



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

*1250 W Alder St • Union Gap, Washington 98903-0009 • (509) 575-2490
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December 20, 2021

U.S. Army Corps of Engineers
Attn: Laura Boerner
PO Box 3755
Seattle, WA 98134

RE: Amendment to 401 Water Quality Certification Order No. 20108 for Yakima River Gap to Gap Ecosystem Restoration, Yakima River, located in Yakima County, Washington.

Dear Laura Boerner:

Enclosed is an amendment to Water Quality Certification Order No. 20108, issued on June 10, 2021, for the above project. We have also included a strikeout version of the Water Quality Certification that reflects the changes made. All other conditions of Water Quality Certification No. 20108 remain in effect.

The purpose of this amendment is to modify the in-water work window provided within Order No. 20108, issued on June 10, 2021. The issued in water work dates (per consultation with WA Department of Fish and Wildlife (WDFW) Habitat Biologist) are in direct conflicted with the winter in-water work window (October 1 – February 28) issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Through additional consultation with WDFW Habitat Biologist, the winter in-water work window is satisfactory.

If you have any questions, please contact Lori White at (509) 575-2616. The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Graff".

Gary Graff, PWS
Regional Section Manager
Shorelands and Environmental Assistance Program

Enclosure

U.S. Army Corps of Engineers

December 20, 2021

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ec: Lori White, Department of Ecology
 Loree' Randall, Department of Ecology
 Melissa Leslie, US Army Corps of Engineers
 Eric Bartrand, WDFW
 ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING) **ORDER No. 20108,**
A WATER QUALITY) **First Amendment**
CERTIFICATION TO)
U.S. Army Corps of Engineers – Seattle)
District)
In accordance with 33U.S.C. 1341)
(FWPCA §401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: U.S. Army Corps of Engineers
Attn: Laura Boerner
PO Box 3755
Seattle, WA 98134

On June 10, 2021 the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification to U.S. Army Corps of Engineers – Seattle District for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

Ecology received a request on December 8, 2021 for the modification of the in-water work dates provided within Order No. 20108. The issued in water work dates (per consultation with WA Department of Fish and Wildlife (WDFW) Habitat Biologist) are in direct conflicted with the winter in-water work window (October 1 – February 28) issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service. Through additional consultation with WDFW Habitat Biologist, the winter in-water work window is satisfactory.

Order No. 20108 dated June 10, 2021 is hereby amended as follows:

I. Condition number C.2 which reads:

In-Water Work Window Timing

The following in-water work windows apply to the project:

June 1 - September 15 of each year.

- *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.*

Is replaced with:

In-Water Work Window Timing

The following in-water work windows apply to the project:

October 1 – February 28 of each year.

No other conditions or requirements of the above referenced Order are affected by this amendment.

Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if it appears necessary to further protect the public interest.

Failure to comply with this amended Order may result in the issuance of civil penalties or other actions whether administrative or judicial, to enforce the terms of this amended Order.

YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearings 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 all 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

Filing an appeal with the PCHB:

Mailing Address:

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

Street Address:

Pollution Control Hearings Board
1111 Israel RD SW
STE 301
Tumwater, WA 98501

Serving a copy of the appeal on Ecology:

Mailing Address:

Department of Ecology
Attn: Appeals Processing Desk
PO Box 47608
Olympia, WA 98504-7608

Street Address:

Department of Ecology
Attn: Appeals Processing Desk
300 Desmond Drive SE
Lacey, WA 98503

December 20, 2021

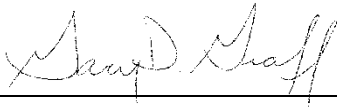
CONTACT INFORMATION

Please direct all questions about this Order to:

Lori White
Department of Ecology
Central Regional Office
1250 W Alder Street
Union Gap, WA 98903
(509) 575-2616
lori.white@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>



Gary Graff, PWS
Regional Section Manager
Shorelands and Environmental Assistance Program

12/20/2021

DATE

IN THE MATTER OF GRANTING A) ORDER # 20108
WATER QUALITY) Yakima River Gap to Gap Ecosystem
CERTIFICATION TO) Restoration, Yakima River, located in Yakima
U.S. Army Corps of Engineers – Seattle) County, 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
Attn: Laura Boerner
P.O. Box 3755
Seattle, Washington 98134

On October 08, 2020, the U.S. Army Corps of Engineers - Seattle District (Corps) submitted a pre-filing meeting request to the Department of Ecology (Ecology). Then the Corps on December 18, 2020, submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Yakima River Gap to Gap Ecosystem Restoration Project, located in Yakima County, Washington. On December 22, 2021, the Corps informed Ecology that the deadline for making a decision on this project would be June 16, 2021. Ecology issued a public notice for the project on January 19, 2021.

The proposed project entails 8 main actions:
Measure 1.0 DID#1 Floodplain Process Restoration:
Diking Improvement District #1 levee to be removed.

Central Pre-Mix gravel processing center to remain.
Radio Station Towers to remain.
Private residences to be demolished prior to construction

Measure 1.1 Floodplain Topographic Restoration:
Private residences to be demolished prior to construction

Measure 1.2 Remove SR24 Cross Dike and KOA Levee; install SR 24 buried sill:
Measure 2.0 Sportsman Island Channel Restoration:

Measure 2.1 Sportsman Upstream Groin Removal:
Federal left bank levee to remain; groins to be removed.

Measure 2.2 Lake Buchanan Spurs:
Federal right bank levee to remain.

Measure 4.0 Blue Slough Automated Headgate:
Blue Slough head gate and culvert to be replaced.

Measure 7.0 Spring Creek Reconnection: Measure 7.0 was proposed to reconnect Spring Creek to the Yakima River by removing compacted roadbed from the mouth of Spring Creek.

The project site(s) are located in Sections 20, 21, 28, & 33 Township 12N, Range 19E, within Water Resource Inventory Area (WRIA) 37, Lower Yakima Watershed.

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 (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.
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 Yakima River Gap to Gap project, located in Yakima County. Ecology has determined that the proposed discharges will comply with all applicable state water quality requirements, provided that the project is conducted in accordance with the Section 401 Water Quality Certification request that Ecology received on December 18, 2020, 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
10/8/2020	Pre-Filling Meeting Request	Pre-filling Meeting Request (10/08/2020)	Corps
12/18/2020	Joint Aquatic Resources (JAR) Form	Joint Aquatic Resources Form (undated)	Corps

12/18/2020	Drawings	Attached to JARPA (undated)	Corps
1/4/2021	National Environmental Policy Act Public Notice	Append I, Finding of No Significant Impact (5/20/2019), in Integrated Detailed Project Report and Environmental Assessment (June 2018)	Corps
12/18/2020	Monitoring and Adaptive Management Plan	Monitoring and Adaptive Management Plan (1/27/2021)	Corps
5/17/2021	Revegetation Plan	Cottonwood recruitment, (5/17/202)	Yakima County
1/27/2021	Revegetation Plan	Seedmixes (1/27/2021)	Corps
5/4/2021	Blue Slough Mitigation Plan (CPM site)	Blue Slough/CPM Mitigation plan (5/4/2021)	Corps
2/12/2021	Modeling	Sportsman Island Wetted Channel, (2/12/2021)	Corps
12/18/2020	Report	CWA Sect 404 Analysis (12/18/2021)	Corps
12/18/2020	Report	Functional Equivalency Analysis (12/18/2021)	Corps
12/18/2020	Report	Integrated Detailed Project Report and Environmental Assessment (June 2018)	Corps
12/22/2020	Memorandum	Reasonable Period of Time (12/22/2021)	Corps
12/18/2020	Water Quality Monitoring Plan	Water Quality Monitoring Plan (12/18/2021)	Corps
12/18/2021	Wetland Delineation	Wetland Delineation and Assessment Report (10/2020)	Corps
2/12/2021	Plan	Did #1 Degrade Plan View (CD102-3) (undated)	Corps
2/12/2021	Drawing	Proposed Staging Area- CPM	Corps

		Preservation (Undated)	
5/4/2021	Plan	CPM Impacts and Mitigation (undated)	Corps

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

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 lori.white@ecy.wa.gov. The submittals shall be identified with Order #20108 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 December 18, 2020 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 lori.white@ecy.wa.gov. Notifications shall be identified with Order No. 20108 and include the Project Proponents 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 for each in-water work window.
 - d. Within seven (7) days of completing in-water work activities for each in-water work window.
 - e. At least seven (7) days within project completion.
 - *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 September 15, 2026.

- *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. In-Water Work Window Timing

The following in-water work windows apply to the project:

~~June 1st–September 15th of each year.~~

October 1- February 28 of each year.

- *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. 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, Yakima River Gap to Gap Ecosystem Restoration* (hereafter referred to as the WQMP) dated October 2020.

- *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.*

E. 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 Department of Ecology 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 123, 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.*
7. Within the project limits¹ all environmentally sensitive areas including, but not limited to, wetlands, wetland buffers, and mitigation areas shall be fenced with high visibility construction (HVF) prior to commencing construction activities. Construction activities include equipment staging, materials storage, and work vehicle parking. Note: This condition does not apply to activities such as pre-construction surveying and installing HVF and construction zone signage.
- a. If the project will be constructed in stages² a detailed description and drawings of the stages shall be sent to Ecology for review at least 20 days prior to placing HVF.
 - b. Condition 2.a. shall apply to each stage.
 - c. All field staff shall be trained to recognize HVF, understand its purpose and properly install it in the appropriate locations.
 - d. HVF shall be maintained until all work is completed for each project or each stage of a staged project.
 - *Justification – Ecology must be assured that the Project Proponent has marked the sensitive areas that are not to be impacted to ensure that they are not damaged from any discharges or 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.*

¹ Project limits include mitigation sites, staging areas, borrow sources, and other sites developed or used to support project construction.

² A stage is part of a project that has been separated into at least two distinct areas to be built during separate timeframes.

8. 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.*
9. Turbid de-watering water associated with in-water work shall not be discharged directly to waters of the state, including wetlands. Turbid de-watering water shall be routed to an upland area for on-site or off-site settling.
 - *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. Clean de-watering water associated with in-water work that has been tested and confirmed to meet water quality standards may be discharged directly to waters of the state including wetlands. The discharge outfall method shall be designed and operated so as not to cause erosion or scour in the stream channel, banks, or vegetation.
 - *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.*

Equipment & Maintenance

11. 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.*

12. 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.*
13. 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.*
14. 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.*
15. 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.*

Bank Stabilization

16. Prior to returning stream flow to the de-watered work area, all proposed bank protection measures shall be in place.

- *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.*

Dredging

17. The Project Proponent shall use an environmental bucket to dredge. A clamshell bucket may be used when necessary.

- *Justification – Ecology has reviewed the project and the BMPs for a specific type of dredging. Changes to the dredging method would require different BMPs. If new dredging methods are proposed, a new WQC pre-filing meeting request, followed by a new WQC request (after requisite 30-days) is required.*
- *Citation – 40 CFR 121, Chapter 90.48 RCW, Chapter 90.48.030 RCW, Chapter 90.48.080 RCW, Chapter 90.52-040 RCW, Chapter 90.54.020(2)(b) RCW, Chapter 173-201A WAC, Chapter 173-201A-240(5)(b) WAC, and Chapter 173-204-400(2).*

18. Dredging operations shall be conducted in a manner that minimizes the disturbance and siltation of adjacent waters and prevents the accidental discharge of petroleum products, chemicals or other toxic or deleterious substances 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, Chapter 173-225-010 WAC.*

19. Dredged material shall be used to create the levee or disposed of at an upland location.

- *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.*

20. Any material temporarily stockpiled within the project site prior to being taken to an approved upland facility shall be fully contained and not allowed to enter waters of the state.

- *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.*

F. Wetlands

1. The Project Proponent shall ensure that no material is stockpiled within existing wetlands or their buffers at the wetland mitigation site(s) at any time, unless otherwise provided for in the Mitigation Plan.
 - *Justification – Ecology must protect water of the state from all potential discharges that can affect water quality. The water quality standards, along with mitigation, protect wetlands as well as permitting some level of degradation where unavoidable or necessary, however we must ensure that stockpiles are not placed in existing wetlands that have not been reviewed and mitigated.*
 - *Citation – 40 C.F.R. 131.12, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A, Chapter 173-201A-260 (3) (i-ii), and Chapter 173-201A-300.*
2. The Project Proponent shall ensure that no construction debris is deposited within existing wetlands or their buffers at the wetland mitigation site(s) at any time, unless otherwise provided for in the Mitigation Plan.
 - *Justification – Ecology must protect waters of the state from all discharges and potential discharges that can affect water quality to protect aquatic life and beneficial uses.*
 - *Citation: RCW 90.48 and WAC 173-201A.*
3. The Project Proponent shall not use hay or straw on exposed or disturbed soil at the mitigation site(s), unless otherwise provided for in the Mitigation Plan.
 - *Justification – The purpose of the mitigation site is to replace or mitigate for the loss of wetlands due to the project discharge, therefore Ecology needs to ensure that the wetlands, as purposed for mitigation, are not overtaken with weeds.*
 - *Citation: RCW 90.48 and WAC 173-201A.*
4. If weed-barrier fabric is used on the site, the Project Proponent shall use only water-permeable, fully biodegradable, non-toxic weed-barrier fabric for the entire-site and/or individual plant weed control, unless otherwise approved by Ecology. If non-biodegradable plastic weed-barrier fabric, is included in the Mitigation Plan, it shall be used only at the base of individual plants and shall be removed before it starts to break down, before it interferes with plant growth, or before the end of the monitoring period, whichever comes first.
 - *Justification – This condition is necessary to ensure the success of any revegetation planting and for weed control that is required as part of the mitigation for the impact from the discharge into waters of the state.*

- *Citation – 40 C.F.R. 131.12, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A, Chapter 173-201A-260 (3) (i-ii), and Chapter 173-201A-300.*
5. If seeding is used for temporary erosion control, it must be a seed mix consisting of native, annual, non-invasive plant species, unless otherwise provided for in the Mitigation Plan.
- *Justification – This condition is necessary for weed control.*
 - *Citation – 40 C.F.R. 131.12, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A, Chapter 173-201A-260 (3) (i-ii), and Chapter 173-201A-300.*

Monitoring and Maintenance

6. Monitoring and maintenance shall be conducted in accordance with the *Yakima River Gap to Gap Ecosystem Restoration Project, Draft Monitoring and Adaptive Management Plan* dated April 2018 for a period of 10 years.
- *Justification –. Implementation of the monitoring plan is necessary to ensure that the mitigation sites are monitored and maintained as proposed to mitigate the impact from the projects dischargers.*
 - *Citation – 40 C.F.R. 131.12, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A, Chapter 173-201A-260 (3) (i-ii), and Chapter 173-201A-300.*
7. The Project Proponent shall submit to Ecology (see A.2) monitoring reports documenting mitigation site conditions for years 1, 2, 3, 5, 7, and 10. The monitoring reports must:
- a. Be submitted by December 31 of each monitoring year. Include one hard copy and one electronic file.
 - b. Include the information listed in Attachment A (Information Required for Monitoring Reports).
 - *Justification - Monitoring reports are necessary to track environmental changes at mitigation sites throughout the monitoring period to ensure that the impact from the projects dischargers are successfully mitigated.*
 - *Citation – 40 C.F.R. 131.12, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A, Chapter 173-201A-260 (3) (i-ii), and Chapter 173-201A-300.*
8. The Project Proponent shall implement the Mitigation Plan's contingency measures if the Mitigation Plan's goals, objectives, or performance standards are not being met.
- *Justification –A contingency plan is necessary in case the actions undertaken for the mitigation fail or only partially succeed.*

- *Citation – 40 C.F.R. 131.12, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A, Chapter 173-201A-260 (3) (i-ii), and Chapter 173-201A-300.*
9. Prior to implementing contingency measures not specified in the Mitigation Plan, the Project Proponent shall consult with Ecology and then update contingency measures within the projects mitigation plan.
- *Justification – A contingency plan is necessary in case the actions undertaken for the mitigation fail or only partially succeed. There are times that additional measure are needed and Ecology needs to be involved in the discussion as the Project Proponent updates the Mitigation Plan. Ecology needs notification that the course of action has changed and to ensure it is an appropriate direction forward.*
 - *Citation – 40 C.F.R. 131.12, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A, Chapter 173-201A-260 (3) (i-ii), and Chapter 173-201A-300.*
10. When necessary to meet the performance standards, the Project Proponent shall replace dead or dying plants with the same species, or an appropriate native plant alternative, during the current or upcoming planting season and note species, numbers, and approximate locations of all replacement plants in the subsequent monitoring report.
- *Justification – This condition is necessary to ensure the success of the mitigation planting.*
 - *Citation – 40 C.F.R. 131.12, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A, Chapter 173-201A-260 (3) (i-ii), and Chapter 173-201A-300.*
11. Invasive species (including common reed, *Phragmites* sp.; reed canary grass, *Phalaris arundinacea*; Russian olive, *Elaeagnus angustifolia*; black locust, *Robinia pseudoacacia*; Chinese elm, *Ulmus parvifolia*; and kochia, *Bassia scoparia*) and Yakima County Class A noxious weeds shall not exceed 20% aerial coverage.
- *Justification – This condition is necessary to keep the amount of non-native and noxious weeds at a minimum and to reduce competition with native species.*
 - *Citation – 40 C.F.R. 131.12, Chapter 17.10 RCW, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 16-750 WAC, Chapter 173-201A, Chapter 173-201A-260 (3) (i-ii), and Chapter 173-201A-300.*
12. For monitoring years five (5) and ten (10), the Project Proponent shall use the currently approved federal wetland delineation manual and appropriate regional supplement to delineate all compensatory wetlands and include delineation information (e.g., data sheets, maps, wetland size, etc.) in the monitoring reports.
- *Justification – This condition is necessary to ensure the project does not result in a net loss of wetland function and values as a result of the stream restoration project.*

- *Citation – 40 C.F.R. 131.12, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A, Chapter 173-201A-260 (3) (i-ii), and Chapter 173-201A-300.*

13. If the Project Proponent has not met all compensatory mitigation conditions by the end of the monitoring period, additional monitoring, additional mitigation, or both maybe needed. Conditions include specifications in the approved Mitigation Plan, such as performance standards for the mitigation site.

- *Justification – This condition is necessary to ensure all planted and restored areas are appropriately vegetated; the river, floodplain, and side channels are functioning as intended; water levels are functioning as predicted; and the proposed amount of wetland is established as a result of the ecosystem restoration project.*

- *Citation – 40 C.F.R. 131.12, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A, Chapter 173-201A-260 (3) (i-ii), and Chapter 173-201A-300.*

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.*

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