



**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

**Southwest Region Office**  
PO Box 47775, Olympia, WA 98504-7775 • 360-407-6300

January 27, 2023

Washington Department of Fish and Wildlife  
ATTN: Doug Wiedemeier  
600 Capitol Way North  
Olympia, WA 98501-1091

Re: First Amendment to 401 Water Quality Certification Order No. 19455 for U.S. Army Corps of Engineers Reference No. NWS-2019-990, Minter Creek Hatchery Surface Water Intake Replacement Project, Minter Creek, Pierce County, Washington

Dear Doug Wiedemeier:

Enclosed is an amendment to Water Quality Certification Order No. 19455, issued on November 10, 2020, 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. 19455 remain in effect.

The purpose of this amendment is to update the approved in water work window, remove condition E.5, and reference the current wetland mitigation plan.

If you have any questions, please contact Lori Kingsbury at [Lori.kingsbury@ecy.wa.gov](mailto:Lori.kingsbury@ecy.wa.gov). The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

A handwritten signature in blue ink, reading "Maria Sandercock".

Maria Sandercock, Section Manager  
Shorelands and Environmental Assistance Program  
Southwest Region Office

Sent via e-mail: [Douglas.Wiedemeier@dfw.wa.gov](mailto:Douglas.Wiedemeier@dfw.wa.gov)

ec: Jen Casper, U.S. Army Corps of Engineers  
Loree' Randall, Ecology, SEA-HQ  
Lori Kingsbury, Ecology, SEA-SWRO  
Zach Meyer, Ecology, SEA-SWRO  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

**IN THE MATTER OF GRANTING A** )  
**WATER QUALITY CERTIFICATION TO** )  
Washington Department of Fish )  
and Wildlife )  
In accordance with 33 U.S.C. 1341 )  
(FWPCA §401), RCW 90.48.120, RCW )  
90.48.260 and Chapter 173-201A WAC )

**WQC ORDER No. 19455, First Amendment**  
**Corps Reference No. NWS-2019-990**

Washington Department of Fish and Wildlife  
ATTN: Doug Wiedemeier  
600 Capitol Way North  
Olympia, WA 98501-1091

On November 10, 2020, the Washington Department of Ecology (Ecology) issued a Section 401 Water Quality Certification (WQC) to Washington State Department of Fish and Wildlife for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

Ecology received a request to amend the WQC on September 1, 2022. The purpose of this amendment is to update the approved in water work window, remove condition E.5, and reference the current wetland mitigation plan.

WQC Order No. 19455 dated November 10, 2020, is hereby amended as follows:

I. First paragraph which reads:

On November 12, 2020 the Department of Ecology (Ecology) received a request from Washington Department of Fish and Wildlife for a Section 401 Water Quality Certification (WQC) for Minter Creek Hatchery Surface Water Intake Replacement project. The U.S. Army Corps of Engineers (Corps) issued a joint public notice for the project on January 24, 2020.

Is replaced with:

On November 12, 2019, the Department of Ecology (Ecology) received a request from Washington Department of Fish and Wildlife for a Section 401 Water Quality Certification (WQC) for Minter Creek Hatchery Surface Water Intake Replacement project. The U.S. Army Corps of Engineers (Corps) issued a joint public notice for the project on January 24, 2020.

II. Condition number C.2. which reads:

In-water work shall be conducted between July 1 and September 15 of any year, unless otherwise approved by Ecology.

Is replaced with:

In-water work shall be conducted between July 1 and September 30 of any year, unless otherwise approved by Ecology.

III. Condition number E.5 is removed:

The Applicant shall have a boat available and on site during in-water activities to immediately retrieve any debris entering the water.

IV. Condition number F.1. which reads:

The Applicant shall mitigate for the temporary wetland impacts as described in the October 30, 2019 letter to the USACE re: Minter Creek Surface Water Intake Replacement, Wetland Mitigation Plan from Doug Wiedemeier, WDFW (hereafter referred to as the "Mitigation Plan") or as modified by this Order or revised and approved by Ecology

Is replaced with:

The Applicant shall mitigate for wetland impacts as described in the *Minter Creek Hatchery – Intake Replacement Detailed Compensatory Wetland Mitigation Plan* prepared by Kaitlyn Kiehart, WDFW dated January 2022 or as modified by this Order or revised and approved by Ecology.

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. The appeal process is governed by RCW 43.21B and WAC 371-08. "Date of receipt" is defined in RCW 43.21B.001(2). More Information is available at <https://eluh.wa.gov/content/11>.

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

- File your notice appeal and a copy of this Order with the PCHB (see filing options below). “Filing” means actual receipt by the PCHB during regular business hours as defined in WAC 371-08-305 and -355. “Notice of appeal” is defined in WAC 371-08-340.
- Serve a copy of your notice of appeal and this Order on the Department of 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 RCW 43.21B and WAC 371-08.

#### **Filing an appeal with the PCHB:**

For the most current information regarding filing with the PCHB, visit:  
<https://elaho.wa.gov/content/11>

##### **Filing by mail**

###### **Mailing Address:**

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

##### **Filing in person (or by certified mail/courier)**

###### **Street Address:**

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

##### **Filing electronically**

###### **Email Address:**

Pchb-shbappeals@elaho.wa.gov

#### **Serving a copy of the appeal on Ecology:**

Electronic copies of appeals are not accepted at the Department of Ecology per WAC 371-08-305(10).

##### **Filing by mail**

###### **Mailing Address:**

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

##### **Filing in person (or by certified mail/courier)**

###### **Street Address:**

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

#### **Contact Information**

Please direct all questions about this Order to:

Lori Kingsbury  
Department of Ecology  
PO Box 47775  
Olympia, WA 98504-47775  
[Lori.kingsbury@ecy.wa.gov](mailto:Lori.kingsbury@ecy.wa.gov)

#### More Information

**Pollution Control Hearings Board Website**

<http://www.eluho.wa.gov/content/11>

**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>

#### Signature



---

Maria Sandercock, Section Manager  
Shorelands and Environmental Assistance Program  
Southwest Region Office

January 27, 2023

This document shows the activities and conditions that have been amended since the original Order was issued. Therefore, it is not the official certification and should only be used for informational purposes.

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER No. 19455, First Amendment</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. NWS- 2019-990</b>
<b>CERTIFICATION TO</b>	)	Minter Creek Hatchery Surface Water Intake
<b>Washington Department</b>	)	Replacement, Minter Creek, located in Gig
<b>of Fish and Wildlife</b>	)	Harbor, Pierce County, Washington.
in accordance with 33 U.S.C. 1341	)	
(FWPCA § 401), RCW 90.48.120, RCW	)	
90.48.260 and Chapter 173-201A WAC	)	

Washington Department of Fish and Wildlife  
Attn: Douglas Wiedemeier  
600 Capitol Way N  
Olympia, WA 98501-1091

On November 12, ~~2020~~ 2019, the Department of Ecology (Ecology) received a request from Washington Department of Fish and Wildlife for a Section 401 Water Quality Certification (WQC) for Minter Creek Hatchery Surface Water Intake Replacement project. The U.S. Army Corps of Engineers (Corps) issued a joint public notice for the project on January 24, 2020.

The proposed project includes the replacement of the Minter Creek upper dam and intake system, the removal of the Minter Creek lower dam and intake structures, and associated maintenance and bank stabilization activities.

Components of the project include:

- Removal of an existing 20-foot by 15-foot concrete and steel diversion structure and reinforcement of bank stabilization accounting for excavation of 29 cubic yards of material and placement of 28 cubic yards of material below ordinary high water (OHW) over a 255-square foot area.
- Replacement of an existing dam and water intake, associated screens, and fishway.
- Excavation of 42 cubic yards of material and placement of 45 cubic yards of material over a 134-square foot area in an unnamed tributary of Minter Creek would occur to pass two pipelines and a conduit.
- Approximately 165 linear feet of bank stabilization material would be placed to stabilize an existing access road downstream of the upper dam. Additionally, 113 cubic yards of boulder-anchored large woody debris would be placed below OHW, and a bio erosion blanket would be placed above OHW.
- One hundred and thirteen (113) linear feet of an existing 20-inch diameter pipe within a Category III wetland would be replaced with a 36-diameter pipe, accounting for temporary impacts to 1,835 square feet of the wetland.
- An existing, 20-foot by 15-foot intake structure below OHW would be removed, and an existing, 65-linear foot sheet pile weir will be removed or cut to mudline, and an existing Denil ladder will be removed to improve fish passage.
- A derelict "fish collection facility" will be removed, which will remove 875 square feet of concrete debris below OHW.
- Thirty-five cubic yards of streambed material will be placed over a 941-square foot area.

- An existing, derelict concrete sediment trap and associated 24-inch diameter pipe would be removed above OHW.
- Associated upland work includes expansion of the upper dam, installation of a gravity pipe system, construction of a new, 180-foot by 35-foot sediment pond, and installation of a new pump station.

The purpose of the project is to bring the Minter Creek Hatchery up to state and federal standards.

The project site is located at 12710 124<sup>th</sup> Avenue Court KPN, Gig Harbor, Pierce County, Washington; SW Section 29, Township 22 North, Range 1 East; within Water Resource Inventory Area (WRIA) 15, Kitsap 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

## **WATER QUALITY CERTIFICATION CONDITIONS**

With this Water Quality Certification (WQC) and through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will comply with applicable water quality standards and other appropriate requirements of state law. In view of the foregoing and in accordance with 33 U.S.C. §1341, RCW 90.48.120, RCW 90.48.260 Chapter 173-200 WAC and Chapter 173-201A WAC, this WQC is granted to the Washington Department of Fish and Wildlife subject to the conditions within this Order.

Issuance of this WQC for this proposal does not authorize Washington Department of Fish and Wildlife 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 Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

#### **A. General Conditions**

1. In this Order, the term “Applicant” shall mean the Washington Department of Fish and Wildlife and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent via e-mail to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) with a copy to [lori.kingsbury@ecy.wa.gov](mailto:lori.kingsbury@ecy.wa.gov). The submittals shall be identified with Order No. **19455** and include the Applicant name, project name, project contact, and the contact phone number.
3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resource Permit Application (JARPA) received by Ecology on November 12, 2019.
4. The Applicant shall obtain Ecology review and approval before undertaking any changes to the proposed project that might significantly and adversely affect water quality, other than those project changes required by this Order.
5. Within 30 days of receipt of any updated information, Ecology will determine if the revised project requires a new public notice and Water Quality Certification or if a modification to this Order is required.
6. This Order is not effective until the Corps issues a permit for this project.
7. The Applicant shall send (per condition A.2 above) a copy of the final Corps, permit to Ecology’s Federal Permit Manager within two weeks of receiving it.
8. The Applicant shall keep copies of this Order on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
9. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, and/or necessary data collection, to ensure that conditions of this Order are being met.
10. Nothing in this Order waives Ecology’s authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation

are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.

11. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48) or the federal Clean Water Act, Ecology may issue an amendment to this Order to incorporate any such changes or amendments applicable to this project.
12. The Applicant shall ensure that all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each signatory that s/he has read and understands the conditions of this Order and the above-referenced permits, plans, documents, and approvals. These statements shall be provided to Ecology before construction begins.
13. 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.
14. Failure of any person or entity to comply with the Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

## **B. Notification Requirements**

1. The following notifications shall be made to Ecology via e-mail to: [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) with a copy to the Federal Permit Manager at [Lori.Kingsbury@ecy.wa.gov](mailto:Lori.Kingsbury@ecy.wa.gov). Notifications shall be identified with Order No. **19455** and include the Applicant 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.
    - i. In addition to the phone or e-mail notification above, the Applicant shall submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
  - b. At least ten (10) days prior to conducting initial in-water work activities for each in-water work window.
  - c. At least seven (7) days prior to project completion for each in-water work window.

3. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per Condition A2 a written construction status report and submit status reports every 12 months until construction and mitigation are completed.

### **C. Timing**

1. This Order will expire five (5) years from the date of issuance. Continuing this Order beyond the five-year term of this Order will require the Applicant to apply for an extension prior to the expiration of this Order.
2. ~~In-water work shall be conducted between July 1 and September 15 of any year, unless otherwise approved by Ecology.~~
2. In-water work shall be conducted between July 1 and September 30 of any year, unless otherwise approved by Ecology.

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

1. Minter Creek is categorized under the Water Quality Standards for Surface Waters of the State of Washington as core summer salmonid habitat and the criteria of the categorization apply as described in WAC 173-201A-200 (1), except as specifically modified by this Order.
2. This Order does not authorize the Applicant to exceed applicable turbidity standards beyond the limits established in WAC 173-201A-200(1)(e)(i).
3. The Applicant shall revise the *Draft Minter Creek Hatchery Intake Replacement Water Quality Monitoring Protection Plan* (WQMPP) prepared by Washington Department of Fish and Wildlife, dated September 15, 2020, to address Ecology comments made on November 9, 2020 and to be consistent with the conditions of this Order. A final Plan shall be submitted to Ecology's Federal Permit Manager (per Condition A.2 of this Order) **for review and approval** at least 30 days prior to beginning any work covered by this Order.
4. The Applicant must provide, in writing, any changes or additions to the Final Approved WQMPP and obtain approval from Ecology's Federal Permit Manager prior to implementation of the changes or additions.
5. Results of the water quality monitoring shall be documented in a report and submitted to Ecology weekly during in-water work activities per condition A.2 of this Order.
6. Mitigation and/or additional monitoring may be required if the monitoring results indicate that the water quality standards have not been met.

### **E. Construction**

#### General Conditions

1. All work in and near the water shall be done so as 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 clearing, filling, or grading work and shall be maintained throughout construction.
2. The project shall be clearly marked/staked prior to construction. Clearing limits, travel corridors, and stockpile sites shall be clearly marked. Sensitive areas and their buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment operators. All project staff shall be trained to recognize construction fencing or flagging that identifies sensitive area boundaries. Equipment shall enter and operate within the marked clearing limits corridors and stockpile areas.
3. Appropriate BMPs shall be implemented to minimize track-out during construction.
4. The Applicant shall ensure that only clean fill (soil) is placed for the proposed project and does not contain toxic materials in toxic amounts.
- ~~5. The Applicant shall have a boat available and on site during in-water activities to immediately retrieve any debris entering the water.~~
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.
7. No stockpiling or staging of materials shall occur at or below the ordinary high-water mark (OHWM) of any waterbody.
8. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.

#### **Equipment & Maintenance**

9. Staging areas will be located a minimum of 50 feet and, where practical, 200 feet, from waters of the state including wetlands. If a staging area must be located within 50 feet of waters of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology's Federal Permit Manager before placing the staging area in the 50-foot setback area.
10. The Applicant shall establish a separate contained area for washing down vehicles and equipment that does not have any possibility of draining to surface waters and/or wetlands. No wash water containing sediments, oils, grease, or other hazardous materials resulting from wash down of the work area, tools, and equipment, including concrete delivery trucks or other equipment used for concrete work, shall be discharged into state waters or storm drains.
11. All machinery and equipment used during project construction shall be serviced, fueled, and maintained in a confined upland area in order to prevent entry to waters of the state. Fueling areas shall be located a minimum of 50 feet from waters of the state, including wetlands, and shall be provided with adequate spill containment.

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.
13. All construction equipment shall be clean and inspected daily before use to ensure that the equipment is free from external petroleum products and has no fluid leaks.
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.
15. All equipment operating within the ordinary high-water mark (OHWM) of the creek shall utilize vegetable-based biodegradable hydraulic fluid.

**Temporary Diversion Structure and Dewatering**

16. The temporary diversion shall be of sufficient size and height, constructed of non-erosive materials, and installed to be able to divert the entire flow around the isolated work area with no chance of water overtopping the structure for the duration of the project.
17. The diversion system shall be designed and operated so as not to cause scour or erosion in the channel or on the bank of the waterbody in which the work is being conducted.
18. Prior to returning water flow to the work area, all bank protection measures shall be in place.
19. Re-introduction of water into the isolated work area shall be done gradually, and at a rate not higher than the normal flow, in order to minimize the mobilization of sediments and fines.
20. Upon completion of the project, all material used for the temporary diversion shall be removed from the site.
21. Turbid dewatering water (including turbid water generated from cleaning and maintenance activities) shall not be discharged directly into waters of the state. Turbid water shall be pumped to an upland area to allow the turbid water to settle. The discharge from the upland areas shall meet water quality criteria at the point of discharge into surface waters and/or wetlands.
22. Dewatering water that is not turbid may be discharged directly to surface waters and/or wetland provided that: a) wastewater containing raw concrete or other harmful material has not been in contact with the water to be discharged, and b) the water will meet all of the water quality standards at the point of discharge.
23. Bank protection material shall be clean rock and free of soil accumulations prior to placement to minimize the potential for turbidity.
24. Rock placement shall be performed in a manner and rate to minimize the disturbance to the bank and riverbed shall be conducted in compliance with water quality standards for turbidity.

25. The toe of the bank protection shall be established prior to placing remaining bank protection to help confine the material to the bank face.

#### **Concrete Work**

26. Spill protection measures shall be in place prior to any concrete delivery over water.
27. Concrete delivery systems shall be inspected daily to prevent any discharges of concrete and/or slurry water into waters of the state.
28. All concrete shall be poured in the dry, or within confined waters not being dewatered, and shall be completely cured prior to coming into contact with waters of the state.
29. Uncured concrete and concrete by-products shall be completely sealed off and totally contained using sealed forms or other leak-proof containment systems.
30. Concrete process water shall not enter waters of the state. Any concrete process/contact water discharged from a confined area with curing concrete shall be routed to upland areas to be treated and disposed of appropriately with no possible entry to state waters.
31. All concrete, cement, and/or grout must be completely cured prior to any contact with flowing waters.

#### **Work in Contaminated Areas**

32. If contamination is suspected, discovered, or occurs during the proposed modernization of the Minter Creek Hatchery, testing of the potentially contaminated media must be conducted.
33. Protective measures shall be implemented to isolate and remove contaminated media and avoid escaping dust, soil erosion, and water pollution during construction activities.
34. All contaminated media shall be managed and disposed of in accordance with state and local regulations.
35. If further contamination is discovered on site, or is revealed by testing, Ecology must be notified (Per Condition A.2 of this Order) and further sampling may be required. It shall also be reported to the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300.

#### **F. Wetland Mitigation Conditions**

- ~~1. The Applicant shall mitigate for the temporary wetland impacts as described in the October 30, 2019 letter to the USACE re: Minter Creek Surface Water Intake Replacement, Wetland Mitigation Plan from Doug Wiedemeier, WDFW (hereafter referred to as the "Mitigation Plan") or as modified by this Order or revised and approved by Ecology.~~
1. The Applicant shall mitigate for wetland impacts as described in the *Minter Creek Hatchery – Intake Replacement Detailed Compensatory Wetland Mitigation Plan* prepared by Kaitlyn Kiehard, WDFW dated January 2022 or as modified by this Order or revised and approved by Ecology.

2. A status report on the mitigation construction, must be submitted to Ecology, 13 months from the date of permit issuance.
3. The Applicant shall ensure that all excess excavated site material is disposed of in an appropriate location outside of wetlands and their buffers and landward of the 100-year floodplain, unless otherwise provided for in the Mitigation Plan.
4. The Applicant shall ensure that no material is stockpiled within existing wetlands or their buffers at the wetland mitigation site(s) at any time, unless provided for in the Mitigation Plan.
5. The Applicant 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.
6. The Applicant shall not use polyacrylamide at the mitigation site(s).
7. If weed-barrier fabric is used on the site, the Applicant 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 approved by Ecology, 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.
8. Aquatic herbicides can be used or applied only by certified applicators or persons under the direct supervision of a certified applicator, and only for those uses covered by the certified applicator's license category.
  - a. Applicators are required to be permitted under Ecology's Noxious Weed Control Permit.
  - b. Applicators shall comply with all conditions of the Noxious Weed Control Permit.
9. If seeding is used as a best management practice for temporary erosion control, it must be a seed mix consisting of native, annual, non-invasive plant species, unless otherwise approved by Ecology.
10. If solid or mesh plant protector tubes are used on the mitigation site(s), Ecology strongly recommends that the Applicant use fully biodegradable options. If non-biodegradable plant protection options are used, they shall be removed before they interfere with plant growth or before the end of the monitoring period, whichever comes first.

#### **G. Emergency/Contingency Measures**

1. The Applicant shall develop and implement a spill prevention and containment plan for this project.
2. The Applicant shall have adequate and appropriate spill cleanup material available on site at all times during construction.

3. The Applicant shall have adequate and appropriate spill response materials available on site to respond to any release of petroleum products or any other material into waters of the state.
4. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
5. Work causing distressed or dying fish 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 Applicant shall notify Ecology's Federal Permit Manager per condition B.1. and immediately take the following actions:
  - a. Cease operations at the location of the non-compliance.
  - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and prevent further environmental damage.
  - c. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
  - d. Immediately notify Ecology's Regional Spill Response Office and the Washington State Department of Fish & Wildlife with the nature and details of the problem, any actions taken to correct the problem, and any proposed changes in operation to prevent further problems.
  - e. Immediately notify the National Response Center at 1-800-424-8802, for actual spills to water only.
6. Notify Ecology's Regional Spill Response Office immediately if chemical containers (e.g., drums) are discovered on-site or any conditions present indicating disposal or burial of chemicals on-site that may impact surface water or ground water.