



State of Washington  
**Department of Fish and Wildlife**

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September 10, 2010

Sharleen Bakeman – Permit Comments  
Water Quality Program  
Washington Department of Ecology  
PO Box 47600  
Olympia, WA 98504

**RE: Comments on Draft Construction Stormwater General Permit**

Dear Ms. Bakeman:

Thank you for the opportunity to comment on the draft update of the Construction Stormwater General Permit. Additionally, I appreciated the opportunity to talk with you directly at the public hearing in Yakima on August 31, 2010 about my concerns with the Construction Stormwater General Permit (CSWGP) and habitat restoration projects. We are am looking forward to working with you in the future to reduce or eliminate permitting redundancies and increase permitting efficiency, while maintaining and protecting water quality and aquatic resources.

We work with several other partners (Conservation Districts, Yakama Nation, Regional Fisheries Enhancement Groups, Non-governmental organizations) throughout the Yakima Basin on habitat restoration projects through the Yakima Tributary Access and Habitat Program (YTAHP). Since 2002, this dedicated group has worked with private landowners to install fish screens at more than 50 irrigation diversions, restored fish access to more than 60 stream miles, and planted nearly five miles of riparian vegetation. These projects are largely funded by grants for salmonid restoration and water quality improvements. Most projects have been of relatively small scale, but recently projects have become larger, often triggering the CSWGP for overall project footprints greater than one acre of disturbance and near surface waters of the state.

My role with YTAHP is to work with project sponsors to obtain all of the environmental permits necessary for project implementation. Each project requires Endangered Species Act (ESA) consultation, Clean Water Act (CWA) Section 404, CWA 401, State Environmental Policy Act (SEPA), Hydraulic Project Approval (HPAs), and local review for compliance with Shoreline Master Programs (SMP) and Critical Areas Ordinances. In each of these consultations, impacts to water quality are required to be addressed and best management practices (BMP) and conservation measures (CM) are employed to minimize and monitor short and long term impacts. These consultations apply to the overall project disturbance, including site access routes, material and equipment staging

areas, and instream and riparian disturbance. In each case, conditions of numerous permits and authorizations require that disturbance of adjacent uplands, riparian, and sensitive areas be kept to a minimum.

Many of these projects receive funding from Ecology through Clean Water Act funds due to their benefits to water quality. It is ironic that these funds are not allowed to be used to pay the fees associated with obtaining a CSWGP that is required under the same Act that funded the project proposal. Thus, due to permit fees, monitoring costs to hire Certified Erosion and Sediment Control Lead (CESCL), and associated public notice fees; less funding can be applied to the very project designed and intended to protect water quality. While there is no disagreement regarding the need for the water quality protection provisions, there should be exceptions if the provisions and performance standards required in a CSWGP are already required and included in other permits and project designs for restoration projects. Among all habitat restoration project proposals requiring a CSWGP that we are aware of, there has been significant redundancy in the requirements of the CSWGP and other required permits with respect to site-specific water quality protection. Thus, there is little or no apparent value added regarding resource protection through obtaining a CSWGP. It is not our intent to circumvent resource protection needs and responsibilities, but to assure that resources (water quality, fish life, etc.) will be protected to the same or higher standards through other existing permit processes and/or help incorporate any requirements of the CSWGP into other consultations that Ecology already participates (ie: CWA 401, SMA, GMA, CWA grant programs). For example, Ecology often does not require Temporary Water Quality Modification permits if Hydraulic Project Approvals already require similar provisions. WDFW can include specific water quality related provisions suggested by Ecology into the Hydraulic Project Approval. If stormwater BMP'S were automatically required and included in all state restoration project proposals (which they should be) requiring additional permitting processes compromises funding that could be otherwise directed towards other restoration projects

Below are some additional comments for consideration in the 2010 CSWGP:

- For many projects, Ecology's 401 has been incorporated into the Corps 404 review. Internal coordination of the CSWGP and the CWA 401 should occur early for projects that will require both and one set of conditions should be provided to the applicant.
- Incorporate WAC 173-27-040(2) (o) and (p) into the CSWGP as they clearly define restoration projects and their exemptions from the Shoreline Management Act under certain criteria, including approval by WDFW for habitat restoration projects. This same language could be incorporated into the CSWGP.
- On page 6 under *S1.C.-Authorized Discharges*, add Habitat Restoration Projects as approved by WDFW to the list of Non-Stormwater Discharges. Conditions and/or provisions could be added here to ensure that the appropriate BMPs are applied and ensure that Ecology has an opportunity to review and approve plans.
- In *S2.C.-Erosivity Waiver*, include inwater work associated with habitat restoration projects approved by WDFW that have all of the other applicable permits and authorizations. In the application for a waiver, the applicant could

- provide project plans, other permits received, and a SWPPP for review. EPA allows inwater work under their Rainfall Erosivity Waiver.
- In *S2.C.-Erosivity Waiver*, consider increasing the R Factor to 8 for approved restoration projects to account for the late irrigation season in the Kittitas Valley that disrupts “normal” hydrograph of many streams.
  - In *S4.-Monitoring Requirements, Benchmarks, Reporting Triggers and Limits*, allow water quality monitoring and reporting by a designated biologist and/or project sponsor rather than a CESCL for habitat restoration projects.
  - In *S6.-Permit Fees*, waive fees for approved restoration projects where performance standards in other permits align with those of a CSWGP. If this is not possible, allow restoration projects to pay monthly fees rather than annual fees for permit coverage.
  - In *S9.-Stormwater Pollution Prevention Plan (SWPPP)*, the SWPPP should be submitted with the NOI for Ecology’s review and approval prior to issuing a permit for all projects. For projects where we’ve received coverage under the CSWGP, our SWPPP was never requested and there have been no compliance checks from Ecology to ensure we applied BMPs. Early review and comment from Ecology will improve the applicants’ use of BMPs to better protect the resource.
  - For *S10.-Notice of Termination*, a site inspection should be required for project sites prior to effective termination to ensure the site is stabilized appropriately.

While the Construction Stormwater General Permit is a critically important process necessary to protect water resources for standard development proposals, there appear to be other appropriate means and venues to provide equivalent water quality protection for restoration and enhancement projects. Thank you again for the opportunity to comment and I look forward to collaborating with you on ways to streamline project review and permitting processes specifically for habitat restoration projects.

Sincerely,



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