



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

*Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000  
711 for Washington Relay Service • Persons with a speech disability can call (877) 833-6341*

July 21, 2020

Shelly Adams  
Seattle City Light  
PO Box 34023  
Seattle, WA 98124-4023

**RE: Water Quality Certification Order No. 18208 for Corps Reference No. NWS-2020-406, Newhalem Creek Dam Gravel Passage, Newhalem Creek, Whatcom County, Washington**

Dear Shelly Adams:

On May 7, 2020, Seattle City Light submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Newhalem Creek Dam Gravel Passage project, Whatcom County, Washington.

On behalf of the state of Washington, the Department of Ecology certifies that the work described in the Joint Aquatic Resource Permit Application (JARPA) and the public notice 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 conditions contained in the enclosed Order.

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

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Burcar", is written over a horizontal line.

Joe Burcar, Section Manager  
Shorelands and Environmental Assistance Program

Sent via email: [shelly.adams@seattle.gov](mailto:shelly.adams@seattle.gov)

Seattle City Light

July 21, 2020

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Enclosure

E-cc: Randel Perry, US Army Corps of Engineers  
Wayne Watne, WA Dept of Fish and Wildlife  
Chad Yunge, Ecology  
Monika Kannadaguli, Ecology  
Loree' Randall, Ecology  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

<b>IN THE MATTER OF GRANTING A</b>	)	<b>ORDER #18208</b>
<b>WATER QUALITY</b>	)	<b>Corps Reference No. NWS-2020-406</b>
<b>CERTIFICATION TO</b>	)	Newhalem Creek Dam Gravel Passage Project,
<b>Seattle City Light</b>	)	Newhalem Creek, located in Whatcom County,
in accordance with 33 U.S.C. 1341	)	Washington.
(FWPCA § 401), RCW 90.48.120, RCW	)	
90.48.260 and Chapter 173-201A WAC	)	

Seattle City Light  
Attn: Shelly Adams  
PO Box 34023  
Seattle, WA 98124-4023

On May 7, 2020, the Department of Ecology (Ecology) received Seattle City Light's request for a Section 401 Water Quality Certification. On May 28, 2020, the U.S. Army Corps of Engineers (Corps) issued a Nationwide Permit (NWP) #17, Hydropower Projects, to Seattle City Light for the Newhalem Creek Dam Gravel Passage project. Ecology distributed a public notice regarding the request for the above-referenced project, pursuant to the provisions of Chapter 173-225 WAC, on June 8, 2020.

The proposed project entails annually removing approximately 200-400 cubic yards of accumulated cobble and gravel from behind the Newhalem Creek Dam and immediately placing downstream over the dam, located at Newhalem Creek, in Whatcom County, Washington, Section 28, Township 37N., Range 12E., WRIA 4.

## **AUTHORITIES**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed this application 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 (FWPCA §§ 301, 302, 303, 306, and 307).
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.
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 as required by RCW 90.48.080.

## **WATER QUALITY CERTIFICATION CONDITIONS**

With this Certification and through issuance of this Order, Ecology certifies it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will comply with applicable water quality standards and other appropriate requirements of state law. 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, water quality certification is granted to the Applicant subject to the conditions within this Order.

Certification of this proposal does not authorize Seattle City Light 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 certification absolves Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

### **A. General Conditions**

1. In this Order, the term “Applicant” shall mean the Seattle City Light and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent via email to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to [rebekah.padgett@ecy.wa.gov](mailto:rebekah.padgett@ecy.wa.gov). The submittals shall be identified with Order #18208 and include the Applicant name, project name, project contact, and the contact phone number.
3. Work authorized by this Order is limited to the work described in the Joint Aquatic Resources Permit Application (JARPA) received by Ecology on May 7, 2020.
4. The Applicant shall obtain Ecology review and approval before undertaking any changes to the proposed project that might significantly and adversely affect water quality, other than those project changes required by this Order.
5. Within 30 days of receipt of any updated information, Ecology will determine if the revised project requires a new public notice and Water Quality Certification or if a modification to this Order is required.
6. The Applicant shall keep copies of this 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.
7. The Applicant 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 conditions of this Order are being met.

8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
9. In the event of changes or amendments to the state water quality, ground water quality, or sediment standards, or changes in or amendments to the state Water Pollution Control Act (RCW 90.48) or the federal Clean Water Act, Ecology may issue an amendment to this Order to incorporate any such changes or amendments applicable to this project.
10. The Applicant shall ensure all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each signatory that s/he has read and understands the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins.
11. This 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 Order.
12. Failure of any person or entity to comply with the Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.
13. This Order will automatically transfer to a new owner or operator if:
  - a. A written agreement between the Applicant and new owner or operator with the specific transfer date of the Order's obligations, coverage, and liability is submitted to Ecology per condition A2;
  - b. A copy of this Order is provided to the new owner or operator; and
  - c. Ecology does not notify the new Applicant that this Order must be modified to complete the transfer.
14. Conditions in this Order apply to all planned phases of the construction and the mitigation for this project.

## **B. Notification Requirements**

1. The following notification shall be made via phone or email (email is preferred) to Ecology's Federal Permit Manager via email to [fednotification@ecy.wa.gov](mailto:fednotification@ecy.wa.gov) and cc to [rebekah.padgett@ecy.wa.gov](mailto:rebekah.padgett@ecy.wa.gov). Notifications shall be identified with Order No. 18208 and include the Applicant name, project name, project location, project contact, and the contact 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 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 for each in-water work window.
  - d. At least seven (7) days of each in-water work window.
2. In addition to the phone or email notification above, the Applicant 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.
3. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per condition A2 a written construction status report and submit status reports every 12 months until construction and mitigation are completed.

### **C. Timing**

1. This Order is valid until March 18, 2022, unless otherwise approved by Ecology.

#### **In-Water Work Window Timing**

2. In-water work shall be conducted between July 15 and October 15 of any year, unless otherwise approved by Ecology.
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. Proposed changes shall be implemented only with written approval from Ecology.

### **D. Water Quality Monitoring & Criteria**

1. This Order does not authorize the Applicant to exceed applicable turbidity standards beyond the limits established in WAC 173-201A-200(1)(e)(i).
2. The Applicant shall implement and conduct water quality monitoring as described in the approved *Newhalem Creek Dam Gravel Passage Water Quality Best Management*

*Practices and Monitoring Plan* (hereafter referred to as the WQMP) prepared by Seattle City Light, received by Ecology on June 5, 2020.

3. Monitoring results shall be submitted within seven (7) days of completion of in-water activity to Ecology's Federal Permit Manager, per condition A2.
4. If water quality exceedances for turbidity are observed outside the point of compliance, work shall cease immediately and the Applicant or the contractor shall assess the cause of the water quality problem and take immediate action to stop, contain, and correct the problem and prevent further water quality turbidity exceedances.

## **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.
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.
3. No stockpiling or staging of materials shall occur at or below the OHWM of any waterbody.
4. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.

### In-Water Conditions

5. If high flow conditions that may cause siltation are encountered during this project, work must stop until the flow subsides.

### Equipment & Maintenance

6. 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.
7. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.

8. 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 Applicant shall set up a designated area for washing down equipment.

#### **F. Emergency/Contingency Measures**

1. The Applicant shall develop and implement a spill prevention and containment plan for this project.
2. The Applicant shall have adequate and appropriate spill cleanup material available on site at all times during construction.
3. The Applicant shall have adequate and appropriate spill response materials available on site to respond to any release of petroleum products or any other material into waters of the state.
4. 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.
5. 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 Applicant shall notify Ecology's Federal Permit Manager per condition B1 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 & 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.
6. 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.



## 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 of this Order. 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 both of the following within 30 days of the date of receipt of this Order:

- File your appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on Ecology in paper form - by mail or in person (see addresses below). Email is not accepted.

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

## ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
<b>Department of Ecology</b> Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	<b>Department of Ecology</b> Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
<b>Pollution Control Hearings Board</b> 1111 Israel Road SW STE 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

## CONTACT INFORMATION

Please direct all questions about this Order to:

Rebekah Padgett  
Department of Ecology  
Northwest Regional Office  
3190 160<sup>th</sup> Avenue SE  
Bellevue, WA 98008  
425-649-7129  
[rebekah.padgett@ecy.wa.gov](mailto:rebekah.padgett@ecy.wa.gov)

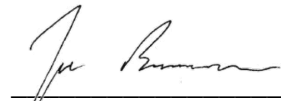
## MORE INFORMATION

- **Pollution Control Hearings Board Website**  
<http://www.eluho.wa.gov/Board/PCHB>

- **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 21<sup>st</sup> day of July 2020, in Bellevue, Washington:



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Joe Burcar, Section Manager  
Northwest Regional Office  
Shorelands and Environmental Assistance Program

**Statement of Understanding**  
**Water Quality Certification Conditions**  
Newhalem Creek Dam Gravel Passage Project  
Water Quality Certification Order No. 18208  
and  
Corps Reference No. NWS-2020-406

As the Applicant for the Newhalem Creek Dam Gravel Passage project, I have read and understand the conditions of Washington State Department of Ecology Order #18208, and any permits, plans, documents, and approvals referenced in the Order. I have and will continue to ensure all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand the conditions of this Order and any permits, plans, documents, and approvals referenced in the Order.

Signature	Date
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Title	Phone
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Company
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