



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Central Region Office
1250 West Alder St., Union Gap, WA 98903-0009 • 509-575-2490

June 13, 2023

Confederated Tribes and Bands of the Yakama Nation
ATTN: Gerald Lewis
401 Fort Road
Toppenish, WA 98948

Re: Water Quality Certification Order No. **21699** (Corps No. **202300131**), Tieton River Mile 4.3 Restoration, Yakima County, Washington

Dear Gerald Lewis:

On February 21, 2023, the Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Tieton River Mile 4.3 Restoration, Yakima County, Washington.

On behalf of the state of Washington, the Department of Ecology certifies that the work described in the Water Quality Certification Request and supplemental 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 certification is subject to the enclosed Water Quality Certification Order (WQC Order).**

Please ensure that anyone doing work under this WQC Order has read, is familiar with, and is able to follow all of the provisions within the attached WQC Order.

If you have any questions about this decision, please contact Alicia Schulz at (509) 379-4541. The enclosed WQC Order may be appealed by following the procedures described within.

Sincerely,

Lori White, Regional Section Manager
Central Regional Office
Shorelands and Environmental Assistance Program

Enclosure (1)

WQC Order No. 21699, Corps No. 202300131

Aquatics ID No. 142318

June 13, 2023

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By certified mail: [7014 3490 0001 5526 7275]

Sent via e-mail: gerald_lewis@yakama.com

E-cc: John Marvin, Habitat Biologist, Yakama Nation
Dave Moore, U.S. Army Corps of Engineers
Ryan Anderson, Department of Ecology
Loree' Randall, Department of Ecology
Alicia Schulz, Department of Ecology
ECYREFEDPERMITS@ecy.wa.gov

**In The Matter of Granting a Water Quality
Certification to Confederated Tribes and Bands of the Yakama Nation
pursuant to 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW
90.48.260 and Chapter 173-201A WAC**

Confederated Tribes and Bands of the Yakama Nation
Attn: Gerald Lewis
401 Fort Road
Toppenish, WA 98948

WQC Order No.	21699
Corps Reference No.	202300131
Site Location	Tieton River Mile 4.3 Restoration located within Tieton River, Naches, Yakima County, Washington.

The Confederated Tribes and Bands of the Yakama Nation (Yakama Nation) submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Tieton River Mile 4.3 Restoration, Yakima County, Washington. The following required processing dates are listed below:

- On 1/12/2023, the Yakama Nation submitted a pre-filing meeting request.
- On 2/21/2023, Ecology received a request for Clean Water Section 401 Water Quality Certification.
- On 2/9/2023, the U.S. Army Corps of Engineers (Corps) sent an email notification to Ecology that they are reviewing the project for authorization under Nationwide Permit No. 27 and requires an individual Section 401.
- On 3/1/2023, Ecology issued a public notice for the project.

The Yakama Nation's Yakima/Klickitat Fisheries Project (YKFP) proposes to improve salmonid spawning and rearing habitat, particularly for ESA listed steelhead, within the Tieton River between approximately river mile (RM) 4.2 and 4.8. The project will accomplish this by creating a side channel, boulder riffle, an engineered log jam (ELJ) and raising the water surface in the Tieton River to induce flow into the side channel. Flows will be routed along a disconnected relic side channel for over half a mile before rejoining the Tieton River, creating new side channel habitat, and increasing the sediment source availability. The project will also provide sediment nourishment to the incised river through a lateral sediment nourishment bar on river right downstream of the boulder riffle. Over time, the proposed project is expected to result in the expansion of native riparian and wetland plant communities as the project elements combine to raise the water surface in the Tieton River in the project area and the boulder riffle,

ELJ, and side channel function together to restore floodplain connectivity and riverine hydrology to Wetlands A and B.

The project site is located at the approximate address, 16954-21216 US Hwy 12, Tieton River, Yakima County, Washington, parcels listed from upstream to downstream: 16140831001 (Washington Department of Fish & Wildlife), 16140899992, 16140842001 (US Bureau of Reclamation), 16140814001 (Washington Department of Fish & Wildlife), Section 15E, Township 14 N., Range 13 E., within Water Resource Inventory Area (WRIA) 38 Naches.

With this WQC Order, Ecology is granting with conditions the Yakama Nation's request for a Section 401 Water Quality Certification for the Tieton River Mile 4.3 Restoration project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on 2/21/2023.

Based on the information submitted, Ecology has determined that the discharge from the project will comply with state water quality requirements. Prior to undertaking any changes that materially alter the project, the Yakama Nation must contact Ecology to determine whether a new Section 401 Water Quality Certification is required.

Issuance of this Section 401 Water Quality Certification for this proposal does not authorize the Yakama Nation 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 Section 401 Water Quality Certification absolves the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

Special Condition:

1. Any work that causes distressed or dying fish or discharges of oil, fuel, or other chemicals into state waters or onto land with a potential for entry into state waters is prohibited.¹ If such work, conditions, or discharges occur, immediately notify² Ecology's Regional Spill Response Office at 360-407-6300 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. You will also need to notify the Washington Emergency Management Division³ at 1-800-258-5990, for spills to water only. This condition is necessary to prevent oil and other hazardous materials spills from causing environmental damage and to ensure compliance with water quality

¹ Chapter 90.48 RCW

² WAC 173-303-145

³ RCW 90.56.280

requirements. The sooner a spill is reported, the quicker it can be addressed, resulting in less harm.

A. Water Quality Monitoring and Criteria

1. This WQC Order does not authorize the Project Proponent to exceed applicable turbidity standards beyond the limits established in Chapter 173-201A WAC as set forth below, unless otherwise authorized in this WQC Order:
 - a. Temporary area of mixing for turbidity established within the state water quality standards for fresh waters (WAC 173-201A-200) is as follows:
 01. For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be two hundred feet downstream of the activity causing the turbidity exceedance.
 02. For waters above 100 cfs flow at the time of construction, the point of compliance shall be 300 feet downstream of the activity causing the turbidity exceedance.
 03. For projects working within or along lakes, ponds, wetlands, or other non-flowing waters, the point of compliance shall be at a **radius of one hundred fifty feet from the activity** causing the turbidity exceedance.
 - Justification - Ecology must protect waters of the state from all discharges and potential discharges of pollution and prevent exceedances of the water quality standards that protect aquatic life and beneficial uses.
 - Citation - Chapter 90.48 RCW, RCW 90.48.030, RCW 90.48.080, Chapter 173-201A WAC, WAC 173-201A-300 - 330, WAC 173-204-120, and WAC 173-225-010.

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 with conditions to the Yakama Nation for the Tieton River Mile 4.3 Restoration project.

This Certification is not effective until the U.S. Corps of Engineers (Corps) Seattle District issues a Department of the Army (DA) permit for this project. WQC Order No. **21699** will remain valid for the duration of the associated DA permit. The Yakama Nation should send a copy of the final DA permit to fednotification@ecy.wa.gov within two weeks of receiving it.

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 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 notice of 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 -335. "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 Chapter 43.21B RCW and Chapter 371-08 WAC.

Filing an appeal with the PCHB:

For the most current information regarding filing with the PCHB, visit:

<https://eluhwa.gov/content/11>

Address and Location Information

Street Addresses:

Department of Ecology

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

Pollution Control Hearings Board

1111 Israel RD SW
STE 301
Tumwater, WA 98501

Mailing Addresses:

Department of Ecology

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

Pollution Control Hearings Board

PO Box 40903
Olympia, WA 98504-0903

E-Mail Address:

Department of Ecology

Not currently available (see Chapter 371-08 WAC)

Pollution Control Hearings Board

Pchb-shbappeals@elaho.wa.gov

Americans with Disabilities Act Information

Accommodation Requests

To request ADA accommodation including materials in a format for the visually impaired, call Ecology at 360-407-7668 or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

Contact Information

Please direct all questions about this WQC Order to:

Alicia Schulz
Department of Ecology
(509) 379-4541
Alicia.schulz@ecy.wa.gov

More Information

- **Pollution Control Hearings Board Website**
<http://www.elaho.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>
- **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 13 day of June 2023 at the Department of Ecology, Union Gap Washington.



Lori White, Regional Section Manager
Central Region Office
Shorelands and Environmental Assistance Program