

Complaint to State DOE



CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for
Environmental Law & Policy

August 29, 2007

Jeannie Summerhays, Northwest Regional Director
Dan Swenson, Water Program Section Supervisor
Washington Department of Ecology
3190 - 160th Ave. S.E.
Bellevue, WA 98008-5452

Re: City of Seattle Hamm Creek Water Code Violation

Dear Ms. Summerhays and Mr. Swenson,

This letter is submitted on behalf of the Center for Environmental Law & Policy and the Duwamish River Cleanup Coalition. We are writing to ask that the Department of Ecology take action to determine that a water right is necessary for the mitigation plan being undertaken for the new City of Seattle Joint Training Facility located in the Hamm Creek watershed. We further request that Ecology direct the City to cease construction of a water diversion system until a water right for the mitigation plan has been approved.

The City of Seattle Project

The City of Seattle illegally filled wetlands and built a new facility for fire, transportation and utility department training in the Hamm Creek watershed. Upon learning of this violation of the Clean Water Act, the U.S. Army Corps of Engineers brought an enforcement action against the City, resulting in a settlement that requires the City to construct and enhance wetlands, both on and off site.

The engineering design for the Seattle Joint Training Facility mitigation plan calls for diversion of water from headwater wetlands of the "Lost Fork" of Hamm Creek into a new, created wetland via a mitigation swale. The headwater wetlands are designated to become a "stormwater pond," but will continue to collect surface and groundwaters from the natural system. These wetlands currently discharge to Lost Fork Hamm Creek.

Under the proposed mitigation system, the water would be diverted from the wetland/stormwater pond, and flow to and through the created wetland. Ultimately this water would be collected into a drainage pipe and discharged into the City of Seattle stormwater system, along Highway 509, where it will discharge to the Duwamish River north of the Hamm Creek watershed. The City's mitigation system as currently designed will completely bypass Hamm Creek and, we fear, contribute to de-watering of the creek.

BOARD OF DIRECTORS: Karen Allston - Anne Johnson - John Osborn - Rachael Paschal Osborn
HONORARY BOARD: Billy Frank Jr. - Prof. Estella Leopold - Gov. Mike Lowry - Prof. Charles Wilkinson

Mailing Address: P.O. Box 9007, Spokane, WA 99209
Seattle: 206.547.5047 Spokane: 509.328.1087 Olympia 360.754.1520
www.celp.org

The purpose of the diversion from the existing wetland/stormwater pond is to hydrate an artificial wetland system which is required as part of the Seattle Joint Training Facility's wetland mitigation plan. The diversion itself and the usage of the diverted water are not part of the natural drainage system.

We will be happy to provide schematics of the existing and proposed drainage system as well as the mitigation system design.

Water Permit Required

Under the state water code, the diversion and use of water for a beneficial purpose requires a water right. The City of Seattle is proposing to collect and divert water from wetlands and hydraulically connected groundwater of the Lost Fork Hamm Creek that would otherwise flow to and through the natural creek system. The purpose of the diversion is to provide water to an artificial wetland to fulfill the requirements of a mitigation plan. The use of water for aquatic mitigation plans is a beneficial use. The water diverted from Lost Fork Hamm Creek will ultimately drain into the City of Seattle's stormwater system and be lost to the Hamm Creek watershed. This proposal does not mimic, and would in fact disrupt, the natural drainage system.

DRCC Alternative Mitigation Plan

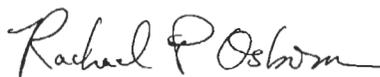
The Duwamish River Cleanup Coalition has attempted to negotiate with the City of Seattle to develop an improved mitigation plan. The DRCC plan asks the City to use an existing, alternate water source (natural wetland and creek flows that are currently discharged to the stormwater system) to fulfill the requirements of the mitigation plan, which would then drain to Hamm Creek where the water would enhance natural drainage and create a net benefit for the environment.

Although a water right might also be required of this proposal, the net environmental benefit would make it a much more palatable proposal than the current mitigation configuration, which will de-water Hamm Creek. To date, the City of Seattle has rejected this proposal.

We request that the Department of Ecology take immediate action to prevent an illegal diversion of water from Hamm Creek.

We will contact you shortly. Thank you for your attention to this matter.

Yours very truly,



Rachael Paschal Osborn
Executive Director

Cc: John Pell, ACOE
Richard Robhom, Dept of Ecology
Richard Conlin, Chair, Environment, Emergency Management & Utilities
Committee, Seattle City Council
BJ Cummings, Duwamish River Cleanup Coalition