



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

15 W Yakima Ave, Ste 200 • Yakima, WA 98902-3452 • (509) 575-2490

September 23, 2011

US Army Corps of Engineers, Portland District
Carolyn Schneider
PO Box 2946, attn: CENWP-PM-E
Portland, Oregon 97208-2946

RE: Water Quality Certification Order 8767 for Corps Public Notice **CENWP-PM-E-11-05**

The proposed project entails the removal of 3 weirs, removal of a large support pier, installation of new stoplog guides, permanent closure of the secondary (south-facing) entrance, structural reinforcing of a concrete deck, filling a cavity below water the water line at the entrance of the fish ladder, fabricating and installing a variable width weir, and installation of lamprey bollards on the floor of the entrance of the fish ladder.

Dear Ms. Schneider:

On June 3, 2011, the Portland District of the Army Corps of Engineers submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification for the John Day Dam North Fish Ladder retrofit. The project is located at John Day Dam, River Mile 216.3 in the Columbia River, Klickitat County, Washington, SWNW ¼ of section 28, T 3N, R 17 East of the Willamette Meridian, 45.718465 N Latitude/-120.697689 W Longitude, in Water Resource Inventory Area (WRIA) Klickitat #30.

A public notice for a proposed water quality certification from Ecology was distributed by Ecology for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on July 19, 2011.

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



US Army Corps of Engineers, Portland District
Carolyn Schneider
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September 21, 2011

If you have any questions, please contact Catherine Reed at (509) 575-2616. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Jeff Lewis
Central Regional Office
Shorelands and Environmental Assistance Program

Enclosure

By certified mail: 7009 2250 0004 4952 0029

e-cc: Ann Stevenson – WDFW
Loree' Randall – Ecology HQ
John Merz – Ecology Central Regional Water Quality Unit Supervisor
Catherine Reed – Ecology Central Regional Federal Permit Coordinator

IN THE MATTER OF GRANTING A) ORDER # 8767
WATER QUALITY) Corps Reference No. CENWP-PM-E-11-05
CERTIFICATION TO)
US Army Corps of Engineers, Portland)
District) to modify the north fish ladder at John Day Dam
in accordance with 33 U.S.C. 1341) located at River Mile 216.3 in the Columbia
(FWPCA § 401), RCW 90.48.120, RCW) River located in Klickitat County, Washington,
90.48.260 and Chapter 173-201A WAC) SWNW ¼ of section 28, T 3N, R 17E;
) 45.718465 N Latitude/-120.697689 W Longitude
)

TO: US Army Corps of Engineers, Portland District
Carolyn Schneider
PO Box 2946, attn: CENWP-PM-E
Portland, Oregon 97208-2946

On June 3, 2011, the Portland District of the Army Corps of Engineers submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification for the John Day Dam North Fish Ladder retrofit. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on July 19, 2011.

The project will occur between November 7, 2011 through March 31, 2012 and between November 7, 2012 through March 31, 2013. Modifications include the removal of 3 weirs, removal of a large support pier, installation of new stoplog guides, permanent closure of the secondary (south-facing) entrance, structural reinforcing of a concrete deck, filling a cavity below water the water line at the entrance of the fish ladder, fabricating and installing a variable width weir, and installation of lamprey bollards on the floor of the entrance of the fish ladder. The construction would take place within and around the vicinity of the fish ladder, with construction staging on the dam and a to-be-determined upland area within the fenced project perimeter. The construction is expected to take a total of 8 to 10 months to complete, but will occur over two construction seasons while allowing for a fully-operational fish ladder between the two construction seasons.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, 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, 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 not violate 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:

1. For purposes of this Order, the term "Applicant" shall mean the US Army Corps of Engineers, Portland District, and its agents, assignees and contractors.
2. For purposes of this Order, all submittals required by its conditions (except for weekly water quality monitoring reports which must be submitted via e-mail or fax) shall be sent to Ecology's Central Regional Office, Attn: Federal Project Coordinator, 15 West Yakima Avenue, Suite 200, Yakima, WA 98902. Any submittals shall reference Order No. 8767 and Corps No. CENWP-PM-E-08-01.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on June 3, 2011, and as modified on July 14, 2011 via e-mail. Modifications of the July 14, 2011 e-mail include construction of the 3 lower weirs while water is moving through the fish ladder, and an additional 2.3 cubic feet of cuttings projected to be generated. 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.
4. 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.
5. This Order does not exempt, and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

6. 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.
7. 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.
8. 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.
9. 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.**
10. 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.
11. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000.00) per violation for each day of continuing noncompliance.

B. Water Quality Monitoring

1. **Turbidity:** This Order does not authorize temporary exceedances of the turbidity standard beyond the limits established in WAC 173-201A-200. For this reach of the Columbia River and its associated beneficial uses, a limit of 5 NTU (nephelometric turbidity units) over background when background is 50 NTU or less, or a 10 percent or less increase in turbidity when the background turbidity is more than 50 NTU must be found at the point of compliance. The point of compliance will be 300 feet downstream of the activity causing the exceedance (based on waters above 100 cfs flow at the time of construction).
2. **pH:** pH measured at the background location is assumed to be within the range of 6.5 to 8.5. The pH change from the project is not authorized to be more 0.5 units different from background values within the 6.5 to 8.5 pH range.

3. **Water Quality Monitoring Plan:** The Applicant shall prepare a water quality monitoring plan for turbidity and pH (as appropriate) for each phase of the project (Sealing of Cells, Rock Removal, Leveling Foundation Slab Work, etc.) that could affect turbidity and/or pH of the surrounding waters.

The plan shall show the location of background and downstream monitoring sites on a plan view map, describe the equipment and methods used (including proposed sample depth within the water column), and shall include a copy of the report form that is proposed to be used by the sampling technicians. The water quality monitoring plan should include a minimum of hourly samplings during the first day of long term work (more than two days) or should include a minimum of hourly samplings over 4 hours for work which lasts less than two days). The frequency of monitoring may be decreased from hourly monitoring over the duration of the work phase, depending on the results of the initial sampling. This monitoring frequency assumes that the type of work remains the same during each phase. Frequency of monitoring should be increased if there is an increased risk with a change in the type of work being done within a particular phase. The plan should also discuss how any dewatering water will be treated and monitored prior to discharge back to the river.

The applicant shall also prepare a **contingency plan** to be put into action in the case of an exceedance for each phase of the project. The contingency plan should describe what action(s) will be taken to address the exceedance, such as application of additional BMPs or changes in the size of work area, timing of work or duration of activities.

A copy of the water quality monitoring and contingency plans shall be in place before work in the water begins.

4. **The water quality monitoring plans and the contingency plans shall be submitted to Ecology for review and approval at least 15 days before construction is anticipated to begin.**
5. **Monitoring Report submission:** Water quality monitoring data sheets must be submitted on a weekly basis during data collection. Submissions should be made via e-mail to craj461@ecy.wa.gov or fax to the attention of Cathy Reed/Federal Project Reviewer, SEA Program at (509) 575-2809.

C. Construction Conditions

1. The Applicant shall comply with all stormwater requirements within the National Pollutant Discharge Elimination System (NPDES) **Stormwater General Permit for Construction Activity** for this project.
2. All work in and near the water shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control Best Management Practices (BMP's) suitable to prevent exceedances of state water quality standards shall be in place before starting clearing, filling and grading work and shall be maintained throughout construction.

3. The project shall be clearly marked/staked prior to construction. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Sensitive areas and buffers that are to be protected from disturbance shall be marked so as to be clearly visible to equipment operators. Equipment shall enter and operate within the marked clearing limits corridors and stockpile areas.
4. Disposal sites for the baffle block and rock debris shall be in upland areas and in compliance with local solid waste disposal laws, the Klickitat County Shoreline Master Plan, and Best Management Practices.

D. Timing Requirements

1. This Order is valid for a period of not more than five years after the signature dated on the last page of this Order. The applicant shall reapply with an updated application for certification if five years elapse between the date of the issuance of this Order and the beginning of construction and/or discharge for which the federal license or permit is being sought.

E. Notification Requirements

1. The Applicant shall provide written notification (FAX, e-mail or mail) to Ecology's Central Regional Office Federal Permit Coordinator in writing at least three (3) days prior to the start of construction at the project and mitigation site.
2. The Applicant shall provide written notification to Ecology's Central Regional Office Federal Permit Coordinator in writing within fourteen (14) days after completion of construction.

NOTE: These notifications shall include the Applicant's name, project name, project location, the number of this Order, contact and contact's phone number.

F. Emergency/Contingency Measures:

1. The Applicant shall develop a **spill prevention and containment plan** for this project, and shall have spill cleanup materials and an emergency call list available on site.
2. 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, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant or operator shall immediately take the following actions:
 - a. Cease operations that are causing the compliance problem.
 - 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 finding distressed or dying fish, the applicant shall collect fish specimens and water samples in the affected area within the first hour of the event. These samples shall be held in refrigeration or on ice until the applicant is instructed by Ecology on what to do with them. Ecology may require analyses of these samples before allowing the work to resume.

- d. 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.
 - e. Immediately notify Ecology's Central Regional Spill Response Office at (509) 575-2490 of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.
 - f. Immediately notify the National Response Center at 1-800-424-8802 for spills to water.
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, including wetlands.
 4. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology's Central Regional Spill Response Office at (509) 575-2490.

G. Appeal Process:

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:

The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, Washington 98504-7608.

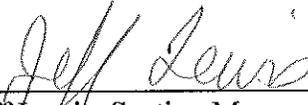
In addition, please send a copy of your appeal to:

Federal Permit Appeals Coordinator
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

*For additional information: Environmental Hearings Office Website:
<http://www.eho.wa.gov>*

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated 9-23-2011 at Yakima, Washington.



Jeff Lewis, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

Carefully read the entire Water Quality Certification Order, sign, date, and return the completed document to Ecology's Central Regional Office, Attn: Federal Permit Coordinator, SEA Program, 15 West Yakima Avenue, Suite 200, Yakima, Washington 98902

Carolyn Schneider
US Army Corps of Engineers, Portland District

Statement of Understanding of Water Quality Certification Order #8767 Conditions

I _____ have read and understand all of the relevant conditions of the Washington State Department of Ecology Section 401 Water Quality Certification Order #8767, and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

I _____, as the **authorized agent or contractor for the construction** at the John Day Dam North Fish Ladder retrofit, have read and understand all of the relevant conditions of the Washington State Department of Ecology Section 401 Water Quality Certification Order #8767, and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

Signature

Date

Title

Company