



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

*PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
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November 30, 2007

REGISTERED MAIL
RB 252 946 608 US

Gary Beeman,
Washington Department of Transportation
South Central Region
P.O. Box 12560
Yakima, WA 98909-2560

RE: Water Quality Certification Order #5238 for Corps NWP 13, reference # NWS-2007-411-SOD for SR 410 Rattlesnake Creek Slope Stabilization in Yakima County, WA.

Dear Mr. Beeman:

On April 2, 2007, the Department of Ecology (Ecology) received the Department of Transportation's (WSDOT) Joint Aquatic Resources Permit Application (JARPA) for a 401 Water Quality Certification (401 Certification) for the proposed SR 410 Rattlesnake Creek Slope Stabilization project. The project proposes to stabilize the bank of the Naches River near its confluence with Rattlesnake Creek adjacent to and along SR 410 by constructing 12 hybrid live groin-barbs (HLGBs) along SR 410 between MP 107.34 and MP 107.60 in Yakima County, WA. The U.S. Army Corps of Engineers issued a NWP 13, reference # NWS-2007-411-SOD for the project on November 21, 2007.

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



If you have any questions, please contact Penny Kelley, Federal Project Coordinator, at 360-407-7298. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Brenden McFarland, Section Manager
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program

BM:pk
Enclosure

cc: Rick Pratt, Corps of Engineers
Eric Bertrand, Department of Fish & Wildlife
Sheri Neuenschwander, Department of Transportation

e-cc: Penny Keys, HQ
Loree' Randall, HQ

IN THE MATTER OF GRANTING A) ORDER # 5238
WATER QUALITY) Corps Reference No. NWS-2007-411-SOD
CERTIFICATION TO) Stabilize the bank of the Naches River near the
Washington Department of) confluence with Rattlesnake Creek by
Transportation) constructing 12 hybrid live groin-barbs. The
in accordance with 33 U.S.C. 1341) project is located in Yakima County,
(FWPCA § 401), RCW 90.48.120, RCW) Washington.
90.48.260 and Chapter 173-201A WAC)
)

TO: Gary Beeman,
Washington Department of Transportation
South Central Region
P.O. Box 12560
Yakima, WA 98909-2560

On April 2, 2007 the Washington Department of Transportation (WSDOT) 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 May 8, 2007. The Corps of Engineers issued a Nationwide Permit 13, Reference #NWS-2007-411-SOD, on November 21, 2007.

The proposed project entails stabilizing the bank of the Naches River near its confluence with Rattlesnake Creek adjacent to and along SR 410 by constructing 12 hybrid live groin-barbs (HLGBs). These structures will be built along the left bank of the Naches River over a distance of approximately 1, 375 feet, with an average of 85 feet between them. Each structure will be approximately 33 feet wide at the river bank and include a soil lift for a planting area. The project is located 13 miles northwest of the City of Naches starting at MP 107.34 and ending at MP 107.60 in Yakima County, WA. Section 3, Township 15N, Range 15E, WRIA# 38 – Naches.

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 WSDOT, and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's HQ, Attn: Federal Project Coordinator, P.O. Box 47600, Olympia, WA 98504-7600 or by e-mail at pkel461@ecy.wa.gov. Any submittals shall reference Order No. 5238 and Corps No. NWS-2007-411-SOD.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on April 2, 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. 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. 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. Timing Requirements

1. This Order is valid through November 21, 2009.

C. Notification

1. The applicant shall notify the Federal Project Coordinator 10 days prior to the start of construction.

D. 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:

Deliver your appeal in person to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

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:

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

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

3. And send a copy of your appeal to:

Penny Kelley
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

*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 Nov 30, 2007 at Olympia, Washington.



Brenden McFarland, Section Manager
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program