



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

February 14, 2008

REGISTERED MAIL

RB 252 945 426 US

Finavera Renewables, Ltd.
ATTN: Mary Jane Parks
107 SE Washington St. Suite 620
Portland, OR 97214

RE: Water Quality Certification Order No. **5360** and Coastal Zone Management consistency determination for **FERC Project No. 12751-000** to deploy the Makah Bay Offshore Wave Energy Pilot Project west of Makah Bay in the Pacific Ocean, Clallam County, Washington

Dear Ms. Parks:

On February 15, 2007, Finavera Renewables, Ltd., 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 Makah Bay Offshore Wave Energy Pilot Project. The project proposes to deploy a 1.0 MW demonstration plant in Makah Bay at water depths of approximately 150 feet, which will generate electricity from energy extracted from ocean waves. Ecology issued a public notice on January 8, 2008, for the proposed project.

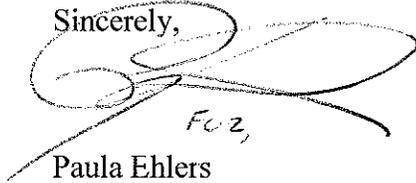
On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. This certification is subject to the conditions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

On June 25, 2007, Finavera Renewables, Ltd. submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). On December 14, 2007, Ecology and Finavera Renewables, Ltd. mutually agreed to extend the timeframe for the CZM determination until Ecology issues the 401 Certification. 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,

A handwritten signature in black ink, appearing to be 'PE', with a large, loopy flourish extending to the right. Below the signature, the initials 'FOZ' are written in a smaller, simpler hand.

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

PE:LO:dn
Enclosure

cc: See Attached List

e-cc: Penny Keys, Ecology HQ
Loree' Randall, Ecology HQ
Jeff Stewart, Ecology SWRO/SEA
Annie Szvetecz, Ecology SWRO/SEA
Lori Ochoa, Ecology SWRO/SEA
Deb Cornett, Ecology SWRO/WQ

COLUMBIA RIVER CRAB FISHERMANS
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PO BOX 461
ILWACO WA 98624

WA STATE DEPARTMENT OF NATURAL RESOURCES
ATTN ELIZABETH ELLIS
AQUATIC RESOURCES DIVISION
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OLYMPIA WA 98504-7027

UNITED STATES DEPARTMENT OF THE INTERIOR
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PACIFIC WEST REGION
909 FIRST AVENUE 5TH FLOOR
SEATTLE WA 98104-1060

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
NORTHWEST REGIONAL OFFICE
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ATTN CHARLENE ANDRADE
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RICH LITTLETON
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WA ST DEPT OF ARCHAEOLOGY AND HISTORIC
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US COAST GUARD
USCGD130AN
ATTN TIM WESTCOTT
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WA STATE DOT
MS 47331

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TACOMA PIERCE COUNTY
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TACOMA WA 98401-1933

MR MARK HOLCOMB
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MS GRETCHEN STARKE
308 NE 124TH AVE
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IN THE MATTER OF GRANTING A)	ORDER # 5360
WATER QUALITY)	FERC Project No. 12751-000
CERTIFICATION TO)	To construct, operate, and maintain a 1.0-
Finavera Renewables, Ltd.)	megawatt (MW) wave energy demonstration
ATTN: Mary Jane Parks)	power plant at approximately 3.19 nautical miles
in accordance with 33 U.S.C. 1341)	west of Makah Bay, Pacific Ocean, in Clallam
(FWPCA § 401), RCW 90.48.120, RCW)	County, Washington.
90.48.260 and Chapter 173-201A WAC)	
)	

TO: Finavera Renewables, Ltd.
 ATTN: Mary Jane Parks
 107 SE Washington Street, Suite 620
 Portland, Oregon 97214

On February 15, 2007, Finavera Renewables, Ltd., 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 the Department of Ecology for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on January 8, 2008.

Finavera proposes to deploy a 1.0-megawatt (MW) wave energy demonstration power plant in Makah Bay at water depths of approximately 150 feet, which will generate electricity from energy extracted from ocean waves. The project will consist of four 250-kilowatt (KW) steel wave energy conversion buoys ("AquaBuOY's), which are approximately 18 feet in diameter and float approximately 9 feet above the water surface. A 3-5 foot diameter and approximately 100 foot long rigid cylinder is attached vertically to the underside of each buoy. Power will be generated using a closed-loop hydraulic system filled with 1,850 gallons of fresh water.

Each AquaBuOY will have quadruple anchor security. The buoy hulls will be tethered to four floats which are then anchored to the sea floor. The floats are each 4-feet in diameter. Each float will be anchored using Vertical Load Anchors that will be lowered to the ocean floor by crane. Small floats and weights will be attached to the chain tackle near the anchor to lift the mooring chain from the seafloor to prevent scouring. The plant employs four buoys and ten anchors.

Energy will be transported to a shore station via a 3.7 mile secured underwater transmission cable which will run along the sea floor except near shore, where it will be buried using a horizontal directional drill technique. The plant is expected to generate approximately 1,500 MW hr/year.

The project is located approximately 3.19 nautical miles west of Makah Bay in the Pacific Ocean. The onshore electrical equipment station will be located on Hobuck Beach within the Makah Reservation boundaries, Clallam County, Washington; NE Section 29, Township 33 North, Range 15 West, WRIA 20, Sol Duc-Hoh 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 Finavera Renewables, Ltd., and its agents, assignees, and contractors.
2. For purposes of this Order, all submittals and notifications required by conditions of this Order shall be sent to Ecology's Southwest Regional Office, Attn: Federal Permit Coordinator, SEA Program, P.O. Box 47775, Olympia, WA 98504-7775. Or by telephone at

(360) 407-6926 or (360) 407-6300, or by fax to (360) 407-6305. Any submittals and/or notifications shall reference Order No. 5360 and FERC Project No. 12751-000.

3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on February 15, 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.
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. 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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 Conditions:

1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-210(1)(e)(i). Furthermore, nothing in this certification shall absolve the Applicants from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.
2. Water Quality Monitoring and Protection Plan. A plan for monitoring water quality shall be developed and submitted to the Federal Permit Coordinator for a 60 day review and approval period prior to beginning construction. **In-water work is not authorized to begin until approval for such work is received from the appropriate regulatory authority.**
 - a. This Plan 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 specific proposed in-water activities
 - iii. a water sampling plan for turbidity which include the requirement of B.3. below
 - iv. a map with numbered or named sampling locations associated with the in-water activities that require monitoring
 - v. a schedule for submittal of monitoring results to Ecology Federal Permit Coordinator per condition A.2.
 - b. A background sample (sample collected outside the area of influence of the in-activity) shall be collected at the beginning of each sample event.
 - c. Any changes and/or additions to the Plan must be approved in writing by Ecology.
3. Turbidity shall be assessed and recorded at a minimum of every four (4) hours during daylight hours when in-water activities (including installation, maintenance, and removal activities) are being conducted. Monitoring points shall be at the point of compliance as specified in WAC 173-201A-210(1)(e)(i)(D), which allows a radius of 150-foot temporary mixing zone from the point of in-water activities. A turbidimeter is recommended; however, visual gauging of turbidity is acceptable
 - a. For this project, the following is considered to be an exceedance of the standard:
 - Project-related turbidity visible 150 feet from the in-water activity; OR,

- 5 NTU over background turbidity when the background turbidity is 50 NTU or less, or more than a ten (10) percent increase in turbidity when the background turbidity is more than 50 NTU, at the point of compliance when a turbidimeter is used.
4. 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 immediate action to stop, contain, correct the problem, and/or prevent further water quality turbidity exceedances. If an exceedance occurs, the Applicant shall follow the protocols and notification procedures below:
- a. Notification of Exceedances: Notification of exceedances that are detected through water quality monitoring shall be made to Ecology within 24 hours of occurrence. Notification shall be made per Condition A2 above. The Applicant shall, at a minimum, provide Ecology with the following information:
 - i. A description of the nature and cause of non-compliance, including the quantity and quality of any unauthorized discharges;
 - ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance; and,
 - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
 - iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, photographs, and any other pertinent information.
5. Mitigation and/or additional monitoring may be required if water quality standards are not met.

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

1. All work in or near the waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.
2. All debris or deleterious material resulting from construction shall be properly contained and disposed of so that such material cannot enter waters of the state.
3. No material shall be stockpiled within the Ordinary High Water Mark (OHWM) of waters of the state.

4. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in a confined area, unless otherwise approved by Ecology, in order to prevent contamination to waters of the state. Fueling areas will be provided with adequate spill containment.
5. During construction, the Applicant shall have a boat available on site at all times to retrieve any debris entering the water.
6. 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.

D. Plan Submittals Required:

1. Additional Reports and Plans are required of the Applicant. The Applicant shall prepare and submit the following plans to Ecology's Federal Permit Coordinator per condition A2 above for a minimum **60-day review period** prior to the start of construction activities:
 - a. Final Project Design, Specifications, and Construction Plan: The Applicant shall develop a plan that includes:
 - Final project design drawings and specifications;
 - Installation methods for the buoys, anchoring system, and transmission cable.
 - b. Facilities Inspection and Maintenance Plan: This plan shall include the following information:
 - Monitoring, protocols;
 - Frequency of inspections;
 - BMPs for any over-water facility maintenance;
 - Notification and reporting procedures.
 - c. A Spill Prevention, Containment, and Counter Measures Plan (SPCC Plan): The Applicant shall develop an SPCC plan to be implemented during proposed project construction, operation, maintenance, and decommissioning. The plan shall include provisions for inspecting vessels and equipment for fuel and hydraulic leaks on a daily basis, and containing and removing petroleum or other oil products, in the event of a spill or leak.
 - d. HDD Implementation Plan
 - Location of HDD entry and exit points. The exit point shall be located in water deep enough to minimize the potential for wave scour. If that is

not possible, the HDD plan shall address the reason for an alternative exit point and provide a plan to monitor for scouring.

- Size and depth of pit;
 - Preventative measures that will be in place to prevent seepage of drilling fluid and any corrective measures that may be taken if there is a “frac-out”;
 - Contingency Measures that will be taken should the drilling fail. Contingency measures shall include a discussion of how many times will the HDD be attempted, BMPs that will be in place during the HDD, and alternative methods for anchoring the cable that will be used should the HDD fail.
- e. Antifouling Compound Study and Plan: Ecology recommends the use of biocide-free anti-fouling systems. If the use of these types of systems is not possible, the Applicant shall provide an Antifouling Compound Study and Plan to Ecology’s Federal Permit Coordinator for review and approval. This Plan shall address the reason for the use of an alternative compound and describe how the project will comply with the marine water quality acute criterion for copper.
- f. Project “As-Built Report: An “As-Built” Report documenting the final project facilities as-built shall be submitted to Ecology within 90 days of completion of project construction. This report shall contain:
- Final project design drawings and specifications for all AquaBuOY components and the underwater transmission cable.
- g. Project Decommissioning Plan: The Applicant shall submit a project removal and decommissioning plan to Ecology for a 120-day review and approval period prior to the start of project construction. This plan shall include the following information:
- Project removal timing and sequencing;
 - Method of equipment removal;
 - Best management practices (BMP’s) that will be used to protect water quality impacts during project decommissioning;
 - A plan for restoring the project area to pre-project conditions. This plan shall address the HDD pits as well as any impacts to erosion/sedimentation caused by the cable.

E. Notification Requirements:

1. Notification shall be made to Ecology’s Federal Project Coordinator in accordance with condition A.2 above for the following activities:

- a. At least ten (10) days prior to the pre-construction meeting
- b. At least ten (10) days prior to the onset of any work on site
- c. At least ten (10) days prior to the onset of in-water work, including wetlands
- d. At least ten (10) days prior to the onset of work at the wetland mitigation site
- e. Immediately following a violation of the state water quality standards or any condition of this Order

F. Timing Requirements:

1. This Order is valid for a period of five years from the date of issuance.
2. In-water work is subject to the fishery closure window determined by Washington State Department of Fish and Wildlife's (WDFW).

G. Emergency/Contingency Measures:

1. The Applicant shall develop and implement if needed a spill prevention and containment plan for all aspects of this project. This plan shall be on site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
2. Spill clean-up materials (Spill Kits) shall be on site at all construction locations at all times.
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.
5. Any discharge of oil, fuel, or chemicals into state waters or onto land with a potential for entry into state waters is prohibited. If such a discharge occurs, the Applicant shall immediately take the following actions:
 - a. Cease operations at the location of the discharge. Containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work.
 - b. Assess the cause of the problem and take appropriate measures to correct the problem and/or prevent further environmental damage. Cleanup shall include proper disposal of any spilled material and used cleanup materials.

- 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. Notify Ecology of the discharge or spill. Spill events shall be reported immediately to Ecology's 24-hour Southwest Regional Spill Response Team at (360) 407-6300, and within 24 hours of other events contact Ecology's Federal Permit Coordinator per condition A2 above.
- e. A detailed written report shall be submitted to Ecology (per condition A2 above) within five (5) days of the event describing the nature of the event, any corrective action taken and/or planned, steps to be taken to prevent a recurrence, and any other pertinent information.

Compliance with these requirements 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.

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:

OR
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
PO Box 47608
Olympia, WA 98504-7608

Deliver your appeal in person to:

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

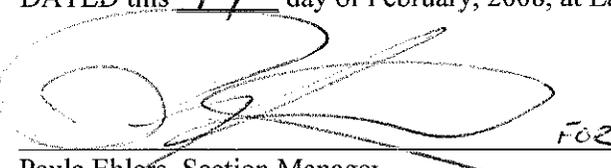
3. And send a copy of your appeal to:

Lori Ochoa
Department of Ecology
Southwest Regional Office
PO Box 47775
Olympia, WA 98504-7775

*For additional information visit the Environmental Hearings Office Website: [http //www.eho.wa.gov](http://www.eho.wa.gov)
To find laws and agency rules visit the Washington State Legislature Website.
[http //www1.leg.wa.gov/CodeReviser](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 14 day of February, 2008, at Lacey, Washington.


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

Attachment # A

**Makah Bay Offshore Wave Energy Pilot Project
Water Quality Certification Order # 5360**

**Statement of Understanding
Water Quality Certification Conditions**

I, _____, state that, I will be involved as an agent or contractor for the Finavera Renewables, Ltd. in the installation, deployment, and/or decommissioning of the Makah Bay Offshore Wave Energy Pilot Project located in the Pacific Ocean and Makah Bay, 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 #5360 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

