



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

November 22, 2005

**REGISTERED MAIL**  
**RR 359 893 859 US**

Cripple Creek, L.L.C.  
Attn: Scott Gunning  
624 Yale Avenue N.  
Seattle, WA 98109

RE: Water Quality Certification Order #2918 and Coastal Zone Management Consistency Determination for U.S. Army Corps of Engineers (Corps) Reference #200500138, Cripple Creek Restoration, Cripple Creek, Snohomish County, Washington

Dear Mr. Gunning:

On January 28, 2005, Cripple Creek L.L.C. submitted a Joint Aquatic Resources 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 Cripple Creek Restoration project. During review of the project, Ecology determined that an individual Section 401 water quality certification would be required. Ecology issued a public notice pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401) on April 6, 2005. The U.S. Army Corps of Engineers issued a Nationwide Permit #27, Wetland and Stream Restoration Activities, for the project on May 26, 2005. The project proposes to install three water control structures to restore a salmonid creek and associated farmed wetlands. The project would fill 15 acres and flood 142 acres of wetlands that have been used for grazing cattle and row crops.

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 November 21, 2005, Cripple Creek L.L.C. 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



Cripple Creek LLC  
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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 Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



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

GT:rrp:cu

cc: Susan Glenn, U.S. Army Corps of Engineers  
Kathy Kilcoyne, Natural Resources Conservation Service  
John Axford, Ducks Unlimited  
Daniel Golner, Ducks Unlimited  
Bill Mavros, Washington Department of Fish and Wildlife  
Penny Keys, Ecology  
Loree' Randall, Ecology

Enclosure

**IN THE MATTER OF GRANTING A** ) **ORDER #2918**  
**WATER QUALITY CERTIFICATION** ) **Corps Reference No. 200500138**  
**TO** ) Cripple Creek Restoration, Cripple Creek,  
**Cripple Creek, L.L.C.** ) Snohomish 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:** Cripple Creek, L.L.C.  
Attn: Scott Gunning  
624 Yale Avenue N.  
Seattle, WA 98109

On January 28, 2005, Cripple Creek L.L.C. submitted a Joint Aquatic Resources 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 Cripple Creek Restoration project. During review of the project, Ecology determined that an individual Section 401 water quality certification would be required. Ecology issued a public notice pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401) on April 6, 2005. The U.S. Army Corps of Engineers issued a Nationwide Permit #27, Wetland and Stream Restoration Activities, for the project on May 26, 2005.

The project proposes to install three water control structures to restore a salmonid creek and associated farmed wetlands. The project would fill 15 acres and flood 142 acres of wetlands that have been used for grazing cattle and row crops. The work will include: removal of reed canary grass, a portion of the site will be de-leveled to create varying depths of water, diversion of the stream flow from Cripple Creek into two restored channels that will have regular occurrences of over bank flow during the rainy season, continually recharging the soils. The water control structures will be designed to maintain a desired depth of approximately 18" water over the majority of the flooded area. The project will be constructed and managed in coordination with Ducks Unlimited and the Natural Resources Conservation Service (NRCS) Wetland Reserve Program.

The proposed work will take place at 15930 State Route 2, approximately 2.5 miles west of Monroe, adjacent to the Burlington Northern and Santa Fe Railway Company railroad lines, in wetlands and on Cripple Creek, Snohomish, Snohomish County, Washington; located in Sections 27, 28, and 34, Township 28 N., Range 6 E., WRIA #7.

**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. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 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 Cripple Creek, L.L.C., and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: Federal Permit Coordinator, Shorelands and Environmental Assistance Program, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008. Any submittals shall be identified with Order #2918 and Corps Reference #200500138.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on January 28, 2005, and supplemental materials reviewed and approved by Ecology. 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.
- A4. Within 30 days of receipt of an updated JARPA, Ecology will determine if a modification to this Order is required.
- A5. This Order shall be withdrawn if the Corps does not issue a Section 404 permit. It shall also be withdrawn if the project is revised in such a manner or purpose that Ecology determines the revised project requires a new authorization and public notice. The Applicant will then be required to reapply for a 401 Water Quality Certification by submitting a new JARPA to Ecology.
- A6. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

- A7. 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.
- A8. 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.
- A9. The Applicant shall ensure that all appropriate project engineers and contractors at the project site shall 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 or mitigation sites.
- A10. 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.
- A11. 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.
- A12. 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) per violation for each day of continuing noncompliance.

**B. Water Quality**

- B1. Cripple Creek is classified as Class AA waters of the state. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 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 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. Project Restoration:**

- C1. Aquatic resource restoration shall be achieved through measures described in the following documents, except as modified by this Order:
- Joint Aquatic Resources Permit Application Form, dated January 11, 2005

- Cripple Creek WRP Wetland Restoration Plans, Ducks Unlimited, dated January 2005
- Draft WCS (water control structure) Details, Ducks Unlimited, dated October 19, 2005
- Cripple Creek, L.L.C. Construction Plan Field Labels Clarification, Ducks Unlimited, received by Ecology November 7, 2005
- Current Conditions and Restoration Activities text, prepared by Andrew Reasoner, Ducks Unlimited, January 2005

C2. In addition to the above-referenced documents, the following requirements shall be conditions of this Order:

- a. Planting: Erosion control grasses shall be seeded above the first-year water level, with the following seed mix, as recommended by the Natural Resource Conservation Service (NRCS): 20 pounds per acre annual rye, 30 pounds per acre red fescue. Native trees and shrubs will be planted in areas shown on the Plans and described in Restoration Activities, to supplement the natural revegetation process.
- b. Timing: The wetland restoration site shall be seeded as described above following completion of site earthwork. Planting of native trees and shrubs shall take place on a schedule determined by Ducks Unlimited, Cripple Creek, L.L.C., and the NRCS.
- c. Record Drawings: Record drawings documenting the final design of the restoration project area shall be prepared when site construction and planting is completed. The drawings shall include the following:
  - Vicinity map showing site access;
  - Approximate final site grading showing areas of deleveling, berms, meandered stream channels, water control structure, etc.;
  - Drawings that shall clearly identify the boundaries of the restoration area;
  - The seed mixture used and the time of seeding;
  - Photographs of the area taken from permanent reference points;
  - Locations of photopoints;
  - A description of any changes to the restoration plan that occurred during construction.

A copy of the record drawings shall be sent to Laura Casey at Ecology within 60 days of completing construction. Ecology approval of these drawings begins year "0" of the monitoring period.

- d. Protection of the wetland restoration area shall be as agreed between Ducks Unlimited and Cripple Creek, L.L.C., and through the NRCS Wetland Reserve Program.
- e. Field Supervision: The wetland restoration grading activity and seeding shall be field-supervised by Ducks Unlimited, NRCS, or a qualified wetland consultant to ensure project is constructed according to plans.

- f. Monitoring and Access: Ecology staff will coordinate with Ducks Unlimited and Cripple Creek, L.L.C. to arrange a mutually-agreeable time to perform joint site visits to evaluate the success of the wetland restoration on this site, over a period of three years, with monitoring joint site visits performed in years 1, 2, and 3.
- g. Maintenance: Cripple Creek, L.L.C. is responsible for management and maintenance of the wetland restoration site, in consultation with the NRCS.

**D. Stormwater Management:**

- D1. Applicant shall comply with the Stormwater Management Manual for Western Washington, February 2005 (Ecology Publication No. 05-10-30), or other approved manual.

**E. Construction:**

- E1. Construction Stormwater and Erosion Control: Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (*e.g.*, a perimeter erosion control silt fence, etc.), shall be in place before starting clearing, filling, and grading work at the restoration site, and shall also comply with all requirements of the applicable NPDES Permit.
- E2. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- E3. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.

**F. Emergency/Contingency Measures:**

- F1. The Applicant shall develop a spill prevention and containment plan for all aspects of this project.
- F2. The facility shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.
- F3. 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.
- F4. 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, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:
  - a. Cease operations at the location of the violation.

- b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
- c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's Federal Permit Coordinator at (425) 649-7129 or (425) 649-7000.
- d. Submit a detailed written report to Ecology within five days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

F5. Compliance with this condition 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.

F6. 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 or WDFW on what to do with them. Ecology or WDFW may require analyses of these samples before allowing the work to resume.

F7. 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.

**G. Timing Requirements**

G1. This Order is valid until all compliance requirements in this document have been met.

G2. In-water work shall be subject to timing limitations imposed by Washington Department of Fish and Wildlife (WDFW). Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by WDFW that fisheries resources may be adversely affected.

**H. Notification Requirements**

H1. Applicant shall provide notice to Ecology's Federal Permit Coordinator at least 3 days prior to the start of construction, and within 14 days after completion of construction at the project site. Notification, referencing Order #2918, can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

**I. 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 November 22, 2005 at Bellevue, Washington.



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

**ATTACHMENT A**

**CRIPPLE CREEK RESTORATION PROJECT  
Water Quality Certification Order #2918**

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

I have read and understand the conditions of Order #2918 Section 401 Water Quality Certification for the Cripple Creek Restoration Project. I have also read and understand all permits, plans, documents, and approvals associated with the Cripple Creek Restoration Project referenced in this order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company