



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

1250 West Alder Street • Union Gap, Washington 98903-0009 • (509) 575-2490

September 10, 2020

City Yakima, Public Works, Water/Irrigation
Attn: David Brown
2301 Fruitvale Blvd.
Yakima, WA 98902

RE: Water Quality Certification Order No. **18181** for Corps No. **NWS-2020-200**, Nelson Dam Removal Project: Water Supply, Riverine Process, and Fish Passage Improvements, Naches River and Cowiche Creek located in Yakima County, Washington.

Dear David Brown:

On March 3, 2020, the City of Yakima's Public Works Department submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the removal of Nelson Dam and improvements to Naches River and Cowiche Creek, in Yakima 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 about this decision, please contact Lori White at (509) 575-2616. The enclosed Order may be appealed by following the procedures described within the Order.

Sincerely,

Brenden McFarland, Section Manager
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program

Enclosure

cc: David Moore, U.S. Army Corp of Engineers
ECY RE FEDPERMITS
Loree' Randall – HQ, SEA

IN THE MATTER OF GRANTING A)	ORDER # 18181
WATER QUALITY)	Corps No. NWS-2020-200
CERTIFICATION TO)	Nelson Dam Removal Project: Water Supply,
City of Yakima, Public Works,)	Riverine Process, and Fish Passage
Water/Irrigation)	Improvements, Naches River and Cowiche Creek
in accordance with 33 U.S.C. 1341)	located in Yakima County, Washington.
(FWPCA § 401), RCW 90.48.120, RCW)	
90.48.260 and Chapter 173-201A WAC)	

City Yakima, Public Works, Water/Irrigation
Attn: David Brown
2301 Fruitvale Blvd.
Yakima, Washington, 98902

On March 3, 2020, the Department of Ecology (Ecology) received the City of Yakima’s Public Works Department’s request for a Section 401 Water Quality Certification for the Nelson Dam Removal project. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on April 01, 2020. The proposed project is located within section 9, Township 13N, Range 18E, WRIA38, Naches watershed and will entail two Phases:

Phase I involves all work within and adjacent to the Naches River associated with dam removal, new intake construction, and fish passage and riverine process improvements (see Sheets 1-19, JARPA Plan Set). Phase II involves all work related to surface water conveyance improvements, including the installation of new surface water pipelines across Cowiche Creek (Sheets 20-23, JARPA Plan Set). Each phase is summarized below and described in more detail in Appendix A.

Phase I - Work in and adjacent to the Naches River

The removal of the following structures:

- Nelson Dam (a partial barrier to fish passage),
- The north bank Reclamation fish ladder,
- The north bank former Powerhouse Bridge abutment,
- Existing intake infrastructure along the south bank, and
- A 64-block Ecology block structure located under the southern-most pier for Powerhouse Road Bridge.

The construction or implementation of:

- Construct a rock-matrix channel-spanning crest and roughened channel fishway.
- Scour and structural countermeasures (larger boulders) would be incorporated immediately below the roughened channel and crest.
- Integrate a concrete sluiceway adjacent to the roughened channel crest with a downstream hydraulic control weir along the south bank of the river.
- Install rock slope protection at Powerhouse Road and HWY 12 Bridges

- Lower the north bank floodplain area by 7-10 ft. landward of the existing fish ladder and continue the roughened channel; provide two secondary high-flow fish passage channels.
- Grade the north bank upstream of the proposed roughened channel crest to provide a smooth transition to the downstream roughened channel.
- Consolidate four points of diversion to a new surface water diversion with gravity water supply with fish screens meeting WDFW and NMFS screening criteria.

Phase II: Surface Water Conveyance Pipelines and Cowiche Creek Crossing

- New pipelines would be installed in the same corridor as the existing City water pipeline (portions of which would be removed).
 - Two of the pipelines would require an open-trench crossing of Cowiche Creek.
- Demolish existing sedimentation basin and siphon, located south of the creek.

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; 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.

WATER QUALITY CERTIFICATION CONDITIONS

Through issuance of this Order, Ecology certifies that 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 the City of Yakima, Public Works Department 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 City of Yakima, Public Works Department and its agents, assignees, and contractors.
2. Ecology’s Central Regional Office, Attn: Lori White, Federal Permit Coordinator, SEA Program, 1250 W Alder Street, Union Gap, WA 98903 or via e-mail to fednotification@ecy.wa.gov and cc to lori.white@ecy.wa.gov. The submittals shall be identified with Order # 18181 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 Resource Permit Application (JARPA) received by Ecology on March 3, 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. This Order is not effective until the U.S. Army Corps of Engineers (Corps) issues a permit for this project.
7. The Applicant shall send (per A.2.) a copy of the final Corps permit to Ecology’s Federal Permit Manager within two weeks of receiving it.
8. 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.
9. 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 that conditions of this Order are being met.

10. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that 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.
11. 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.
12. The Applicant 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 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.
13. 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.
14. 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.
15. 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 A.2.;
 - b. A copy of this Order is provided to the new owner or operator; and
 - c. If Ecology does not notify the new Applicant that this Order must be modified to complete the transfer.
16. 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 e-mail (e-mail is preferred) to Ecology's Federal Permit Manager via e-mail to fednotification@ecy.wa.gov and cc to lori.white@ecy.wa.gov. Notifications shall be identified with Order No. 18181 and include the Applicants name, project name, project location, project contact and the contact's phone number.
 - a. Immediately following a violation of state water quality standards or when the project is out of compliance with any of this Orders conditions.
 1. In addition to the phone or e-mail notification, 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.
 - 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 prior to completing each wetland mitigation site.
 - e. At least seven (7) days prior to each in-water work window
2. 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 of each in-water work window and submit status reports of each in-water work window every 12 months until construction and mitigation are completed.

C. Timing

1. This Order shall remain in effect for a period of five (5) years from the date of issuance of this certification. Continuing this project beyond the five-year term of this Order will require the Applicant to obtain review and written approval by Ecology to extend the project for an additional five (5) years. The total term of this Order shall not exceed a total of ten (10) years total.

In-Water Work Window Timing

2. In-water work is subject to a fishery closure window determined by Washington Department of Fish and Wildlife's Hydraulic Project Approval (HPA). All in-water work shall be completed within the work window identified in the most current HPA issued for this project.
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.

D. Water Quality Monitoring & Criteria

1. The Naches River and Cowiche Creek are categorized as Salmonid spawning, rearing, and migration habitat and the criteria of the categorization apply as described in WAC 173-201A-200 (1), except as specifically modified by this Order.
2. This Order does not authorize the Applicant to exceed applicable turbidity standards beyond the limits established in WAC 173-201A-200(1)(e)(i).
3. 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;
 - a. Temporary area of mixing for turbidity established within the state water quality standards for fresh waters (WAC 173-201A-200) is as follows:
 - i. For waters up to 10 cfs flow at the time of construction, the point of compliance shall be one hundred feet downstream from the activity causing the turbidity exceedance.
 - ii. For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be two hundred feet downstream of the activity causing the turbidity exceedance.
 - iii. For waters above 100 cfs flow at the time of construction, the point of compliance shall be three hundred feet downstream of the activity causing the turbidity exceedance.
4. 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.
5. The Applicant shall conduct water quality monitoring as described in the approved *Water Quality Monitoring Plan, Nelson Dam Removal Project* (hereafter referred to as the WQMP) prepared by HDR, Inc. dated February 13, 2020.
6. The Applicant must provide, in writing, any changes or additions to the WQMP and obtain approval from Ecology's Federal Permit Manager prior to implementation of the changes or additions.
7. Monitoring results shall be submitted monthly to the Ecology Federal Permit Manager, per condition A.2.
8. Mitigation and/or additional monitoring may be required if the monitoring results indicate that the water quality standards have not been met.

9. Visible turbidity anywhere beyond the temporary area of mixing (point of compliance) from the activity shall be considered an exceedance of the standard.
10. 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. The Applicant shall obtain and comply with the conditions of the Construction Stormwater Permit (National Pollutant Discharge Elimination System – NPDES) issued for this project.
2. Within the project limits¹ all environmentally sensitive areas including, but not limited to, wetlands, wetland buffers, and mitigation areas shall be fenced with high visibility construction (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 2.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.
3. 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.
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.

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.

5. 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.
6. Turbid de-watering water associated with in-water work shall not be discharged directly to waters of the state, including wetlands. Turbid de-watering water shall be routed to an upland area for on-site or off-site settling.
7. Clean de-watering 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.
8. All equipment being used below the ordinary high water mark shall utilize bio-degradable hydraulic fluid.

Equipment & Maintenance

9. Staging areas will be located a minimum of 50 feet and, where practical, 200 feet, from waters of the state including wetlands. If a staging area must be located within 50 feet of waters of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology's Federal Permit Manager before placing the staging area in the setback area.
10. 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.
11. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order.
12. 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.
13. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall not be discharged into state waters. The Applicant shall set up a designated area for washing down equipment.
14. 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.

Dewatering Conditions:

15. The applicant must conduct all dewatering methods as described in the dewatering plan found within Sections 2.2.1.2 and 2.2.2.2, Dewatering and In-Water Work of the *Nelson Dam Removal Project: Water Supply, Riverine Process, and Fish Passage Improvements Biological Assessment and EFH Assessment* document, prepared by HDR, Inc. on February 28, 2020.
16. Water pumped from construction areas and cofferdams, discharge from excavated materials, and any other upland or in-water activities that are similar to dewatering activities may not be discharged to the Naches River or Cowiche Creek or conveyed to surface waters unless it meets Surface Water Quality Standards (Chapter 173-201A WAC) at the point of discharge for pollutants of concern.
17. All equipment associated with dewatering activities shall be properly operated and maintained.

Bridge Abutment and Sediment Basin Demolition and Fish Bypass Structure

18. No structural material may enter water of the state during bridge demolition activities.
19. During demolition, structures shall be removed from the banks, existing roads, or from adjacent bridges whenever possible. When necessary, equipment may operate below the OHWL, provided the work is consistent with the project's most recent HPA.
20. All forms for concrete shall be completely sealed to prevent the possibility of fresh concrete entering waters of the state.
21. All concrete shall be completely cured prior to coming into contact with water.
22. 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.
23. 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.
24. All excavated sediment shall be disposed upland in an approved disposal site.

Stream Diversion/Stream Side Channels

25. All culvert work shall be conducted in the dry or in isolation from stream flow.
26. Stream flow isolation work shall not scour the stream channel or banks of the water body in which the work is being done.
27. 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.
28. Culverts shall be installed to avoid inlet scouring and prevent downstream bank erosion.
29. Fill associated with culvert installation shall be protected from erosion to the 100-year peak flow.

Bank Stabilization

30. Prior to returning stream flow to the de-watered work area, all proposed bank protection measures shall be in place.
31. Placement of hard armament shall be conducted in compliance with water quality standards for turbidity.

Ground Improvements

32. Ground improvement activities shall not cause exceedence of water quality standards for turbidity.

F. Wetlands

1. Implement the Restoration Plan, Phase I and Phase 2, Restoration Plan, Dated September 2, 2020, including the implementation of the planting plan.
2. The Applicant shall submit any proposed changes to the Restoration Plan in writing to Ecology (see A.2) for review and approval before implementing the changes.
3. If seeding is used for temporary erosion control, it must be a seed mix consisting of native, annual, non-invasive plant species, unless otherwise approved by Ecology.

G. 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 on hand to respond to emergency 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, 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 the Ecology Federal Permit Manager per condition B.1. 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/or 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 Hearing 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.) E-mail 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
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503 Pollution Control Hearings Board 1111 Israel Road SW STE 301 Tumwater, WA 98501	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608 Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

CONTACT INFORMATION

Please direct all questions about this Order to:

Lori White
Department of Ecology
Central Regional Office
1250 W Alder Street
Union Gap, WA 98903

(509) 575-2616
lori.white@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 10th day of September, 2020 at the Department of Ecology, Lacey, Washington



Brenden McFarland, Section Manager
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program

Attachment A
Statement of Understanding
Water Quality Certification Conditions

Nelson Dam Removal Project
City of Yakima, Public Works, Water/Irrigation / Attn: David Brown
Water Quality Certification Order No. **18181**
and
Corps Reference No. **NWS-2020-200**

As the Applicant for the Nelson Dam Removal project, I have read and understand the conditions of Washington State Department of Ecology Order #**18181**, and any permits, plans, documents, and approvals referenced in the Order.

I have and will continue to ensure that 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

Title

Phone

Company