STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

REGISTERED MAIL
RB 252 946 568 US

October 5, 2007

Gary Beeman
Department of Transportation
South Central Region
P.O. Box 12560
Yakima, WA 98909-2560

RE: Water Quality Certification Order #5066 for Corps Public Notice No. 200700618 for construction of a rock revetment ~ 2650 feet long and a porous rock sill on the south bank of the Naches River in the cities of Yakima & Selah in Yakima County, Washington.

Dear Mr. Beeman:

On May 2, 2007, the Department of Ecology (Ecology) received the Department of Transportation's (WSDOT) Joint Aquatic Resource Permit Application (JARPA) for a 401 Water Quality Certification (401 Certification) for the proposed US 12 Naches River Floodplain Restoration project. The project proposes to construct a rock revetment ~ 2650 feet long and a porous rock sill on the south bank of the Naches River and remove some alluvial material blocking a historic river channel. The project is located adjacent to US 12, MP 200.9 to MP 201.6 in the cities of Yakima and Selah in Yakima County, Washington. The U.S. Army Corps of Engineers issued a public notice for the project on June 8, 2007.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice complies with the applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act and applicable state laws. This certification is subject to the conditions contained in the enclosed Order.

This letter also serves as the State response to the Corps of Engineers' June 8, 2007 Public Notice.

If you have any questions, please contact Penny Kelley, Federal Project Coordinator, at pkel461@ecy.wa.gov or 360-407-7298. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Brenden McFarland, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology

BM:pk
Enclosure

cc: Rick Pratt, Corps of Engineers
Eric Bartrand, Department of Fish & Wildlife
Doug Eitemiller, Department of Transportation
Bill Sauriol, Department of Transportation

e-cc: Penny Keys, HQ
Loree' Randall, HQ
Water Quality Northwest Region

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Washington Department of Transportation in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)))))))))	**ORDER # 5066** **Corps Reference No. 200700618** Construct a rock revetment ~ 2650 feet long and a porous rock sill on the south bank of the Naches River and remove some alluvial material blocking a historic river channel. The project is located adjacent to US 12, MP 200.9 to MP 201.6 in Yakima County, Washington.

TO: Gary Beeman
Department of Transportation
South Central Region
P.O. Box 12560
Yakima, WA 98909-2560

On May 2, 2007, Washington Department of Transportation (WSDOT) submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. The U.S. Army Corps of Engineers (Corps) issued a public notice for the project on June 8, 2007.

The project starts at MP 200.9 and extends to MP 201.6 within the cities of Yakima and Selah in Yakima County, WRIA 38, Section 11, Township 13N, Range 18E. The project entails constructing a rock revetment ~2650 feet long on the south bank of the Naches River adjacent to US 12. In addition to, and upstream of, the revetment, alluvial material will be removed from a historic river channel allowing part of the river to be diverted during project construction. The revetment will be constructed using riprap to stabilize the river bank. Vegetated rock groins are incorporated into the revetment design to divert flood flows away from the highway. Large woody debris will be included in the revetment to provide habitat for fish. Between the highway and the revetment, WSDOT will construct a floodplain terrace and riparian buffer to enhance floodplain habitat. Upstream of the revetment on the south bank, a porous rock sill will be constructed to prevent future head-cuts upriver. The construction of the porous rock sill will impact 0.06 acres of wetland and removal of alluvial material from the historic river channel will impact 0.01 acres of wetland. WSDOT is mitigating for these impacts (and the impacts to Naches River) by donating 40 acres and purchasing for donation and additional 57 acres of privately held land to the Yakima County Flood Control Zone District. The majority of these lands are located within the Naches and Yakima River floodplains. Conservation deed restrictions will be placed on these properties to ensure they are managed as floodplain habitat over the long term.

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, 303, 306 and 307);

2. Conformance with the state water quality standards 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 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.

A. General Conditions:

1. For purposes of this Order, the term "Applicant" shall mean WSDOT, and its agents, assignees and contractors.

2. For purposes of this Order, all submittals required as conditions shall be sent to Ecology Headquarters, Attn: Federal Project Coordinator, P.O. Box 47600, Olympia, WA 98504-7600 or via e-mail (preferred), if possible, to the Coordinator assigned to this project. Notifications shall be made via phone and /or e-mail (preferred). All submittals and notifications shall be identified with Order No. 5066 and include the Applicant's name, project name, project location, the project contact and the contact's phone number.

3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on May 2, 2007. 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 shall be rescinded if the U.S. Army Corps of Engineers does not issue a Section 404 permit.

6. This Order does not exempt, and is provisional upon. compliance with other statutes and codes administered by federal, state, and local agencies.

7. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers, lead workers, and state and local government inspectors.

8. 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.

9. 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.

10. The Applicant shall ensure that all project engineers, contractors, and other workers who have authority to direct work 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 signator 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.

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. 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 per day for each day of continuing noncompliance.

B. Notification Requirements:

1. Notification shall be made to Ecology's Federal Project Coordinator in accordance with condition A.2 above for the following activities:

   a. At least 10 days prior to the pre-construction meeting
   b. At least 10 days prior to the onset of any work on site

c. Immediately following a violation of the state water quality standards or any condition of this Order

C. Water Quality

Certification of this proposal does not authorize the Applicant 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) except as modified by this order. Furthermore, nothing in this certification shall absolve WSDOT from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments occurring as a result of project construction or operations.

Short Term Modification

1. Consistent with WAC 173-201A-410, this Order authorizes a short term modification to the turbidity standards for the Naches River by granting a temporary mixing zone where turbidity criteria may be exceeded. The short term modification applies to excavation of alluvial material to reopen a historic river channel and construction of the rock revetment and vegetated rock groins.

2. The short term modification is granted for the duration of 30 days from the time the connection between the Naches River and the constructed diversion channel is established during the fish window granted in the most current Hydraulic Project Approval issued by WDFW.

3. The temporary turbidity mixing zone is granted for a distance of 2100 feet downstream from the activity causing the exceedance.

Monitoring

1. A water quality monitoring plan shall be developed and submitted to Ecology for review and approval at least 10 days prior to the start of excavation work for the diversion channel or construction of the vegetated rock groins.

2. Water quality monitoring shall be conducted at least twice daily and must include readings that span a minimum of four hours.

3. A background sample shall be collected prior to taking the compliance sample. These samples are collected for the purpose of measuring turbidity

4. Monitoring shall be conducted at a minimum of three locations. Sampling at each location shall be conducted at 500 feet, at 1000 feet and 2100 feet.

5. Monitoring results shall be submitted monthly to Ecology Federal Project Coordinator in accordance with condition A.2 above.

D. Wetlands

1. At year three, at least 50 percent wetland vegetation cover shall be the goal for those temporarily disturbed wetland areas that were originally vegetated wetlands. If this goal has not been met, then a remediation plan shall be submitted for approval by Ecology.

2. The Applicant shall prepare a revegetation monitoring report for the planting benches, rock sills, and other structures at years 3 and 5 from the date of planting.

E. Construction Conditions:

1. The Applicant shall comply with the conditions of the current Construction Stormwater Permit (National Pollutant Discharge Elimination System (NPDES) issued for this project.

2. The Applicant shall submit a copy of the Stormwater Pollution Prevention Plan to the Federal Project Coordinator, in accordance with condition A.2 above, at least 30 days prior to the beginning construction for review. The SWPPP shall be prepared in accordance with the requirements of the Construction Stormwater General Permit issued for this project.

3. Within the project limits[1], all environmentally sensitive areas including, but not limited to, wetlands, wetland buffers, and mitigation areas shall be fenced with high visibility construction fence (HVF) prior to commencing construction activities. Construction activities include equipment staging, materials storage, and worker-vehicle parking. *Note: This condition does not apply to activities such as pre-construction surveying and installing HVF and construction zone signage.*

All field staff shall be trained to: recognize HVF; understand its purpose; and properly install it in the appropriate locations.

4. All clearing limits, stockpile sites, staging areas, and trees to be preserved shall clearly be marked prior to commencing construction activities.

5. All clearing limit, stockpile site, staging area, and tree-preservation marking shall be maintained until all work is completed for each project.

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

---

[1] Project limits include mitigation sites, staging areas, borrow sources, and other sites developed or used to support project construction.

7. Staging areas shall be located a minimum of 50 feet from waters of the state, including wetlands. If a staging area must be located within 50 feet of a water of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology's Federal Project Coordinator before placement of the staging area in the setback area.

8. All construction debris shall be properly managed and disposed of in an approved upland disposal site.

9. Excavated alluvium associated with Rock Sill construction, Diversion Channel and the Rock Revetment & Groins shall be removed from the project site unless specifically provided in the submitted application materials.

10. When constructing the vegetated rock groins, rock shall be placed individually into position to minimize turbidity.

11. 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.

12. Clean de-watering water associated with in-water work that has been tested and confirmed to meet water quality standards may be discharged directly 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.

F. Equipment & Maintenance

1. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state, including wetlands. Accumulated 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.

2. 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.

3. Wash water containing oils, grease, or other hazardous materials resulting from washing down equipment or working areas shall not be discharged into state waters. The applicant shall set up a designated area for washing down equipment.

4. No cleaning solvents or chemicals used for tool or equipment cleaning may be discharged to the ground or to waters of the state.

G. Timing Requirements:

This Order is valid until all requirements in this document have been met.

H. Emergency/Contingency Measures:

1. The Applicant shall develop and implement a spill prevention and containment plan for this project and shall have spill cleanup material available on site at all times during construction.

2. Any work that is out of compliance with the provisions of this Order, or producing conditions that are causing distressed or dying fish, or causing any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters is prohibited. If such work occurs, the Applicant shall comply with WSDOT's Environmental Compliance Assurance Procedure for Construction projects and Activities (March 10, 2003) and immediately take the following actions:

   a. Cease operations at the location of the violation;
   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, 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 receives further instructions from Ecology. 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. This work shall take 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. If at any time, the Applicant finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the Applicant shall immediately notify Ecology's Central Regional Spill Response Office at 509-575-2490.

I. Appeal Process:

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:		Deliver your appeal in person to:
The Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903	OR	The Pollution Control Hearings Board 4224 – 6th Ave SE Rowe Six, Bldg 2 Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:		Deliver your appeal in person to:
The Department of Ecology Appeals Coordinator P.O. Box 47608 Olympia, WA 98504-7608	OR	The Department of Ecology Appeals Coordinator 300 Desmond Dr SE Lacey, WA 98503

3. And send a copy of your appeal to:

Penny Kelley
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

For additional information visit the Environmental Hearings Office Website: http://www.eho.wa.gov
To find laws and agency rules visit the Washington State Legislature Website: http://www1.leg.wa.gov/CodeReviser

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 Oct 5, 2007 at Olympia, Washington.

Brenden McFarland, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

Attachment A

Water Quality Certification Order #5066
Statement of Understanding

I, _____, state that, I will be involved as a WSDOT employee or an agent or contractor for Washington State Department of Transportation on the US 12 Naches River Scour Repair Project starting between MP 200.9 and MP 201.6 in Yakima County, WA. I further state that I have read and understand the relevant conditions of Washington Department of Ecology **Water Quality Certification Order 5066** and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

_____ _____
Signature Date

_____ _____
Company Phone number

_____
Address

_____
City, State, and Zip Code