



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

February 28, 2005

REGISTERED MAIL
RB 253 008 134 US

Washington Department of Fish and Wildlife
ATTN: Mr. Greg Schirato
2391 West Deegan
Shelton, Washington 98584-8750

REGISTERED MAIL
RB 253 008 151 US

Natural Resources Conservation Service
(NRCS)
ATTN: Mr. Greg Fisher
1835 Black Lake Blvd SW, Suite D
Olympia, Washington 98512-5623

REGISTERED MAIL
RB 253 008 179 US

US Army Corps of Engineers (USACE)
ATTN: Ms. Kathleen Kunz
PO Box 3755
Seattle, Washington 98124-3755

Attn: Agency Representatives

RE: Water Quality Certification Order Number 1993 for Corps Public Notice 200400681 to restore tidal inundation to approximately 300 acres of diked pasture land adjacent to the Willapa River in South Bend, Pacific County, Washington

Dear Applicants:

The public notice issued by U.S. Army Corps of Engineers on August 25, 2004 for proposed work in the Willapa River, Pacific County, Washington has been reviewed. On behalf of the State of Washington, we certify that the work proposed in the application for Department of Army permit, and Corps public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This letter also serves as the State response to the Corps of Engineers.

- This certification concurrence is subject to the conditions contained in the enclosed Order.

Water Quality Certification 1993
February 28, 2005
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If you have any questions, please contact Lori Ochoa at (360) 407-7391. 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 stamp or mark.

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

PJL:dn
Enclosure

cc: Mike DeSimone, Pacific County

**IN THE MATTER OF GRANTING A WATER)
QUALITY CERTIFICATION TO)
Washington Department of Fish and Wildlife,)
Natural Resources Conservation Service,)
US Army Corps of Engineers,)
Washington Department of Transportation, and)
Ducks Unlimited)
in accordance with 33 U.S.C. 1341)
FWPCA § 401, RCW 90.48.260,)
RCW 90.48.120 and WAC 173-201A)**

**ORDER #1993
(Corps No. 200400681)
Restore tidal inundation to approximately
300 acres of diked pasture land adjacent
to the Willapa River, Pacific County,
Washington**

TO:

Washington Department of Fish and Wildlife
ATTN: Mr. Greg Schirato
2391 West Deegan
Shelton, Washington 98584-8750

Washington Department of Transportation
ATTN: Ms. Becky Michaliszyn
11018 Northeast 51st Circle
Vancouver, Washington 98682-6686

Natural Resources Conservation Service
ATTN: Mr. Greg Fisher
1835 Black Lake Blvd SW, Suite D
Olympia, Washington 98512-5623
US Army Corps of Engineers (USACE)
ATTN: Ms. Kathleen Kunz
PO Box 3755
Seattle, Washington 98124-3755

Ducks Unlimited (DU)
ATTN: Mr. Daniel Golner
1101 SE Tech Center Drive, Suite 115
Vancouver, Washington 98683-5510

ATTN: Agency Representatives

On August 25, 2004, a public notice for a proposed water quality certification from the State of Washington was distributed for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401). The proposed project will restore tidal inundation to approximately 300 acres of diked pastureland adjacent to the Willapa River. As part of the proposed project, up to 17.5 acres of drainage and borrow ditches will be filled; remnant tidal channels will be excavated within the dike; a new cross dike will be constructed to protect adjacent landowners from tidal inundation; US Highway 101 will be raised; a parking pullout will be constructed; culverts and tidegates for water conveyance under the highway will be placed/replaced; freshwater habitat improvement will occur at two sites; and the existing dike will be removed and its borrow ditch will be filled. The improvement in wetland function and quality associated with restoring natural hydrology through re-connecting most of the site to the Willapa River will compensate for the wetland impacts. The site is located on the left bank of the Willapa River approximately one mile downstream of the City of South Bend in Pacific County, Washington.

For purposes of this Order, the term "Applicants" shall mean Washington Department of Fish and Wildlife, Natural Resources Conservation Service, US Army Corps of Engineers, Washington Department of Transportation (WSDOT), Ducks Unlimited (DU) and their agents and contractors.

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 investigated 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, 302, 303, 306, and 307);
2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; 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:

In view of the foregoing and in accordance with 33 U.S.C. 1341, 90.48.260 RCW, 90.48.120 RCW and Chapter 173-201A WAC, certification is granted to the Applicants subject to the following conditions:

A. No Further Impairment of Existing Water Quality

- A1. The Willapa River is a Class A water of the state. Certification of this proposal does not authorize the Applicants 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(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 Applicants from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.
- A2. The Applicants shall submit a Stormwater Pollution Prevention Plan (SWPPP) and a Temporary Erosion and Sediment Control Plan (TESC) for all components of the project site 30 days prior to beginning construction.
 - a) These plans shall include:
 - Name and phone number of person responsible for implementing the plans
 - Best management practices that will be implemented
 - Frequency of BMP inspections
 - Contingency plan in the event of adverse weather conditions or other foreseeable undesirable conditions
 - b) These plans shall be submitted to the Federal Permit Manager, Department of Ecology, SWRO, PO Box 47775, Olympia, WA 98504-7775 at least 15 days before beginning construction.

B. Timing:

B1. This Order is valid until all compliance requirements in this document have been met.

C. Notification Conditions:

- C1. The Applicants shall notify Ecology's Southwest Regional Office Federal Permit Manager (Lori Ochoa) at 360/ 407-7391, Fax 360/ 407-6305, E-mail loch461@ecy.wa.gov, or mail P.O. Box 47775, Olympia, WA 98504-7775) at least fourteen (14) days prior to the starting work.
- C2. The Applicants shall notify Ecology's Southwest Regional Office Federal Permit Manager within fourteen (14) days after completion of construction.
- C3. The Applicants 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 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 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.

D. Construction Conditions

- D1. Prior to active clearing and grading in wetlands, the adjacent wetlands shall be protected from construction impacts. Construction fencing or flagging (using brightly colored tape at no more than twenty-five foot (25') intervals) of the existing wetlands and stream channels to be protected shall be completed prior to clearing. 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.
- D2. Work in or near waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.
- D3. Erosion control devices (e.g., 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 through construction.
- D4. 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.
- D5. All construction debris shall be properly disposed of on land so that it cannot cause water quality degradation to state waters.
- D6.

E. Mitigation

- E1. Project mitigation shall be constructed and maintained as described in SR 101 – Potter Slough Wetland/Biology Report dated November 2002 (Addendum A) and Willapa River Estuarine Habitat Restoration Project JARPA Application Project Drawings (Addendum B) and the Revised Draft Environmental Assessment dated August 2004.
- E2. The property owner shall grant Ecology access to the mitigation areas for inspection.
- E3. Prior to implementing any contingency measures, applicant will consult with permitting agencies.

F. Reporting Conditions

- F1. A detailed “as built” report shall be prepared after construction showing any variances from the final mitigation plan. The “as-built” shall be the baseline document used for all future monitoring of the mitigation project. It shall include but not be limited to:
 - comments from a wetland specialist present on site during mitigation construction;
 - final site plan showing site topography (both site plan view and typical sections) and clearly indicating the mitigation site boundary;
 - photographs of the area taken from permanent photo points which will be designated on the site plan;
 - the installed planting scheme showing densities, sizes, and approximate locations of plants as well as plant sources and time of planting; and,
 - an analysis of any changes to the mitigation plan that occurred during construction.

G. Emergency/Contingency Measures:

- G1. 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:
 - G1a. Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
 - G1b. 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.
 - G1c. 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.

- G2. 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.
- G3. No refueling or equipment maintenance shall occur on the construction site.
- G4. 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. General Conditions:

- H1. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources.
- H2. This Order does not exempt the Applicants from, and is conditioned upon compliance with, other statutes and codes administered by federal, state, and local agencies.
- H3. The Applicants shall construct and operate the project in a manner consistent with the project description contained in the Public Notice for certification, or as otherwise approved by Ecology.
- H4. The Applicants shall reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the public notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval prior to implementation of such action.
- H5. The Applicants shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.
- H6. Copies of this Order and all related permits, approvals, and documents shall be kept on the project site and readily available for reference by the project managers, construction managers and foremen, other employees and contractors of the APPLICANT, and state agency personnel.
- H7. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines 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 the public interest.
- H8. 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.

Appeal Process:

Any person aggrieved by Order Number 1993 may obtain review thereof by appeal. Pursuant to Chapter 43.21B. RCW, a person can appeal this order to the Pollution Control Hearings Board within 30 days of the date of receipt of this Order. Any such appeal must be sent to the Washington Pollution Control Hearings Board, PO Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, Attn: Loree' Randall, PO Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated 28 FEBRUARY 2005 at Lacey, Washington



Perry J Lund, Unit Supervisor
Shorelands and Environmental Assistance Program
Department of Ecology – Southwest Regional Office

Attachment # A
Water Quality Certification
Statement of Understanding

I, _____, state that, I will be involved as an agent or contractor for the Applicants, in the Willapa River Estuarine Habitat Restoration Project near the City of South Bend, Pacific County Washington. I further state that I have read and understand the relevant conditions of Washington Department of Ecology Water Quality Certification Order #1993 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Company

