



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
Eastern Region Office

4601 North Monroe St., Spokane, WA 99205-1295 • 509-329-3400

February 22, 2024

Brock A. Maslonka
PO Box 214
Cusick, WA 99119-0214

Re: Water Quality Certification Order No. **22349** (Corps No. **NWS-2018-0077**), Maslonka Property Mitigation Project, Pend Oreille County, Washington

Dear Brock A. Maslonka:

On October 10, 2023, Brock A. Maslonka submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Maslonka Property Mitigation Project, Pend Oreille County, Washington.

On behalf of the state of Washington, the Department of Ecology certifies with conditions 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 Matt Fisher at (509) 601-9546. The enclosed WQC Order may be appealed by following the procedures described within.

Sincerely,

Jeremy Sikes, Section Manager
Eastern Region Office
Shorelands and Environmental Assistance Program

Enclosure (1)

By certified mail: [9214 8901 9403 8350 1165 38]

Sent via e-mail: tanglefoot2@hotmail.com

WQC Order No. 22349, Corps No. NWS-2018-0077

Aquatics ID No. 142948

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E-cc: Jess Jordan, U.S. Army Corps of Engineers
Vince Barthels, Ardurra
Loree' Randall, Ecology
Matt Fisher, Ecology
ECYREFEDPERMITS@ecy.wa.gov

**In The Matter of Granting a Water Quality
Certification With Conditions to Brock A. Maslonka
pursuant to 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW
90.48.260 and Chapter 173-201A WAC**

Brock A. Maslonka
PO Box 214
Cusick, WA 99119-0214

WQC Order No.	22349
Corps Reference No.	NWS-2018-0077
Site Location	Maslonka Property Mitigation Project located within Perkins Slough, near Cusick, Pend Oreille County, Washington.

Brock A. Maslonka submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Maslonka Property Mitigation Project, Pend Oreille County, Washington. The following required processing dates are listed below:

- On August 15, 2023, Brock A. Maslonka submitted a pre-filing meeting request.
- On August 28, 2023, Ecology issued a public notice for the project.
- On October 10, 2023, Ecology received a request for Clean Water Section 401 Water Quality Certification.
- On February 12, 2024, the U.S. Army Corps of Engineers (Corps) sent an email notification to Ecology that they are reviewing the project for authorization under the Nationwide Permit Program and requires an individual Section 401.
- Ecology’s “Reasonable Period of Time” for this project has been established as June 11, 2024.

This project proposes to mitigate impacts stemming from earthwork and dam construction in Perkins Slough during September 2015, and emergency response work within Perkins Slough in February 2016. The project is intended to restore the previously filled segment of Perkins Slough and to enhance vegetative structure and habitat functioning. This project is in direct response to a settlement agreement between the Applicant and the US EPA (Environmental Protection Agency) to resolve the unauthorized discharge of dredged and/or fill materials associated with the earthen dam.

The project site is located on Highway 20, within Perkins Slough, Pend Oreille County, Washington, Section 7, Township 33 N., Range 44 E., within Water Resource Inventory Area (WRIA) 62 Pend Oreille.

With this WQC Order, Ecology is granting with conditions, Brock A. Maslonka's request for a Section 401 Water Quality Certification for the Maslonka Property Mitigation Project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on October 10, 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, Brock A. Maslonka 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 Brock A. Maslonka 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 Conditions:

A. Water Quality Monitoring and Criteria

1. This WQC Order does not authorize Brock A. Maslonka to exceed applicable water quality standards beyond the limits established in Chapter 173-201A WAC, except as authorized by this WQC Order.
 - Justification - This condition ensures compliance with water quality standards 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, 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.
2. For in-water activities within fresh waters (including wetlands) turbidity shall not exceed 5 NTU over background when the background is 50 NTU or less; or a 10 percent increase in turbidity when the background turbidity is more than 50 NTU (Aquatic Life Use Category: core summer salmonid habitat).
 - 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.
3. This WQC Order does not authorize Brock A. Maslonka to exceed applicable turbidity 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 up to 10 cfs flow at the time of construction, the point of compliance shall be one hundred feet downstream from the activity causing the turbidity exceedance.
 02. 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.
 03. For waters above 100 cfs flow at the time of construction, the point of compliance shall be three hundred feet downstream of the activity causing the turbidity exceedance.
 04. 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.
4. Brock A. Maslonka shall conduct water quality monitoring as described in the approved Clean Water Act Section 401 "Visual Water Quality Monitoring Plan", dated September 5, 2023 (hereafter referred to as the WQMP).
- 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 - RCW 90.48, RCW 90.48.030, Chapter 173-201A WAC, 173-201A-300-330 and WAC 173-225-010.

5. If water quality exceedances for turbidity are observed outside the point of compliance, work shall cease immediately and Brock A. Maslonka or the contractor shall assess the cause of the water quality problem and take immediate action to 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 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.
6. Visible turbidity anywhere beyond the temporary area of mixing (point of compliance) from the activity, shall be considered an exceedance of the standard.
 - 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 Brock A. Maslonka for the Maslonka Property Mitigation 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. **22349** will remain valid for the duration of the associated DA permit. Brock A. Maslonka should send a copy of the final DA permit to fednotification@ecy.wa.gov within two weeks of receiving it.

To transfer this Order to a new owner or operator, complete a Request for Transfer of Order form following the instructions at the top of the form. Link to form:
<https://apps.ecology.wa.gov/publications/SummaryPages/ECY070695.html>.

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 information 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 mail, in person, or by email (see addresses below).

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

Filing an appeal

Filing with the PCHB

For the most current information regarding filing with the PCHB, visit: <https://elaho.wa.gov/> or call: 360-664-9160.

Service on Ecology

Street Addresses:

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

Mailing Addresses:

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

E-Mail Address:

ecologyappeals@ecy.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 360-407-6831 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

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Please direct all questions about this WQC Order to:

Matt Fisher

Department of Ecology

509-601-9546

Matt.Fisher@ecy.wa.gov

More Information

- **Pollution Control Hearings Board Website**
<https://elaho.wa.gov>
- **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 22nd day of February 2024 at the Department of Ecology, Spokane, Washington.

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A handwritten signature in blue ink that reads "Jeremy Sikes". The signature is written in a cursive, slightly slanted style.

Jeremy Sikes, Section Manager

Eastern Region Office

Shorelands and Environmental Assistance Program