



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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January 15, 2020

Habitat Bank LLC  
Attn: Victor Woodward  
801 E 1st St STE B 107  
Cle Elum WA 98922-1246

RE: Water Quality Certification Order No. 16928 for Corps Public Notice No. NWS-2015-414 to  
operate and construct the Keller Farm Mitigation Bank King County, Washington

Dear Victor Woodward:

On January 22, 2019, Victor Woodward submitted a request for a Section 401 Water Quality  
Certification (WQC) under the federal Clean Water Act for the Keller Farm Mitigation Bank, King  
County, Washington.

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.

If you have any questions, please contact Kate Thompson at (360) 407-6749 or  
[kate.thompson@ecy.wa.gov](mailto:kate.thompson@ecy.wa.gov). The enclosed Order may be appealed by following the procedures  
described in the Order.

Sincerely,

Lauren Driscoll, Wetlands Section Manager  
Shorelands and Environmental Assistance Program

Enclosure

by certified mail: 9489 0090 0027 6066 3565 07

CC: Suzanne Anderson, Corps of Engineers  
Linda Storm, US EPA Region 10  
Cathy Beam, City of Redmond

E-cc: ECY RE FEDPERMITS  
Loree' Randall - HQ, SEA



<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER # 16928</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. NWS-2015-414</b>
<b>CERTIFICATION TO</b>	)	To construct the Keller Farm Mitigation Bank
<b>Victor Woodward</b>	)	Project, Bear and Perrigo Creek, located in King
in accordance with 33 U.S.C. 1341	)	County, Washington.
(FWPCA § 401), RCW 90.48.120, RCW	)	
90.48.260 and Chapter 173-201A WAC	)	

Habitat Bank, LLC  
 Attn: Victor Woodward  
 801 E 1<sup>st</sup> St STE B 107  
 Cle Elum, WA 98922-1246

On January 22, 2019, the Department of Ecology (Ecology) received Victor Woodward's request for a Section 401 Water Quality Certification. On December 5, 2019, the U.S. Army Corps of Engineers (Corps) issued a Nationwide Permit (NWP) # NWS-2015-414, to Victor Woodward for the Keller Farm project. A Joint Public Notice regarding the request was distributed by the Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on July 23, 2015. Ecology issued a public notice concerning the request for the Section 401 Water Quality Certification on November 5, 2019.

The project proposes to construct and operate a 75.2-acre wetland mitigation bank. The project involves re-establishment of 51.1 acres of wetland, rehabilitation of 7.9 acres of wetland, rehabilitation of 4.3 acres of stream channel and associated wetlands, and enhancement of 11.9 acres of riparian forested upland.

Within these areas the project proposes to:

- Re-establish wetland hydrology and varying wetland hydroperiods across the site by disabling farm ditches and targeted grading.
- Re-establish wetland vegetation and habitat communities across the site by removing and controlling invasive plant species and reintroducing native vegetation.
- Improve access for aquatic organisms to floodplain wetland and aquatic areas by enhancing and creating off-channel rearing and refuge habitat for salmonids within the floodplain streams and deeper backwater areas connected to Bear Creek.
- Reconnect Bear Creek to the floodplain and improve floodplain functions on the bank site.
- Re-establish and rehabilitate stream channel habitat in the floodplain through grading and addition of large woody debris.

Proposed alternations to the existing aquatic resources on the site are as follows:

- Approximately 7,114 linear feet of existing ditched stream channels would be replaced with 12,276 linear feet post-project meandering stream channels containing pools, large woody material, and grade control riffles.
- Six floodplain connections with Bear Creek will be constructed: three overflow connections, two backwater channel connections, and where the floodplain streams outlet to Bear Creek.

These impacts are expected to be mitigated by the bank project itself. The net gain of wetland acreage and function will be significant. The entire project is protected in perpetuity by a conservation easement. The Keller Farm Mitigation Bank Instrument (MBI), dated December 2019 and certified by Ecology on December 16, 2019, serves to outline and describe the legal agreements made by the permittee and signatories of the MBI, as well as the detailed implementation plan for the establishment and operation of the Keller Farm Mitigation Bank.

No physical address has been assigned for the property where the work is being performed. The general project is located immediately east of Avondale Road NE and north of NE Union Hill Road within the City of Redmond, King County, Washington. The bank site is located within portions of Section 1, Township 2 North, Range 5 East, and Section 1, Township 25 North, Range 5 East; in Water Resource Inventory Area 8 (Lake Washington-Cedar/Sammamish Watershed).

## **AUTHORITIES**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed 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, 302, 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 comply with 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 Victor Woodward to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification absolves Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments resulting from project construction or operations.

### **A. General Conditions**

1. In this Order, the term "Applicant" shall mean the Victor Woodward and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent to Ecology's Headquarters Office, Attn: Federal Permit Manager, P.O.Box 47600, Olympia, WA 98504-7600 or via e-mail to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to [kate.thompson@ecy.wa.gov](mailto:kate.thompson@ecy.wa.gov). The submittals shall be identified with Order #16928 and include the Applicant name, project name, project contact, and the contact phone number.
3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Permit Application (JARPA) received by Ecology on January 22, 2019.
4. The Applicant shall construct the project as described in the MBI prepared by Habitat Bank, LLC and dated December 2019, or as modified by this Order or revised and approved by Ecology.
5. The Applicant shall obtain Ecology review and approval before undertaking any changes to the proposed project that might significantly and adversely affect water quality, other than those project changes required by this Order.
6. Within 30 days of receipt of any updated information, Ecology will determine if the revised project requires a new public notice and Water Quality Certification or if a modification to this Order is required.

7. The Applicant shall keep copies of this Order 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.
8. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, and/or necessary data collection, to ensure that conditions of this Order are being met.
9. 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.
10. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48) or the federal Clean Water Act, Ecology may issue an amendment to this Order to incorporate any such changes or amendments applicable to this project.
11. The Applicant shall ensure that all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand the conditions of this Order and any permits, plans, documents, and approvals referenced in the Order.
12. 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.
13. Failure of any person or entity to comply with the Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.
14. This Order will automatically transfer to a new owner or operator if:
  - a. A written agreement between the Applicant and new owner or operator with the specific transfer date of the Order's obligations, coverage, and liability is submitted to Ecology per condition A.2.;
  - b. A copy of this Order is provided to the new owner or operator; and
  - c. If Ecology does not notify the new Applicant that this Order must be modified to complete the transfer.

## **B. Notification Requirements**

1. The following notification shall be made via phone or e-mail (e-mail is preferred) to Ecology's Federal Permit Manager via e-mail to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to [kate.thompson@ecy.wa.gov](mailto:kate.thompson@ecy.wa.gov). Notifications shall be identified with Order No.16928 and include the Applicants name, project name, project location, project contact and the contact's phone number.
  - a. Immediately following a violation of state water quality standards or when the project is out of compliance with any of this Orders conditions.
    1. In addition to the phone or e-mail notification, the Applicant shall submit a detailed written report to Ecology within five (5) 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.
  - b. At least ten (10) days prior to all pre-construction meetings
  - c. At least ten (10) days prior to conducting initial in-water work activities for each in-water work window.
  - d. At least seven (7) days prior to completing each wetland mitigation site.
  - e. At least seven (7) days within project completion.

## **C. Timing**

1. This Order shall remain in effect for the life of the Keller Farm Mitigation Bank.
2. In water work below the ordinary high water line must occur, in any year, between:
  - a. July 1 and August 31 of a given year on Bear Creek;
  - b. July 1 and September 30 of a given year for fish bearing tributaries to Bear Creek;
  - c. June 15 and October 15 of a given year for non-fishing bearing tributaries to Bear Creek.
3. Any project change that requires a new or revised Hydraulic Project Approval (HPA) from the Department of Fish and Wildlife should be sent to Ecology for review.

#### **D. Water Quality Monitoring & Criteria**

1. This Order does not authorize the Applicant to exceed applicable turbidity standards beyond the limits established in WAC 173-201A-200(1)(e)(i).
2. For in-water activities within Bear Creek turbidity shall not exceed 5 NTU over background when the background is 50 NTU or less; or a 10 percent increase in turbidity when the background turbidity is more than 50 NTU;
  - a. Temporary area of mixing for turbidity established within the state water quality standards for fresh waters (WAC 173-201A-200) is as follows:
    - i. For waters up to 10 cfs flow at the time of construction, the point of compliance shall be one hundred feet downstream from the activity causing the turbidity exceedance.
    - ii. For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be two hundred feet downstream of the activity causing the turbidity exceedance.
    - iii. For waters above 100 cfs flow at the time of construction, the point of compliance shall be three hundred feet downstream of the activity causing the turbidity exceedance.

For projects working within or along lakes, ponds, wetlands, or other non-flowing waters, the point of compliance shall be at a radius of one hundred fifty feet from the activity causing the turbidity exceedance.

3. Visible turbidity anywhere beyond the temporary area of mixing (point of compliance) from the activity shall be considered an exceedance of the standard.
4. If water quality exceedances for turbidity are observed outside 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, and correct the problem and prevent further water quality turbidity exceedances.
5. Mitigation and/or additional monitoring may be required if the monitoring results indicate that the water quality standards have not been met.

#### **E. Construction**

##### General Conditions

1. The Applicant shall obtain and comply with the conditions of the current Construction Stormwater Permit (National Pollutant Discharge Elimination System – NPDES) issued for this project.

2. All clearing limits, stockpiles, staging areas, and trees to be preserved shall clearly be marked prior to commencing construction activities and maintained until all work is completed for each project.
3. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
4. All construction debris, excess sediment, and other solid waste material shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.
5. All equipment being used below the ordinary high water mark shall utilize bio-degradable hydraulic fluid.

#### Equipment & Maintenance

6. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state, including wetlands. Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and the undercarriage of equipment prior to its use around waters of the state, including wetlands.
7. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
8. 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.

#### Isolation Berm

9. Stream flow isolation work shall not scour the stream channel or banks of the water body in which the work is being done.
10. To minimize sediment releases into downstream water, water reintroduced to the channel shall be done gradually and at a rate not exceeding the normal stream flow.
11. Prior to returning stream flow to the de-watered work area, all proposed bank protection measures shall be in place.

**F. Emergency/Contingency Measures**

1. The Applicant shall develop and implement a spill prevention and containment plan for this project.
2. The Applicant shall have adequate and appropriate spill cleanup material available on site at all times during construction.
3. The Applicant 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.
4. 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.
5. Work causing distressed or dying fish, discharges of oil, fuel, or chemicals into state waters or onto land with a potential for entry into state waters, is prohibited. If such work, conditions, or discharges occur, the Applicant shall notify the Ecology Federal Permit Manager per condition B.1. and immediately take the following actions:
  - a. Cease operations at the location of the non-compliance.
  - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
  - c. 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.
  - d. Immediately notify Ecology's Regional Spill Response Office and the Washington State Department of Fish & Wildlife with the nature and details of the problem, any actions taken to correct the problem, and any proposed changes in operation to prevent further problems.
  - e. Immediately notify the National Response Center at 1-800-424-8802, for actual spills to water only.
6. Notify Ecology's Regional Spill Response Office immediately if chemical containers (e.g. drums) are discovered on-site or any conditions present indicating disposal or burial of chemicals on-site that may impact surface water or ground water.

#### YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person. (See addresses below.) E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

#### ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW STE 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

#### CONTACT INFORMATION

Please direct all questions about this Order to:

Kate Thompson, Wetland Banking Specialist  
Department of Ecology, Headquarters  
PO Box 47600  
Olympia, WA 98504  
[kate.thompson@ecy.wa.gov](mailto:kate.thompson@ecy.wa.gov)

#### MORE INFORMATION

- **Pollution Control Hearings Board Website**  
<http://www.eluho.wa.gov/Board/PCHB>
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**  
<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**  
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>

- **Chapter 34.05 RCW – Administrative Procedure Act**  
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Chapter 90.48 RCW – Water Pollution Control**  
<http://app.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**  
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-200>
- **Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**  
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

**SIGNATURE**

Dated this 15 day of January 2020 at the Department of Ecology, Lacey Washington



Lauren Driscoll, Wetland Section Manager  
Shorelands and Environmental Assistance Program