



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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May 28, 2021

U.S. Army Corps of Engineers – Seattle District
Attn: Zachary Martin Wilson
PO Box 3755
Seattle, WA 98124

RE: Water Quality Certification Order No. 19995 for Lynden Levee and Culvert Repair Project,
Lynden, Whatcom County, Washington

Dear Zachary Martin Wilson:

On March 3, 2021, U.S. Army Corps of Engineers – Seattle District submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Lynden Levee and Culvert Repair project, Whatcom County, Washington; however, the Department of Ecology did not consider it a valid request until March 8, 2021.

On behalf of the state of Washington, the Department of Ecology certifies that the work described in the Section 401 Request and supporting documents complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and applicable state laws. This WQC is subject to the conditions contained in the enclosed Order.

If you have any questions about this decision, please contact Rebekah Padgett at (425) 365-6571. The enclosed Order may be appealed by following the procedures described within the Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Burcar".

Joe Burcar, Section Manager
Shorelands and Environmental Assistance Program

Sent by electronic mail: Zachary.m.wilson@usace.army.mil

Enclosure

e-cc: Joel Ingram, Washington Department of Fish and Wildlife
Terry Swanson, Ecology
Chris Luerkens, Ecology
Chad Yunge, Ecology
Amy Jankowiak, Ecology
Grant Yang, Ecology
Loree' Randall, Ecology
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A)	ORDER No. 19995
WATER QUALITY)	Lynden Levee and Culvert Repair Project,
CERTIFICATION TO)	Nooksack River located in Whatcom County,
U.S. Army Corps of Engineers – Seattle)	Washington.
District)	
pursuant to 33 U.S.C. 1341 (FWPCA)	
§ 401), RCW 90.48.120, RCW 90.48.260)	
and Chapter 173-201A WAC)	

U.S. Army Corps of Engineers – Seattle District
 Attn: Zachary Martin Wilson
 PO Box 3755
 Seattle, WA 98124

On September 17, 2020, the U.S. Army Corps of Engineers - Seattle District (Corps) submitted a pre-filing meeting request to the Department of Ecology (Ecology). Ecology and Corps conducted a pre-filing meeting on November 6, 2021. Then the Corps on March 3, 2021, submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Lynden Levee and Culvert Repair Project, Nooksack River located in Whatcom County, Washington. On March 8, 2021, the Corps submitted additional information and Ecology considered the Request valid on this date. On March 19, 2021, the Corps informed Ecology that the deadline for making a decision on this project would be May 17, 2021. But then on April 12, 2021 the Corps revised the deadline to May 31, 2021. Ecology issued a public notice for the project on March 12, 2021.

The proposed project entails repair of approximately 732 linear feet of the Lynden Levee at two locations, including replacement of two culverts (24- and 48-inch-diameter) with one flap gate culvert (48-inch-diameter) at Site 1. The excavation area at Site 1 is approximately 7-feet-deep and 19-feet-wide, with a total volume of approximately 1,300 cubic yards. The excavation area at Site 2 is approximately 9-feet-deep and 25-feet-wide, with a total volume of approximately 1,900 cubic yards. Approximately 50 logs, 10 root wads, and a mix of smaller pieces of woody material will be placed along the levee repair. Plantings will be installed at Site 1 and upstream of Site 2 as mitigation for impacts to vegetation.

The project sites are located on the right bank of the Nooksack River (approximately River Mile 17.3), near the Lynden Wastewater Treatment Plant, in Lynden, Whatcom County, Washington, Section 20, Township 40 N., Range 3 E., within Water Resource Inventory Area (WRIA) 01 Nooksack River. Specifically, the two site locations are:

- Site 1: approximately 457 linear feet on the right bank, located next to the Lynden Wastewater Treatment Plant.
- Site 2: approximately 275 linear feet on the right bank, located approximately 1.3 miles downstream of the Lynden Wastewater Treatment Plant.

AUTHORITIES

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed the WQC request 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;
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;
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; and,
4. Conformance with Washington's prohibition on discharges that cause or tend to cause pollution of waters of the state of Washington. RCW 90.48.080.

With this Water Quality Certification (WQC) Order, Ecology is granting with conditions, the Corps request for a Section 401 Water Quality Certification for the Lynden Levee and Culvert Repair Project, Nooksack River, located in Whatcom County. Ecology has determined that the proposed discharges will comply with all applicable state water quality requirements, provided the project is conducted in accordance with the Section 401 Water Quality Certification request that Ecology received on March 3, 2021 and March 8, 2021, the supporting documents referenced in Table 1 below, **and the conditions of this WQC Order.**

Table 1. Supporting Documents

Date Received	Document Type	Title & Date	Author
March 3, 2021	Memorandum	Memorandum from Corps to Loree' Randall, Ecology, Subject: Section 401 Water Quality Certification Request for Repairs to the Lynden Levee near the City of Lynden, Washington (dated March 2, 2021).	Laura Boerner, Corps
March 3, 2021	Joint Aquatic Resources (JAR) Form	Joint Aquatic Resources Form (undated)	Corps

March 3, 2021	Drawings	Sheets 1 of 8 to 8 of 8 (Plates G-001, G-002, and C-100 to C-105) (dated May 27, 2020)	Corps
March 3, 2021	Memorandum	Memorandum from Corps to Federal Consistency Coordinator, Department of Ecology, RE: Lynden Levee Repairs near Lynden, Whatcom County, Washington. Determination of functional analogy to Nationwide Permit (NWP) 3 (dated March 3, 2021)	Zachary Wilson, Corps
April 1, 2021	National Environmental Policy Act Public Notice	Notice of Preparation/Clean Water Act Public Notice, Reference: PMP-21-02, Name: Lynden Levee and Culvert Repair (dated April 1, 2021)	Corps
April 23, 2021	Biological Assessment	Biological Assessment, Lynden Levee Repairs Whatcom, Washington (dated December 2020)	Corps
May 6, 2021	E-mail	E-mail to Rebekah Padgett, Ecology, RE: Lynden Levee Repairs – Plantings (dated May 6, 2021, 3:51 PM)	Zachary Wilson, Corps
May 10, 2021	Plan	Draft Fish Exclusion and Rescue Plan, Project: Lynden Levee and Culvert Repair (dated May 10, 2021)	Corps
May 10, 2021	Mitigation Plan	2021 Lynden Levee and Culvert Repair Mitigation Plan (dated May 10, 2021)	Corps
May 11, 2021	Water Quality Monitoring Plan	Water Quality Monitoring Plan, Project: Lynden Levee and Culvert Repair (dated May 11, 2021)	Corps

Issuance of this Section 401 Water Quality Certification for this proposal does not authorize U.S. Army Corps of Engineers – Seattle District 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 WQC absolves the

Corps from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

A. General Conditions

Clean Water Act (CWA) Section 401 certification is granted with conditions to the Corps. Ecology has determined that any discharge from the proposed project will comply with water quality requirements, as defined by 40 CFR 121.1(n), subject to the following conditions pursuant to Section 33 USC §1341(d). Additionally, the following conditions shall be incorporated into the Corps project and strictly adhered to by the Corps. This WQC 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 WQC Order.

Specific condition justifications and citations required by 40 CFR 121.7(d)(1) are provided below each condition in *italic text*.

1. In this WQC Order, the term “Project Proponent” shall mean the U.S. Army Corps of Engineers – Seattle District and its agents, assignees, and contractors.
 - *Justification – Ecology needs to identify that conditions of this WQC Order apply to anyone conducting work on behalf of the Project Proponent to ensure compliance with the water quality standards and other applicable state laws.*
 - *Citation – 40 CFR 121.1(j), Chapter 90.48 RCW, Chapter 90.48.080 RCW, Chapter 90.48.120 RCW, Chapter 90.48.260 RCW, Chapter 173-200 WAC, Chapter 173-201A WAC, and Chapter 173-225-010 WAC.*
2. All submittals required by this WQC Order shall be sent to Ecology’s Headquarters Office, Attn: Federal Permit Manager, via e-mail to fednotification@ecy.wa.gov and cc to Rebekah.Padgett@ecy.wa.gov. The submittals shall be identified with Order #19995 and include the Project Proponent’s name, project name, project contact, and the contact phone number.
 - *Justification – Ecology needs to identify where information and submittals are to be submitted to be in compliance with the requirements of this WQC Order.*
 - *Citation – 40 CFR 121, Chapter 90.48 RCW, Chapter 90.48.120 RCW, Chapter 90.48.260 RCW, Chapter 173-201A WAC, and Chapter 173-225-010 WAC.*
3. Work authorized by this WQC Order is limited to the work described in the WQC request package received by Ecology on March 3, 2021 and March 8, 2021 and the supporting documentation identified in Table 1 above.
 - *Justification – Ecology has the authority to prevent and control pollution of state waters. By authorizing a discharge into a water of the state, through a WQC, Ecology is certifying the project as proposed will not negatively impact our state’s water quality. Therefore, it is imperative the project is conducted as it was presented during the review process. Any deviations from information within the WQC Request*

package and this WQC Order must be disclosed prior to the initiation of the planned work.

- *Citation – 40 CFR 121, Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.120 RCW, Chapter 90.48.260 RCW, Chapter 173-200 WAC, Chapter 173-201A WAC, Chapter 173-204 WAC, and Chapter 173-225-010 WAC.*
4. The Project Proponent shall keep copies of this WQC 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.
 - *Justification – All parties (including on-site contractors) must be aware of and comply with the WQC Order for the protection of water quality.*
 - *Citation – 40 CFR 121.3, Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 173-201A WAC, and Chapter 173-225-010 WAC.*
 5. The Project Proponent 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.
 - *Justification – Ecology must be able to investigate and inspect construction sites and facilities for compliance with all state rules and laws.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.090 RCW, Chapter 173-201A WAC, and Chapter 173-225-010 WAC.*
 6. The Project Proponent shall ensure that all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Project Proponent shall provide Ecology a signed statement (see Attachment A for an example) before construction begins.
 - *Justification – Ecology needs to ensure that anyone conducting work at the project, on behalf of the Project Proponent, are aware of and understand the required conditions of this WQC Order to ensure compliance with the water quality standards and other applicable state laws.*
 - *Citation – 40 CFR 121.1(j), Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 173-201A WAC, and Chapter 173-225-010 WAC.*
 7. 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.
 - *Justification – Ecology has the authority to prevent and control pollution of state waters, and to protect designated uses. By authorizing a discharge into a water of the state, through a water quality certification, we are certifying the project as proposed will not negatively impact our state's water quality and will comply with the state's water quality requirements. Therefore, it is imperative the project is conducted as it was presented during the review process, and as conditioned herein.*

- *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 173-201A WAC, Chapter 173-201A-300(2)(e)(i) WAC, Chapter 173-201A-310 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
8. Failure of any person or entity to comply with the WQC Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the state's water quality standards.
- *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses; civil penalties and other enforcement actions are the primary means of securing compliance with water quality requirements.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.037 RCW, Chapter 90.48.080 RCW, Chapter 90.48.120 RCW, Chapter 90.48.142 RCW, Chapter 90.48.144 RCW, and Chapter 173-225-010 WAC.*

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 and cc to Rebekah.Padgett@ecy.wa.gov. Notifications shall be identified with Order #19995 and include the Project Proponent name, project name, project location, project contact and the contact phone number.
 - a. Immediately following a violation of state water quality standards or when the project is out of compliance with any conditions of this Order.
 - 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.
 - d. Within seven (7) days of completing in-water work activities.
 - *Justification – Ecology must be aware of when a project starts and ends and whether there are any issues. This allows Ecology to evaluate compliance with the state water quality requirements.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204 WAC, and Chapter 173-225-010 WAC.*
2. In addition to the phone or e-mail notification required under B.1.a. above, the Project Proponent 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.
 - *Justification – Ensure the Project Proponent remains in full compliance with state water quality requirements for the duration of the project.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.120 RCW, Chapter 173-201A WAC, and Chapter 173-225-010 WAC.*

C. Timing

1. This Order will expire December 31, 2028.
 - *Justification – Certifications are required for any license or permit that authorizes an activity that may result in a discharge. Ecology needs to be able to specify how long the WQC Order will be in effect.*
 - *Citation – 40 CFR 121 and Chapter 173-225-010 WAC.*
2. The following in-water work windows apply to the project:
 - a. All activities within the wetted perimeter of the Nooksack River may be conducted between June 15 and August 31 of any year. To the extent practicable, work within the wetted perimeter of the Nooksack River work shall be conducted after July 1.
 - b. All activities in the drainage channels shall be conducted between June 15 and September 30 of any year. To the extent practicable, work within the drainage channels shall be conducted after July 1.
 - *Justification – This condition is reaffirming the project will take place during a time period that will not harm fish or other aquatic species.*
 - *Citation – Chapter 77.55 RCW, Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300 WAC, Chapter 173-201A-330 WAC, Chapter 173-225-010 WAC, and Chapter 220-660 WAC.*

D. Project Mitigation Conditions

1. The Project Proponent shall implement the *2021 Lynden Levee and Culvert Repair Mitigation Plan*, prepared by U.S. Army Corps of Engineers – Seattle District, dated May 10, 2021 [hereafter referred to as “Mitigation Plan”], or as modified by this Order.
 - *Justification – This condition is necessary to ensure that unavoidable physical alterations are properly mitigated for the protection of water quality and beneficial uses*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.74 RCW, Chapter 90.74.005-040 RCW, Chapter 173-201A WAC, Chapter 173-201A-300 WAC, Chapter 173-201A-310 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC, and Chapter 220-660 WAC.*
2. The Project Proponent shall submit any changes to the Mitigation Plan in writing to Ecology (see A2 prior to implementing the change. Please note that substantial changes could require a new WQC).
 - *Justification – Ecology must be able to understand the scope of changes to the Mitigation Plan to ensure that unavoidable physical alterations are properly mitigated for the protection of water quality and beneficial uses.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.74 RCW, Chapter 90.74.005-040 RCW, Chapter 173-201A WAC, Chapter 173-201A-300(2)(e)(i) WAC, Chapter 173-201A-310 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

3. The Project Proponent shall submit an As-Built Report per Condition A2 within 90 days of completion of planting, showing planting location, size, and species, describing any changes in related to the mitigation components, and including photos of the plantings, and large woody debris.
 - *Justification – To ensure the mitigation was implemented as reviewed and authorized to provide commensurate water quality functions and beneficial uses lost as a result of the project.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.74 RCW, Chapter 90.74.005-040 RCW, Chapter 173-201A WAC, Chapter 173-201A-300(2)(e)(i) WAC, Chapter 173-201A-310 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
4. The Project Proponent shall submit monitoring reports annually, by December 31 of each year, to Ecology (see A2) documenting mitigation site conditions for years 1, 2, 3, 4, and 5. The reports shall include monitoring results for the plants, such as survival and areal coverage of riparian vegetation, photographs, and a discussion on whether the performance standards are being met and contingency measures to be taken. Status of the willow bundles and large woody debris also shall be included in the reports.
 - *Justification – To ensure the mitigation was implemented as reviewed and authorized to provide commensurate water quality functions and beneficial uses lost as a result of the project.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.74 RCW, Chapter 90.74.005-040 RCW, Chapter 173-201A WAC, Chapter 173-201A-300 WAC, Chapter 173-201A-310 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
5. If the Project Proponent has not met all conditions, including performance standards for the mitigation site at the end of the monitoring period, the Project Proponent shall provide a plan for additional monitoring and/or additional mitigation.
 - *Justification – To ensure the mitigation was implemented as reviewed and authorized to provide commensurate water quality functions and beneficial uses lost as a result of the project.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.74 RCW, Chapter 90.74.005-040 RCW, Chapter 173-201A WAC, Chapter 173-201A-300 WAC, Chapter 173-201A-310 WAC, and Chapter 173-225-010 WAC.*

E. Water Quality Monitoring & Criteria

1. This Order does not authorize the Project Proponent to exceed applicable turbidity standards beyond the limits established in WAC 173-201A-200(1)(e)(i).

- *Justification – This condition provides citation to the appropriate water quality standard criteria to protect surface waters of the state. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
2. The Project Proponent shall conduct water quality monitoring as described in the approved *Water Quality Monitoring Plan, Project: Lynden Levee and Culvert Repair* (hereafter referred to as the WQMP), prepared by U.S. Army Corps of Engineers – Seattle District, dated May 11, 2021.
- *Justification – This condition is necessary to ensure that the monitoring as proposed by the Project Proponent and authorized by Ecology is conducted to protect water quality. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
3. Monitoring results shall be submitted monthly to Ecology’s Federal Permit Manager, per condition A2.
- *Justification – This information is necessary for Ecology to determine if the project was implemented as approved by the WQC Order and that no adverse impacts to water quality or beneficial uses occurred.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
4. Visible turbidity anywhere beyond the temporary area of mixing (point of compliance) from the activity shall be considered an exceedance of the standard.
- *Justification – This condition specifically informs the Project Proponent of when they would be out of compliance with the water quality standards and an obvious sign of water quality degradation. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
5. If water quality exceedances for turbidity are observed outside the point of compliance, the Project Proponent or the contractor shall assess the cause of the water quality problem and take immediate action to modify or stop, contain, and correct the problem and prevent further water quality turbidity exceedances.

- *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution and know if there are exceedances of the water quality standards that protect aquatic life and beneficial uses.*
- *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

F. Construction

General Conditions

1. All work in and near waters of the state shall be conducted to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control Best Management Practices (BMPs) suitable to prevent exceedances of state water quality standards shall be in place before starting maintenance and shall be maintained throughout the duration of the activity.
 - *Justification – Disturbed areas without appropriate BMP's and construction methods can discharge excess sediment to waters of the state and degrade water quality. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
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.
 - *Justification – Ensures that the project proponent preserves sensitive areas from discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
3. No stockpiling or staging of materials shall occur at or below the OHWM of any waterbody.
 - *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
4. The Project Proponent shall obtain the Construction Stormwater Permit (National Pollutant Discharge Elimination System – NPDES) from the Environmental Protection Agency for this project.

- *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – 40 CFR 122, Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
5. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
- *Justification – Concrete, petroleum products or other waste materials are detrimental to water quality. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
6. 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.
- *Justification – Ecology must be assured that the Project Proponent is managing and disposing of material to protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

Equipment & Maintenance

7. Staging areas will be located a minimum of 50 feet and, where practical, 200 feet, from waters of the state including wetlands.
- *Justification – Requiring a minimum setback ensures that material will not end up in waters of the state. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
8. 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.

- *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC.*
9. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
- *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
10. 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.
- *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
11. Wash water containing oils, grease, or other hazardous materials resulting from washing of equipment or working areas shall not be discharged into state waters. The Project Proponent shall set up a designated area for washing down equipment.
- *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*
12. Turbidity curtains shall be properly deployed and maintained in order to minimize turbidity and re-suspension of sediment.

- *Justification – This condition would ensure containment and limit movement of sediment that could cause water quality exceedances. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
- *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

Culvert Work & Stream Bypass

13. All culvert work shall be conducted in the dry or in isolation from stream flow.

- *Justification – This condition would limit re-suspension of sediment that could cause water quality exceedances. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
- *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

14. Stream flow isolation work shall not scour the stream channel or banks of the waterbody in which the work is being done.

- *Justification – Scour and erosion could cause long term instability of the project and contribute to water quality impacts. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
- *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

15. 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.

- *Justification – Maintaining natural stream flow rate is important for maintaining beneficial uses and preventing water quality impacts. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
- *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

16. Culverts shall be installed to avoid inlet scouring and prevent downstream bank erosion.

- *Justification – Scour and erosion could cause long term instability of the project and contribute to water quality impacts. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
- *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

17. Fill associated with culvert installation shall be protected from erosion to the 100-year peak flow.

- *Justification – Erosion could cause long term instability of the project and contribute to water quality impacts. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
- *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

Levee Repair Work

18. Placement of rip-rap and embankment materials shall be conducted in a controlled manner, in compliance with water quality standards for turbidity.

- *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
- *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

19. Excavation activity both in-water and above the Ordinary High Water Mark shall be conducted in a controlled manner, in compliance with water quality standards for turbidity.

- *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
- *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, and Chapter 173-225-010 WAC.*

G. Emergency/Contingency Measures

1. The Project Proponent shall develop and implement a spill prevention and containment plan for this project.

- *Justification – Ecology must ensure that the Project Proponent has a plan to prevent pollution from entering waterways. Ecology must protect waters of the state from all*

discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.

- *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 90.56.280 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC, and Chapter 173-303-145 WAC.*
2. The Project Proponent shall have adequate and appropriate spill response and cleanup materials available on site to respond to any release of petroleum products or any other material into waters of the state.
- *Justification – Ecology must have assurance that the Project Proponent has the material readily available in order to address any spills that might occur to protect waters of the state. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 90.56.280 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC, and Chapter 173-303-145 WAC.*
3. 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.
- *Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 90.56.280 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC, and Chapter 173-303-145 WAC.*
4. Work causing distressed or dying fish and 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 Project Proponent shall notify Ecology's Federal Permit Manager per condition A2 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 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.
 - *Justification – This condition is necessary to prevent oil and hazardous materials spills from causing environmental damage and to ensure compliance with water quality requirements. The sooner a spill is reported, the quicker it can be addressed, resulting in less harm. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 90.56.280 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC, and Chapter 173-303-145 WAC.*
5. 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.
- *Justification – Oil and hazardous materials spills cause environmental damage. The sooner a spill is reported, the quicker it can be addressed, resulting in less harm. Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation – Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.56 RCW, Chapter 90.56.280 RCW, Chapter 173-201A WAC, Chapter 173-201A-300–330 WAC, Chapter 173-204-120 WAC, Chapter 173-225-010 WAC, and Chapter 173-303-145 WAC.*

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

CONTACT INFORMATION

Please direct all questions about this Order to:

Rebekah Padgett
Department of Ecology
(425) 365-6571
Rebekah.Padgett@ecy.wa.gov

MORE INFORMATION

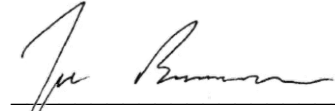
- **Pollution Control Hearings Board Website**
<http://www.eluho.wa.gov/Board/PCHB>
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **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 173.204 WAC – Sediment Management Standards**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>
- **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 28th day of May, 2021, at the Department of Ecology, Shoreline, Washington



Joe Burcar, Section Manager

Northwest Regional Office

Shorelands and Environmental Assistance Program

Attachment A

**Statement of Understanding
Water Quality Certification Conditions**

Lynden Levee and Culvert Repair Project

Water Quality Certification Order #19995

As the Project Proponent for the Lynden Levee Repairs project, I have read and understand the conditions of Washington State Department of Ecology Order #19995, and any permits, plans, documents, and approvals referenced in the Order. I have and will continue to 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.

Signature _____ Date _____

Title _____ Phone _____

Company _____