO, SEA
Deborah Cornett - SWRO, WQ

IN THE MATTER OF GRANTING A)	ORDER # 4477
WATER QUALITY)	Corps Reference No. NWS-2006-1337-SO
CERTIFICATION TO)	For the placement of seven to nine engineered
Jamestown S’Klallam Tribe)	log jams and to augment one existing log jam in
in accordance with 33 U.S.C. 1341)	the railroad bridge reach of the Dungeness River
(FWPCA § 401), RCW 90.48.120, RCW)	in Clallam County, Washington.
90.48.260 and Chapter 173-201A WAC)	
)	
)	

TO: Jamestown S’Klallam Tribe
ATTN: Mr. Byron Rot
1033 Old Blyn Highway
Sequim, Washington 98382

On November 1, 2006, the Jamestown S’Klallam Tribe submitted a Joint Aquatic Resource 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 Ecology for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on April 24, 2007.

The proposed project will involve the placement of seven to nine engineered log jams and the augmentation of one existing log jam in the railroad bridge reach of the Dungeness River. The purpose of the project is to create high flow refugia for salmonids and improve channel complexity and sinuosity. The upstream site will be at river mile 5.9 and access to the upstream site will require two temporary bridges. The downstream site will be at river mile 5.3. A third temporary bridge will be used to cross the Dungeness River at the downstream site. The river flow will need to be diverted at two of the upstream engineered log jams. A 900-foot long, 20-foot wide diversion channel will be constructed. Each log jam installation will require excavating material, placing the logs, and replacing the excavated material around each jam. The project is located within the Dungeness River near 2151 Hendrickson Road, Sequim, Clallam County, Washington, Sections 14 and 23, Township 30 North, Range 4 West; WRIA 18, in the Elwha-Dungeness 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 Jamestown S'Klallam 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 Project Coordinator, P.O. Box 47775, Olympia, WA 98504-7775. Any submittals shall reference Order No. 4477 and Corps No. NWS-2006-1137-SO.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on November 1, 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. No Further Impairment of Water Quality:

1. This Order does not authorize temporary exceedances of the turbidity standard beyond the limits established in WAC 173-201A-200(1)(e). 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.

2. The Dungeness River has been identified on the current 303(d) list of impaired waterbodies for exceeding water quality standards for instream flow and fecal coliform. This proposed project shall not result in further exceedances of these parameters.

C. Water Quality Monitoring and Reporting Conditions:

1. During and immediately after project construction, the Applicant or their contractor shall visually monitor for turbidity discharges at the point of compliance established in WAC 173-201A-200(1)(e). If water quality exceedances are observed outside of the point of compliance, work shall cease immediately and the Applicant or the contractor shall assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further water quality turbidity exceedances. The Applicant or their contractor shall notify Ecology's Southwest Regional Office Federal Permit Coordinator at (360) 407-6926 of the exceedances.
2. If the results of the monitoring show that the water quality standards or project performance standards are not being met additional monitoring and mitigation may be required.
3. Any changes to the monitoring requirements must be approved in writing by Ecology.

D. 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.
4. The Applicant shall establish a separate contained area for washing down vehicles and 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 or storm drains.

5. 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. Fueling equipment and vehicles within 100 feet of state waters and wetlands is not allowed.
6. Logs or LWD used in the construction of the log jams shall be free of dirt, sand and other fine material to the extent practicable.
7. Appropriate Best Management Practices (BMP's) shall be implemented to minimize track-out during construction.

E. Timing Requirements:

1. This Order is valid until though July 26, 2009.
2. In-water work shall be subject to the timing limitations imposed by the most recent Hydraulic Project Approval (HPA) issued by Washington Department of Fish for this project.

F. 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 and mitigation 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.

G. 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.

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

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:

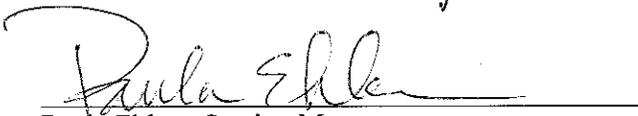
Loi Ochoa
Department of Ecology
Southwest Regional Office
P.O. Box 47775
Olympia, WA 98504-7775

*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 this 31 day of July, 2007 at Lacey, Washington.


Paula Ehlers, Section Manager
Shorelands and Environmental Assistance Program
Southwest Regional Office

Attachment # A
Dungeness River Engineered Log Jams
Water Quality Certification Order # **4477**

Statement of Understanding
Water Quality Certification Conditions

I, _____, state that, I will be involved as an agent or contractor for the Jamestown S’Klallam Tribe in the construction of the Dungeness River Engineered Log Jams consisting of the placement of seven to nine engineered log jams and to augment one existing log jam in the railroad bridge reach of the Dungeness River near 2151 Hendrickson Road, Sequim, Clallam County, Washington. I further state that I have read and understand the relevant conditions of the Washington Department of Ecology Water Quality Certification Order #4477 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

