



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

May 1, 2025

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

Re: Amendment to 401 Water Quality Certification Order No. **23187**, Union Slough Levee
Rehabilitation, Snohomish River, Snohomish County, Washington

Dear Mary Bacon:

Enclosed is an amendment to Water Quality Certification Order No. 23187, issued on August 27, 2024, for the above project. We have also included a strikeout version of the Water Quality Certification that reflects the changes made. All other conditions of Water Quality Certification No. 23187 remain in effect.

The purpose of this amendment is to update the advanced mitigation site location and mitigation compensation requirement.

If you have any questions, please contact Jessica Hausman at (564) 669-9873. The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

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

Enclosure (3)

By certified mail: 91 7199 9991 7036 8715 4690

First Amendment to Order No. 23187

Aquatics No. 143696

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Sent via e-mail: Mary.M.Bacon@usace.army.mil

E-cc: Caren Crandell, U.S. Army Corps of Engineers

Jessica Hausman, Ecology

Patricia Johnson, Ecology

Erin Hanlon Brown, Ecology

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

WQC Order No.	23187, First Amendment
Site Location	Union Slough Levee Rehabilitation located within Snohomish River and estuarine wetlands, Everett, Snohomish County, Washington.

On August 27, 2024, the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification to the U.S. Army Corps of Engineers, Seattle District, for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

Ecology received a request on March 25, 2025, to amend WQC Order No. 23187 as the advanced mitigation site location and compensation ratios for the project had changed.

WQC Order No. 23187 dated August 27, 2024, is hereby amended as follows:

I. Condition number C.1. which reads:

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.

Is replaced with:

The USACE, Seattle District shall mitigate wetland impacts as described in Mitigation Use Plan for Diking Improvement District No. 5 Union Slough Levee Repair Project, dated April 2025, or as required by this Order.

2. Condition number C.2.a. which reads:

a. A ledger showing that the required amount of 0.15 credits has been deducted from the advance wetland mitigation site.

Is replaced with:

- a. A ledger showing that the required amount of 0.24 credits has been deducted from the advance wetland mitigation site.

No other conditions or requirements of the above referenced Order are affected by this amendment.

Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if it appears necessary to further protect the public interest.

Failure to comply with this amended Order may result in the issuance of civil penalties or other actions whether administrative or judicial, to enforce the terms of this amended Order.

Your right to appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt. The appeal process is governed by 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 by 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://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

Contact Information

Please direct all questions about this Order to:

Jessica Hausman
Department of Ecology
(564) 669-9873
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>

First Amendment to WQC Order No. 23187

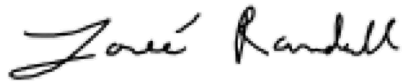
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Signature

Dated this 1st day of May 2025 at the Department of Ecology, Lacey, Washington.

A handwritten signature in black ink that reads "Loree' Randall". The signature is written in a cursive, flowing style.

Loree' Randall, Section Manager

Aquatic Permitting & Protection Section

Shorelands and Environmental Assistance Program

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

**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

WQC Order No.	23187, First Amendment
Site Location	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:

- 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.
1. 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.

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- 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.~~

1. The USACE, Seattle District shall mitigate wetland impacts as described in Mitigation Use Plan for Diking Improvement District No. 5 Union Slough Levee Repair Project, dated April 2025, 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~~ **0.24 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.

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- 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.

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