



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

December 10, 2024

Port of Moses Lake
Attn: Milton Miller
7810 Andrews St NE
Moses Lake, WA 98837

Re: Termination of Section 401 Water Quality Certification Order No. 22348

Dear Milton Miller:

For the reasons stated below, the Department of Ecology (Ecology) hereby terminates Section 401 Water Quality Certification Order No. 22348, pursuant to RCW 90.48.120.

Project Background

Ecology received a Water Quality Certification (WQC) request for this project on November 21, 2022. Ecology issued a WQC for the project on October 26, 2023, which authorized impacts to Wetlands A, B, C, and E as well as Crab Creek. On August 6, 2024, the U.S. Army Corps of Engineers notified Ecology that the permitting for Wetlands C, E, and Crab Creek changed, therefore no longer requiring an individual WQC.

Ecology is terminating the Section 401 Water Quality Certification Order No. 22348 and will be issuing an Administrative Order to address the impacts to Wetlands A and B.

Your right to appeal

You have a right to appeal this Termination letter 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 Chapter 43.21B.001(2) RCW.

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

- File your notice of appeal and a copy of this Termination letter with the PCHB (see filing options below). “Filing” means actual receipt by the PCHB during regular business hours as defined in Chapter 371-08-305 WAC and -335. “Notice of appeal” is defined in Chapter 371-08-340 WAC.
- Serve a copy of your notice of appeal and this Termination letter 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.

Address and location information

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

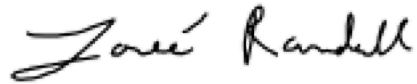
E-Mail Address:

ecologyappeals@ecy.wa.gov

If you have questions, please contact Jeremy Sikes at 509-481-1913 or jeremy.sikes@ecy.wa.gov.

Termination of Section 401 Water Quality Certification No. 22348
Aquatics No. 140891, Corps No. NWS-2020-1068
December 10, 2024
Page 3 of 3

Sincerely,



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

Enclosure: Section 401 Water Quality Certification Order No. 22348

By certified mail: 9489 0090 0027 6391 8523 61

E-cc: Jess Jordan, U.S. Army Corps of Engineers
Jennifer Bader, Jacobs Engineering Group Inc.
Jeremy Sikes, Ecology
Erin Hanlon Brown, Ecology
ecyrefedpermits@ecy.wa.gov

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

Port of Moses Lake
Attn: Milton Miller
7810 Andrews St NE
Moses Lake, WA 98837

WQC Order No.	22348
Corps Reference No.	NWS-2020-1068
Site Location	Northern Columbia Basin Railroad, located within Crab Creek and associated wetlands, Grant County, Washington.

Port of Moses Lake submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act to the Department of Ecology (Ecology) for the Northern Columbia Basin Railroad, Grant County, Washington. The following processing dates are listed below:

- On 7/30/2021, the Port of Moses Lake submitted a pre-filing meeting request.
- On 11/21/2022, Ecology received a request for Clean Water Section 401 Water Quality Certification.
- On 7/25/2023, Ecology issued a public notice for the project.

The project proposes to construct two new rail line segments (Segment 1 and Segment 2) and acquire and refurbish an existing rail line (Segment 3) that would connect Segments 1 and 2. All jurisdictional wetlands and waterbodies occur along Segment 1. The entire proposed route would extend approximately 11.5 miles, primarily in the City of Moses Lake and also in unincorporated portions of Grant County. Segment 1 of the Project includes construction of a new bridge over Crab Creek and construction of approximately 4.6 miles of new track. The Project ROW would be 100 feet wide, extending 50 feet from either side of the proposed track centerline. One ROW portion would be 130 feet wide to accommodate the width of deeper cut slopes. Several small, temporary staging areas which are adjacent to the ROW and would be located in the uplands extend out approximately 40 feet. The purpose of the Project is to provide rail service to lands designated and zoned for industrial use in the northern part of the city of Moses Lake along E. Wheeler Road (Road 3 NE) and east of the Grant County International Airport (GCIA), to enhance opportunities for economic development, and to attract new, rail dependent businesses to those areas.

The project site is located at 47.13059 N Lat, 119.1974 W Long, extending to 47.14539 N Lat, 119.2758 W Long, Crab Creek, Grant County, Washington, Sections 13, 14, 19, 20, and 27, Township 19 N., Range 29 E., within Water Resource Inventory Area (WRIA) 41 Lower Crab.

Authorities

In exercising authority under 33 U.S.C. §1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed this 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.
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.
5. The Project Proponent of the project authorized is responsible for obtaining all other permits, licenses, and certifications that may be required by federal, state, local or tribal authorities.

With this Water Quality Certification Order (WQC Order), Ecology is granting with conditions Port of Moses Lake’s request for a Section 401 Water Quality Certification for the Northern Columbia Basin Railroad, Crab Creek located in Grant County. Ecology has determined that the proposed discharges will comply with all applicable state water quality and other appropriate requirements of State law, provided the project is conducted in accordance with the WQC request that Ecology received on 11/21/2022, the supporting documents referenced in Table 1 below, **and the conditions of this WQC Order.**

Table 1 Supporting Documents

Date Received	Document Type	Title and Date	Author
11/21/2022	Joint Aquatic Resources Permit Application(JARPA) Form	JARPA, dated 9/16/2021	Port of Moses Lake, Milton Miller
11/21/2022	Drawings	JARPA Drawings, dated 8/17/2021 and 8/20/2021	Jacobs Engineering Group Inc.
11/21/2022	Mitigation Plan	Wetland Mitigation Bank Use Plan, Northern	Jacob Engineering Group Inc.

		Columbia Basin Railroad Project, Port of Moses Lake, Washington, dated 11/5/2021	
11/21/2022	Wetland Delineation	Northern Columbia Basin Railroad Project, Port of Moses Lake, Washington, Wetlands and Waters of the U.S. Delineation Report, Updated July 2021	Jacobs Environmental Services, Suzan E. Platte
1/18/2023	Water Quality Monitoring and Protection Plan (WQMPP)	Clean Water Act Section 401 Water Quality Monitoring and Protection Plan, Northern Columbia Basin Railroad Segment 1, Port of Moses Lake, Grant County, Washington, dated 1/12/2023	Jacob Engineering Group Inc., Ariel Bordenave
1/26/2023	Dewatering Plan	Port of Moses Lake – Northern Columbia Basin Rail Segment 1 Project: Draft Dewatering Plan, dated 1/26/2023	Jacob Engineering Group Inc., Jen Bader
3/20/2023	State Environmental Policy Act (SEPA)	Mitigated Determination of NonSignificance Adoption of Existing Document, dated 11/15/2021	Port of Moses Lake, Milton Miller
3/20/2023	Hydraulic Project Approval (HPA)	HPA 2022-2-135+01 for Application ID 27801, dated 12/19/2022	WA Department of Fish & Wildlife, Eric Pentico

Issuance of this Section 401 Water Quality Certification for this proposal does not authorize Port of Moses Lake 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) or

other appropriate requirements of State law. Furthermore, nothing in this Section 401 Water Quality Certification absolves the Port of Moses Lake from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

Water Quality Certification Conditions

The following conditions will be incorporated into the Corps permit and strictly adhered to by the Port of Moses Lake. Specific condition justifications and citations are provided below.

A. General Conditions

1. In this WQC Order, the term “Project Proponent” shall mean the Port of Moses Lake 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, RCW 90.48.080, RCW 90.48.120, RCW 90.48.260, Chapter 173-200 WAC, Chapter 173-201A WAC, and WAC 173-225-010.
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 matt.fisher@ecy.wa.gov. The submittals shall be identified with WQC Order No. 22348 and include the Project Proponent’s name, Corps permit number, 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 - Chapter 90.48 RCW, RCW 90.48.120, RCW 90.48.260, Chapter 173-201A WAC, and WAC 173-225-010.
3. Work authorized by this WQC Order is limited to the work described in the WQC request package received by Ecology on 1/26/2023 and the supporting documentation identified in Table 1.

- 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 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, and may require a new WQC request.
 - Citation - 40 CFR 121.5, 40 CFR 121.10, 40 CFR 121.11, Chapter 90.48 RCW, RCW 90.48.030, RCW 90.48.120, RCW 90.48.260, Chapter 173-200 WAC, Chapter 173-201A WAC, Chapter 173-204 WAC, and WAC 173-225-010.
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 - Chapter 90.48 RCW, RCW 90.48.030, Chapter 173-201A WAC, and WAC 173-225-010.
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 WQC 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, RCW 90.48.030, RCW 90.48.090, RCW 90.48.120, Chapter 173-201A WAC, and WAC 173-225-010.
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 WQC Order and all permits, approvals, and documents referenced in this WQC 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 - Chapter 90.48 RCW, RCW 90.48.030, Chapter 173-201A WAC, and WAC 173-225-010.

7. This WQC 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 WQC 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, Ecology is certifying the project as proposed will not negatively impact state 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, RCW 90.48.030, RCW 90.48.120, Chapter 173-200 WAC, Chapter 173-201A WAC, WAC 173-201A-300(2)(e)(i), WAC 173-201A-310, WAC 173-204-120, and WAC 173-225-010.

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 and the conditions of this WQC 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. Ecology has independent state authority to ensure protection of state water quality. Civil penalties and other enforcement actions are the primary means of securing compliance with water quality requirements.
- Citation - Chapter 90.48 RCW, RCW 90.48.030, RCW 90.48.037, RCW 90.48.080, RCW 90.48.120, RCW 90.48.140, RCW 90.48.142, RCW 90.48.144, and WAC 173-225-010.

9. The Project Proponent shall provide Ecology documentation for review before undertaking any major changes to the proposed project that could significantly and adversely affect water quality, other than those project changes required by this WQC Order.

- Justification - Ecology has independent authority to enforce our 401 certification conditions issued through this WQC Order pursuant to RCW 90.48, and has independent state authority to ensure protection of state water quality. In order to ensure the project will comply with water quality standards in the event of any major changes, Ecology must be able to review the scope of work involved in the construction and operation of the project, otherwise all work must stop and a new 401 certification pre-filing meeting, followed by a new WQC request (after requisite 30-days) is required.

- Citation - 40 CFR 121.1(k) and (n), 40 CFR 121.3, 40 CFR 121.5, 40 CFR 121.11, Chapter 90.48 RCW, and Chapter 173-201 WAC.

10. The Project Proponent shall send (per A.2.) a copy of the final Federal permit to Ecology's Federal Permit Manager within two weeks of receiving it.

- Justification - This condition is needed to ensure that all the conditions of the WQC Order have been incorporated into the federal permit.
- Citation - 40 CFR 121.10, 40 CFR 121.11, and Chapter 90.48 RCW.

11. To transfer this WQC Order to a new owner or operator the Project Proponent shall:

- a. Complete a Request for Transfer of Order with a specific transfer date of the WQC Order's obligations, coverage, and liability and submit it to Ecology per condition A.2. Link to form: <https://apps.ecology.wa.gov/publications/SummaryPages/ECY070695.html>;
- b. Provide a copy of this WQC Order to the new owner or operator; and
- c. The transfer is not considered valid until the Project Proponent receives written notification from Ecology that the transfer has been approved.
 - Justification – Ecology has independent state authority to ensure protection of state water quality. Ecology needs to ensure that anyone conducting work at the project, including any new owners or operators, 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 121.5, Chapter 90.48 RCW, RCW 90.48.030, Chapter 173-201A WAC, and WAC 173-225-010.

B. Notification Requirements

1. The following notifications 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 matt.fisher@ecy.wa.gov. Notifications shall be identified with WQC Order No. 22348, and include the Project Proponent name, project name, project location, project contact and the 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 WQC 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; and
- d. Within seven (7) days of completion of each in-water work activities.
 - Justification - Ecology has independent state authority to ensure protection of state water quality. 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, RCW 90.48.030, RCW 90.48.120, Chapter 173-201A WAC, WAC 173-201A-300 - 330, Chapter 173-204 WAC, and WAC 173-225-010.

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 - Ecology has independent state authority to ensure protection of state water quality. This condition is intended to assure the Project Proponent remains in full compliance with state water quality requirements for the duration of the project.
- Citation - Chapter 90.48 RCW, RCW 90.48.120, Chapter 173-201A WAC, and WAC 173-225-010.

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

- Justification - Ecology has independent state authority to ensure protection of state water quality. 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, RCW 90.48.030, RCW 90.48.120, Chapter 173-201A WAC, WAC 173-201A-300 - 330, Chapter 173-204 WAC, and WAC 173-225-010.

C. Timing

1. This WQC Order is effective upon issuance of the U.S. Corps of Engineers (Corps) individual permit for this project and will remain valid for the duration of the associated permit for the project.

- Justification – Certifications are required for any license or permit that authorizes an activity that may result in a discharge or fill material into waters. This WQC Order is not valid until the Federal agency issues a permit. Additionally, 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. The following in-water work windows apply to the project:
- a. All activities within the wetted perimeter of the Crab Creek may be conducted between March 1 and July 15 of any year. To the extent practicable, work within the wetted perimeter of the Crab Creek shall be conducted after 6/1/2023.
 - b. All activities in the drainage channels shall be conducted between March 1 and July 15 of any year. To the extent practicable, work within the drainage channels shall be conducted after 6/1/2023.
 - 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, RCW 90.48.030, RCW 90.48.080, Chapter 173-201A WAC, WAC 173-201A-300, WAC 173-201A-330, WAC 173-225-010, and Chapter 220-660 WAC.
3. Any project change that requires a new or revised Hydraulic Project Approval (HPA) from the Department of Fish and Wildlife should be sent to Ecology for review before the change is implemented.
- 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, RCW 90.48.030, RCW 90.48.080, Chapter 173-201A WAC, WAC 173-201A-300, WAC 173-201A-330, WAC 173-225-010, and Chapter 220-660 WAC.

D. Water Quality Monitoring and Criteria

1. This WQC Order does not authorize the Project Proponent 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). For in-water activities within fresh waters (including wetlands) pH shall be within the range of 6.5 to 8.5, with a human-caused variation within the above range of less than 0.2 units. (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 the Project Proponent 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 or pH 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 or pH 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 or pH 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. The Project Proponent shall conduct water quality monitoring as described in the approved Clean Water Act Section 401 Water Quality Monitoring and Protection Plan, identified in Table 1 (hereafter referred to as the WQMPP).
 - 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. The Project Proponent shall revise the Clean Water Act Section 401 Water Quality Monitoring and Protection Plan (Plan), identified in Table 1, to be consistent with the conditions of this WQC Order. The revised Plan shall be submitted to Ecology's Federal Permit Manager (per Condition A.2 of this Order) **for review** at least 30 days prior to beginning any work covered by this WQC Order.
 - 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.
6. If water quality exceedances for turbidity or pH are observed, work shall cease immediately and the Project Proponent 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 or pH 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.
7. 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.
8. Monitoring results shall be submitted monthly to Ecology's Federal Permit Manager, per condition A.2.
- 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.
9. Ecology may ask or could use its discretionary authority to require the Project Proponent to provide mitigation and/or additional monitoring if the monitoring results indicate that the water quality standards have not been met.
- Justification - Ecology must protect waters of the state from all discharges and potential discharges of pollution and ensure that aquatic life and beneficial uses are protected.
 - Citation - RCW 90.48, RCW 90.48.010, RCW 90.48.030, RCW 90.48.080, RCW 90.48.120, Chapter 173-201A WAC, 173-201A-300-330 WAC, and Chapter 173-204 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 BMPs 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, 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. 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, 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. The Project Proponent shall obtain and comply with the conditions of the Construction Stormwater General Permit (National Pollutant Discharge Elimination System - NPDES) issued 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 –, Chapter 90.48 RCW, RCW 90.48.030, RCW 90.48.080, RCW 90.48.260, Chapter 173-201A WAC, WAC 173-201A-300 - 330, WAC 173-204-120, and WAC 173-225-010.
5. Within the project limits¹ all environmentally sensitive areas including, but not limited to, wetlands, wetland buffers, shoreline riparian buffers and mitigation areas shall be fenced with high visibility construction fencing (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 5.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 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.
6. 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 - 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.

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.

7. 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, 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.
8. All equipment being used below the ordinary high water mark shall utilize biodegradable hydraulic fluid.
 - 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, 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.
9. Applicant shall ensure that fill (soil, gravel, or other material) placed for the proposed project does not contain toxic materials in toxic amounts.
 - 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, 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.
10. Work within waters of the state shall be conducted in the dry or during periods of low flow to the extent practicable.
 - 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, 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.

11. Temporary cofferdams, bladder dams, super sack dams, floating turbidity curtains, and bypasses used to divert water around the work area shall be in place prior to initiation of work below the OHWM. These shall be properly deployed and maintained in order to minimize turbidity and re-suspension of sediment.

- Justification - This condition ensures containment and limits movement 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, 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.

12. To minimize sediment releases, re-introduction of water into the isolated work area shall be done gradually, and at a rate not higher than the normal flow.

- 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, 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.

Equipment and Maintenance

13. Staging areas will be located a minimum of 50 feet and, where practical, 200 feet, from waters of the state, including wetlands, unless otherwise requested by the project proponent and authorized by Ecology.

- 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, 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.

14. 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, RCW 90.48.030, RCW 90.48.080, Chapter 90.56 RCW, Chapter 173-201A WAC, WAC 173-201A-300 - 330, WAC 173-204-120, and WAC 173-225-010.
15. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this WQC 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, 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.
16. 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, RCW 90.48.030, RCW 90.48.080, Chapter 90.56 RCW, Chapter 173-200, Chapter 173-201A WAC, WAC 173-201A-300 - 330, WAC 173-204-120, and WAC 173-225-010.
17. 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, RCW 90.48.030, RCW 90.48.080, Chapter 90.56 RCW, Chapter 173-201A WAC, WAC 173-201A-300 - 330, WAC 173-204-120, and WAC 173-225-010.
18. Turbidity curtains shall be properly deployed and maintained in order to minimize turbidity and re-suspension of sediment.

- Justification - This condition ensures containment and limits movement 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, 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.

19. A separate area shall be set aside, which does not have any possibility of draining to surface waters, for the wash-out of concrete delivery trucks, pumping equipment, and tools.

- 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, 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.

20. Barges shall not be allowed to ground-out during in-water construction.

- Justification - This condition is necessary to protect shallow water habitat and prevent suspension of sediment. 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, Chapter 173-201A WAC, 173-201A-300-330 WAC, and Chapter 173-204 WAC.

21. Barges shall be kept free of material that could be blown into water.

- 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, 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.

22. No return water is allowed to discharge from the barge(s) into 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, 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.

Bridge Construction

23. The Project Proponent shall minimize disturbance of vegetation when constructing temporary work platforms for bridge construction and demolition activities.

- Justification - Vegetation removal or disturbance can contribute to erosion and turbidity issues. 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.

24. Ground improvement activities for the new bridge shall not cause exceedance of 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.
- Citation - Chapter 90.48 RCW, RCW 90.48.030, RCW 90.48.080, Chapter 173-200 WAC, Chapter 173-201A WAC, WAC 173-201A-300 - 330, WAC 173-204-120, and WAC 173-225-010.

25. All forms for concrete shall be completely sealed to prevent the possibility of fresh concrete entering 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, 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.

26. All concrete shall be completely cured prior to coming into contact with water.

- 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, 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.

27. 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.

- 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, 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.

28. All saw cut water and debris generated from saw cutting activities that occur above water shall be contained and disposed of appropriately with no possible entry to 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, 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.

29. All excavated sediment shall be disposed upland in an approved disposal site, unless otherwise authorized by this WQC Order.

- Justification - Ecology must be assured that the Project Proponent is managing and disposing of sediment to protect water quality 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.

Dewatering

30. Turbid dewatering water associated with in-water work shall not be discharged directly to waters of the state, including wetlands. Turbid dewatering 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, 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.

31. Clean dewatering 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, 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.

32. Dewatering water may not be discharged to the Crab Creek or conveyed to surface waters unless it meets Surface Water Quality Standards (Chapter 173-201A WAC) at the point of discharge, unless otherwise authorized by this WQC 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, 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.

33. The Project Proponent shall follow the Dewatering and Disposal Plan approved by Ecology, identified in Table 1.

- 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, 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.

34. The dewatering outfall or method of discharge shall be designed and operated so as not to cause erosion or scour in state waters, 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, 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.

35. All equipment associated with dewatering activities shall be properly operated and maintained.

- Justification - Maintained equipment is less likely to fail or leak pollutants. 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, Chapter 173-201A WAC, WAC 173-201A-300 - 330, WAC 173-204-120, and WAC 173-225-010.

Culvert Work and Stream Bypass

36. All culvert work shall be conducted in the dry or in isolation from stream flow.

- 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, 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.

37. Stream flow isolation work shall not scour the stream channel or banks of the water body in which the work is being done.

- Justification - Scour and erosion could cause long term instability of the project and contribute to water quality impacts. 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.

38. To minimize sediment releases into downstream water, water reintroduced to the channel shall be done gradually and at a rate not exceeding the normal stream flow.

- Justification - Maintaining natural stream flow rate is important for maintaining beneficial uses and preventing water quality impacts. 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.

39. Culverts shall be installed to avoid inlet scouring and prevent downstream bank erosion.

- Justification - Scour and erosion could cause long term instability of the project and contribute to water quality impacts. 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.

40. Fill associated with culvert installation shall be protected from erosion to the 100-year peak flow.

- Justification - Erosion could cause long term instability of the project and contribute to water quality impacts. 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.

Bank Stabilization

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

- Justification - Unprotected banks could erode, causing bank instability and contribute to water quality impacts. 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.

42. Placement of rip-rap shall be conducted in compliance with water quality standards for turbidity.

- 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, 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.

F. Wetland Mitigation Conditions

1. The Project Proponent shall mitigate wetland impacts as described in Wetland Mitigation Bank Use Plan (hereafter called the "Mitigation Plan") as identified in Table 1 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. The Project Proponent shall submit any proposed changes to the Mitigation Plan in writing to Ecology (see A.2) for review, as described in the Mitigation Plan, before implementing the changes.
 - Justification – When adequate mitigation is provided, the water quality impacts are offset and not considered significant, at least in the long-term. Changes to impacts or mitigation must be considered when evaluating mitigation adequacy.
 - 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), WAC 173-201A-300, and WAC 173-225-010.
3. Prior to impacting wetlands Crab Creek and associated wetlands, the Project Proponent shall submit to Ecology documentation from the bank sponsor verifying the purchase of 2.143 wetland mitigation bank credits (credits) from the Washington State Department of Transportation Moses Lake Mitigation Bank. This documentation must include the Ecology Order Number, Order issuance date, impact acreage, the amount of credits required by the Order, and date of credit purchase.
 - Justification - This condition is necessary to ensure the compensatory mitigation was actually provided by the bank.
 - 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), WAC 173-201A-300, and WAC 173-225-010.

4. Unless otherwise authorized by this WQC Order, the Project Proponent shall complete the purchase of credits before impacting wetlands. Otherwise, Ecology may require the Project Proponent to provide additional compensation to account for additional temporal loss of wetland functions.
 - Justification - Mitigation that is not emplaced concurrent with impacts will result in degradation of existing beneficial uses of the wetlands affected by the proposed action through temporal loss of functions.
 - 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), WAC 173-201A-300 and WAC 173-225-010.
5. If the Project Proponent has not purchased credits within 13 months of the date of this Order, the Project Proponent shall inform Ecology, in writing, of the status of:
 - a. Norther Columbia Basin Railroad.
 - b. When bank credits will be purchased.

With the:
 - c. Reason for the delay.
 - d. Expected date of completion.

The Project Proponent shall submit an updated written notification every 12 months thereafter until Northern Columbia Basin Railroad is complete and the required credits are purchased.

- Justification - Mitigation that is not emplaced concurrent with impacts will result in degradation of existing beneficial uses of the wetlands affected by the proposed action through temporal loss of functions.
 - 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), WAC 173-201A-300, and WAC 173-225-010.
6. The Project Proponent’s obligation to compensate for wetland impacts under F.1 is not met until the Project Proponent has received written notice from Ecology that the obligation is met.
 - Justification - If the mitigation site is not meeting all compensatory mitigation conditions then the water quality impacts will not be offset by the mitigation.

- 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), WAC 173-201A-300, and WAC173-225-010.

G. Emergency/Contingency Measures

1. The Project Proponent shall develop and implement a spill prevention and containment plan for all aspects of 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, RCW 90.48.030, RCW 90.48.080, Chapter 90.56 RCW, Chapter 90.56.280 RCW, Chapter 173-201A WAC, WAC 173-201A-300 - 330, WAC 173-204-120, WAC 173-225-010, and WAC 173-303-145.
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 WQC 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, 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.
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, 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.

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 and 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, 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.
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, 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.

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://eluh0.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 360-407-7668 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:

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 26th day of October 2023 at the Department of Ecology, Spokane, Washington.



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