



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

July 20, 2015

Evan Lewis  
Chief, Environmental and Cultural Resources Branch  
U.S. Army Corps of Engineers  
PO Box 3755  
Seattle, WA 98124

**RE: Coastal Zone Consistency for 2015 Skagit River Levee Rehabilitation, Diking  
District 17 Sites 1-3 Project, Skagit River, Skagit County, Washington**

Dear Mr. Lewis:

On May 22, 2015, U.S. Army Corps of Engineers, Seattle District (Corps) submitted a Federal Consistency Determination for rehabilitation of the Skagit Levee at three sites within Diking District 17, located along the left bank of the Skagit River, at the river bend near the City of Anacortes Water Treatment Plant, at the following locations:

- Site 1: 48°26'26.90"N 122°22'22.64"W;
- Site 2: 48°26'17.55"N 122°22'21.89"W; and
- Site 3: 48°26'4.84"N 122°22'9.20"W.

The proposed repair work would reshape the slope to its pre-flood location at two sites (Site 1 is approximately 265 linear feet and Site 2 is approximately 480 linear feet). The work would consist of restoring the 2H:1V slope, replacing lost armor rock with a one-foot spall filter layer and a three-foot blanket of Class IV riprap, and placing topsoil with hydroseed. Site 3 (approximately 1,200 linear feet in length) would include the installation of a fish bench with unanchored logs, layback of the riverward slope, and placing topsoil with hydroseed.

Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with the Corps' determination that the proposed work, as described in the Corps Federal Consistency Determination dated May 22, 2015, is consistent with Washington's CZMP.

If you have any questions regarding Ecology's consistency determination please contact Rebekah Padgett at (425) 649-7129.

**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 all 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 RD SW STE 301 Tumwater, WA 98501	<b>Pollution Control Hearings Board</b> PO Box 40903 Olympia, WA 98504-0903

Sincerely,



Paul Anderson, Wetlands/401 Unit Supervisor  
Shorelands and Environmental Assistance Program  
Northwest Regional Office

PA:rrp:ap

By certified mail: 7012 1640 0000 6245 7746

cc: Hannah Hadley, U.S. Army Corps of Engineers  
Wendy Cole, Washington Department of Fish and Wildlife  
Brenda Werden, Washington Department of Natural Resources  
Betsy Stevenson, Skagit County Planning & Development

e-cc: Bob Fritzen – BFO  
Doug Gresham – NWRO  
Danielle DeVoe – NWRO  
Dave Garland – NWRO  
Dave Radabaugh – NWRO  
Loree' Randall – HQ  
Anne Dettelbach – NWRO  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)



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July 20, 2015

Evan Lewis  
Chief, Environmental and Cultural Resources Branch  
U.S. Army Corps of Engineers, Seattle District  
PO Box 3755  
Seattle, WA 98124

**RE: Water Quality Certification Order #11659 for 2015 Skagit River Levee Rehabilitation, Diking District 17 Sites 1-3 Project, Skagit River, Skagit County, Washington**

Dear Mr. Lewis:

On June 17, 2015, the U.S. Army Corps of Engineers, Seattle District, submitted an application to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the above project.

On behalf of the State of Washington, Ecology certifies that the work described in the application 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.

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,

Paul Anderson, Wetlands/401 Unit Supervisor  
Shorelands and Environmental Assistance Program  
Northwest Regional Office

PA:rrp:ap

Enclosure



*Evan Lewis*  
*July 20, 2015*  
*Page 2*

By certified mail: 7012 1640 0000 6245 7746

cc: Hannah Hadley, U.S. Army Corps of Engineers  
Wendy Cole, Washington Department of Fish and Wildlife  
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Anne Dettelbach – NWRO  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

**IN THE MATTER OF GRANTING A ) ORDER #11659**  
**WATER QUALITY )** 2015 Skagit River Levee Rehabilitation, Diking  
**CERTIFICATION TO )** District 17 Sites 1-3 Project; Skagit River,  
**U.S. Army Corps of Engineers, )** Skagit County, Washington.  
**Seattle District )**  
 in accordance with 33 U.S.C. 1341 )  
 (FWPCA § 401), RCW 90.48.120, RCW )  
 90.48.260 and Chapter 173-201A WAC )

TO: U.S. Army Corps of Engineers, Seattle District  
 Attn: Evan Lewis  
 PO Box 3755  
 Seattle, WA 98124

On June 17, 2015, U.S. Army Corps of Engineers, Seattle District (Corps) submitted a request to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. 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 July 1, 2015.

The 2015 Skagit River Levee Rehabilitation, Diking District 17 Sites 1-3 project is for the replacement of three damaged sections of levee and includes:

- Site 1 (265 lineal feet): Reshape the slope to its pre-flood condition, including restoration of the 2H:1V slope, replacement of lost armor rock with a spall filter layer and riprap, and placement of topsoil with hydroseed.
- Site 2 (480 lineal feet): Reshape the slope to its pre-flood condition, including restoration of the 2H:1V slope, replacement of lost armor rock with a spall filter layer and riprap, and placement of topsoil with hydroseed.
- Site 3 (1,200 lineal feet): Installation of a fish bench with unanchored logs, layback of the riverward slope, and placement of topsoil with hydroseed.

The project is located along the Diking District 17 Levee at the river bend near City of Anacortes Water Treatment Plant, River Bend Road, Site 1: 48°26'26.90"N 122°22'22.64"W, Site 2: 48°26'17.55"N 122°22'21.89"W, Site 3: 48°26'4.84"N 122°22'9.20"W, near Mount Vernon, Skagit County, Washington, Skagit River, Section 13, T. 34 N., R. 3E., WRIA 3.

**AUTHORITIES:**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has examined 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 meet the 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 Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC), or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments occurring as a result of project construction or operations.

#### **A. General Conditions:**

- A1. For purposes of this Order, the term "Applicant" shall mean U.S. Army Corps of Engineers, Seattle District, and its agents, assignees, and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Project Manager, 3190 160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #11659.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on June 17, 2015. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.

- A4. Within 30 days of receipt of an updated JARPA, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
- A5. Copies of this Order shall be kept 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.
- A6. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
- A7. 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.
- A8. The Applicant shall ensure that all appropriate project engineers and contractors at the project site 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 project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project or mitigation sites.
- A9. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state (including wetlands) or related aquatic resources, except as specifically provided for in conditions of this Order.
- A10. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

**B. Water Quality Conditions:**

- B1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-200(1)(e)(i).
- B2. The Applicant shall monitor water quality during in-water construction according to the *Revised Draft Water Quality Monitoring Plan, 2015 Skagit River Levee Rehabilitation Project—Diking District 17, Sites 1-3*, prepared by U.S. Army Corps of Engineers, dated July 13, 2015, or as modified by this Order or revised and approved by Ecology.

- B3. Background samples shall be collected at the same frequency as the point of compliance samples through the duration of water quality monitoring.
- B4. If no exceedances are detected, results of water quality sampling, as determined by the Plan, shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.
- B5. Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #11659, Attn: 401/CZM Federal Project Manager, by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:
- i. A description of the nature and cause of exceedance.
  - ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance.
  - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
  - iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the exceedance, turbidity results and location, photographs, and any other pertinent information.

**C. Conditions for Construction Activities:**

- C1. Maintenance activity shall be conducted during low-flow conditions.
- C2. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- C3. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.
- C4. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.

- C5. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- C6. Mechanical equipment shall be operated from adjacent uplands, unless otherwise authorized by Ecology.
- C7. Bank excavation and slope regrading activity shall be conducted carefully and material slowly removed from waters of the state in order to minimize turbidity.
- C8. Excavated materials shall not be stockpiled on the riverward bench, unless appropriate BMPs are implemented to protect water quality.
- C9. No on-site stockpile may remain in place for more than 24 hours.
- C10. Excavated materials may be deposited at an off-site stockpile area such that no material can be discharged to waters of the state, and the material shall be hydroseeded at the end of the construction season.
- C11. Hydroseed overspray shall be kept out of waters of the state, with hand seeding as needed, and shall not be fertilizer based if it has the potential to leach into the river.
- C12. Topsoil shall be carefully placed onto the upper bank in small bucketloads and no soil placement shall occur below ordinary high water mark.
- C13. Exposed soils adjacent to the channel at risk of entering the watercourse shall be protected from erosion using native vegetation (e.g., native grass seed mix, trees, etc.) or other means approved by Ecology.
- C14. Existing native vegetation shall be retained in the work areas to the maximum extent practicable.
- C15. Clean Fill Criteria: Applicant shall ensure that fill (soil or other material) placed for the proposed project does not contain toxic materials in toxic amounts.
- C16. Biodegradable hydraulic fluids shall be utilized to the extent practicable.

In-Water Construction Conditions:

- C17. In-water work shall be conducted in such a way as to minimize turbidity.
- C18. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology that fisheries resources may be adversely affected.

- C19. Rocks shall be placed along the riverward slope and toe individually or in small bucketloads, and no end dumping of rock into water shall be allowed.

**D. Emergency/Contingency Measures:**

- D1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.

- D2. 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.

- D3. 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.

- D4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:

- a. Cease operations at the location of the violation or spill.
- b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
- c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Project Manager at (425) 649-7129 or (425) 649-7000.
- d. 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.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

**E. Timing Requirements**

- E1. Work below the Ordinary High Water Line (OHWL) shall not occur from September 1 through July 14 of any year for the protection of fish, without prior approval from Ecology.
- E2. This Order expires September 30, 2015.

**F. Reporting and Notification Requirement Conditions**

- F1. Applicant shall provide notice to Ecology’s 401/CZM Federal Project Manager:
  - At least three (3) days prior to the start of construction.
  - Within 14 days after completion of construction at the project site.
 Notification, referencing Order #11659 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

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

## 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**

[www.eho.wa.gov/Boards\\_PCHB.aspx](http://www.eho.wa.gov/Boards_PCHB.aspx)

### **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**

<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>

### **Chapter 371-08 WAC – Practice And Procedure**

<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>

### **Chapter 90.48 RCW – Water Pollution Control**

<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>

### **Chapter 173-204 WAC – Sediment Management Standards**

[www.ecy.wa.gov/biblio/wac173204.html](http://www.ecy.wa.gov/biblio/wac173204.html)

### **Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**

[www.ecy.wa.gov/biblio/wac173200.html](http://www.ecy.wa.gov/biblio/wac173200.html)

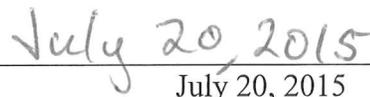
### **Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**

[www.ecy.wa.gov/biblio/wac173201A.html](http://www.ecy.wa.gov/biblio/wac173201A.html)

## SIGNATURE



Paul Anderson, Wetlands/401 Unit Supervisor  
Shorelands and Environmental Assistance Program  
Northwest Regional Office



July 20, 2015

**ATTACHMENT A**

**U.S. ARMY CORPS OF ENGINEERS, SEATTLE DISTRICT  
2015 SKAGIT RIVER LEVEE REHABILITATION,  
DIKING DISTRICT 17 SITES 1-3 PROJECT  
Water Quality Certification Order #11659**

**Statement of Understanding of  
Water Quality Certification Conditions**

I have read and understand the conditions of Order #11659 Section 401 Water Quality Certification for the U.S. Army Corps of Engineers, Seattle District, 2015 Skagit River Levee Rehabilitation, Diking District 17 Sites 1-3 Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company