



STATE OF WASHINGTON  
**DEPARTMENT OF ECOLOGY**

PO Box 47600, Olympia, WA 98504-7600 • 360-407-6000

August 27, 2024

U.S. Army Corps of Engineers (USACE)  
Seattle District  
Attn: Mary Bacon  
4735 E. Marginal Way South, Bldg. 1202  
Seattle, Washington 98134

Re: Water Quality Certification Order No. **23187**, Union Slough Levee Rehabilitation,  
Snohomish County, Washington

Dear Mary Bacon:

On July 2, 2024, USACE, Seattle District submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Union Slough Levee Rehabilitation project in Snohomish 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 Jessica Hausman at (564) 669-9873. The enclosed WQC Order may be appealed by following the procedures described within.

Sincerely,

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Loree' Randall, Section Manager  
Aquatic Permitting and Protection Section  
Shorelands and Environmental Assistance Program

Enclosure (1)

By certified mail: 9489 0090 0027 6391 8521 63

Union Slough Levee Rehabilitation  
WQC Order No. 23187, Aquatics ID No. 143696  
August 27, 2024  
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Sent via e-mail: [Mary.M.Bacon@usace.army.mil](mailto:Mary.M.Bacon@usace.army.mil)

E-cc: Caren Crandell, U.S. Army Corps of Engineers  
Jessica Hausman, Ecology  
[ECYREFEDPERMITS@ecy.wa.gov](mailto:ECYREFEDPERMITS@ecy.wa.gov)

**In The Matter of Granting a Water Quality Certification with Conditions  
to U.S. Army Corps of Engineers, Seattle 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 (USACE)  
Seattle District  
Attn: Mary Bacon  
4735 E. Marginal Way South, Bldg. 1202  
Seattle, Washington 98134

<b>WQC Order No.</b>	23187
<b>Site Location</b>	Union Slough Levee Rehabilitation located within Snohomish River and estuarine wetlands, Everett, Snohomish County, Washington.

The U.S. Army Corps of Engineers (USACE), Seattle District submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Union Slough Levee Rehabilitation, Snohomish County, Washington. The following required processing dates are listed below:

- On 3/26/2024, the USACE, Seattle District submitted a pre-filing meeting request.
- On 7/2/2024, Ecology received a request for Clean Water Section 401 Water Quality Certification.
- On 7/8/2024, USACE, Seattle District submitted additional information, and the Department of Ecology (Ecology) considered the Request valid on this date.
- On 7/15/2024, Ecology issued a public notice for the project.
- Ecology’s “Reasonable Period of Time” for this project has been established as 1/8/2025.

This project proposes to repair the Union Slough levee to its pre-damaged level of protection within its pre-damaged footprint. The repair will rehabilitate the 2H:1V slope, reestablish rock armor, and be constructed to current U.S. Army Corps of Engineers standards. The project proposes to impact approximately 0.15 acres of Category II estuarine wetland that has become established in the levee footprint. Compensatory mitigation will be provided through the withdrawal of advance mitigation credits from the Smith Island Restoration Project advance mitigation site.

The project site is located within estuarine wetlands below the S.R. 529 bridge crossing of the Snohomish River, Snohomish County, Washington, Section 8, Township 29 N., Range 5 E., within Water Resource Inventory Area (WRIA) 7, Snohomish.

With this WQC Order, Ecology is granting with conditions USACE, Seattle District's request for a Section 401 Water Quality Certification for the Union Slough Levee Rehabilitation project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on 7/2/2024, and the following supporting documentation:

1. Mitigation Use Plan for City of Everett Union Slough Levee Repair Project, dated June 28, 2024, submitted to Ecology, received 7/8/2024, regarding the use of Advance Mitigation credits.
2. Wetland Rating Form submitted to Ecology, received 7/8/2024, evaluating the estuarine wetlands impacts by the levee repair.

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, USACE, Seattle District 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 USACE, Seattle District to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC), or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this Section 401 Water Quality Certification (WQC) absolves USACE, Seattle District from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

**A. Special Conditions:**

1. This WQC Order No. **23187** will remain valid until March 14, 2026.
  - Justification – Certifications are required for any license or permit that authorizes an activity that may result in a discharge or fill material into waters. Ecology needs to be able to specify how long the WQC Order will be in effect.
  - Citation – Chapter 90.48 RCW, Chapter 173-201A WAC, and WAC 173-225-010.
2. 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. If such work, conditions, or discharges occur, immediately notify 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 Division 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 requirements. The sooner a spill is reported, the quicker it can be addressed, resulting in less harm.

- 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, RCW 90.48.030, RCW 90.48.080, Chapter 90.56 RCW, RCW 90.56.280, Chapter 173-201A WAC, WAC 173-201A-300 - 330, WAC 173-204-120, WAC 173-225-010, and WAC 173-303-145.

## **B. Water Quality Monitoring and Criteria**

1. This WQC Order does not authorize the USACE, Seattle District 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. The USACE, Seattle District shall implement the approved Water Quality Monitoring and Protection Plan (WQMP), dated June 17, 2024.
  - Justification - This condition is necessary to ensure that the monitoring and BMPs that are proposed by the Project Proponent and authorized by Ecology are 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, 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.

### **C. Wetland Mitigation Conditions**

1. The USACE, Seattle District shall mitigate wetland impacts as described in Mitigation Use Plan for City of Everett Union Slough Levee Repair Project, dated June 28, 2024, or as required by this Order.
  - Justification - Alteration of water quality necessitates the use of mitigation as a method of controlling pollution. When adequate mitigation is provided, the impacts are not considered significant enough to water quality, at least in the long-term. The water quality standards, along with mitigation, protect wetlands as well as permitting some level of degradation where unavoidable or necessary.
  - Citation – 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A WAC, WAC 173-201A-260 (3)(i-ii), WAC 173-201A-300, and WAC 173-225-010.
2. Prior to impacting wetlands, the USACE, Seattle District shall submit to Ecology the following as proof of advance mitigation credit withdrawal:
  - a. A ledger showing that the required amount of 0.15 credits has been deducted from the advance wetland mitigation site.
  - b. The ledger must include the Order number, Order issuance date, impact acreage, the amount of credits required by the Order, and the date the credit was deducted.
    - Justification - This condition is necessary to ensure the compensatory mitigation was actually provided by the advance mitigation site.
    - Citation – 33 CFR 332, 40 CFR 131.12, 40 CFR 230, subpart J, RCW 47.85.040, Chapter 90.48 RCW, Chapter 90.54 RCW, Chapter 90.74 RCW, Chapter 173-201A WAC, WAC 173-201A-260 (3)(i-ii), and WAC 173-201A-300.

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 USACE, Seattle District for the Union Slough Levee Rehabilitation project.

## 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://eluh.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](mailto: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

Please direct all questions about this WQC Order to:

Jessica Hausman  
Department of Ecology  
(564) 669-9873  
[jessica.hausman@ecy.wa.gov](mailto:jessica.hausman@ecy.wa.gov)

## More Information

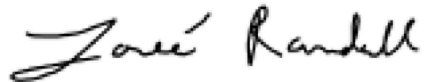
- **Pollution Control Hearings Board Website**  
<https://elaho.wa.gov>
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**  
<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**  
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **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 27th day of August 2024 at the Department of Ecology, Lacey, Washington.



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Loree' Randall, Section Manager  
Aquatic Permitting and Protection Section  
Shorelands and Environmental Assistance Program