



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

July 7, 2009
CERTIFIED MAIL

Yakama Nation
Attn: Ms. Lavina Washines
PO Box 151
Toppenish, WA 98498

RE: Water Quality Certification Order 6928 for Corps Public Notice No. NWS 2009-214 to construct a new fishway intake structure and make other improvements at the Lyle Falls Fish Hatchery, in Klickitat County, Washington

Dear Ms. Washines:

On June 8, 2009 Richard Connolly of Harbor Consulting Engineers submitted a Joint Aquatic Resource Permit Application (JARPA) via e-mail on behalf of the Yakama Nation to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification under the federal Clean Water Act for the above-referenced project. The project proposes discharge of 20 cubic yards of concrete in the Klickitat River to construct a new fishway intake structure as part of modifications to the existing Lyle Falls Fishway at Rivermile 2.2, near Lyle in Klickitat County, Washington. The U.S. Army Corps of Engineers issued a public notice on April 30, 2009 for the proposed project.

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.

This letter also serves as the State response to the Corps of Engineers' April 30, 2009 Public Notice.



Ms. Lavina Washines
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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, Section Manager
Central Regional Office
Shorelands and Environmental Assistance Program

Enclosure

cc: David J. Martin, US Army Corps of Engineers
Richard Connolly, Harbor Consulting Engineers
Anne Friesz, Washington Dept. of Fish and Wildlife

e-cc: Loree' Randall - HQ
Lynda Jamison - CRO

IN THE MATTER OF GRANTING A)	ORDER # 6928
WATER QUALITY)	Corps Reference No. NWS-2009-214
CERTIFICATION TO)	Lyle Falls Fishway improvements located in
Yakama Nation)	Klickitat County, Washington. Improvements
in accordance with 33 U.S.C. 1341)	include construction of a new concrete fishway
(FWPCA § 401), RCW 90.48.120, RCW)	intake structure and fishway extension
90.48.260 and Chapter 173-201A WAC)	
)	
)	

TO: Yakama Nation
 Attn: Ms. Lavina Washines
 PO Box 151
 Toppenish, WA 98498

On June 8, 2009 Richard Connolly of Harbor Consulting Engineers submitted a Joint Aquatic Resource Permit Application (JARPA) via e-mail on behalf of the Yakama Nation to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification for the above-referenced project. A public notice regarding the request was distributed by the Army Corps of Engineers and Ecology for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on April 30, 2009.

The proposed project entails discharge of 20 cubic yards of concrete in the Klickitat River to construct a new fishway intake structure as part of modifications to the existing Lyle Falls Fishway at Rivermile 2.2, near Lyle in Klickitat County, Washington; Sections 25 and 26, Township 3N, Range 12 E, WRIA# 30, Klickitat River Watershed.

The project proposes to construct a new fishway intake structure and extend the existing fishway 350 feet parallel to the shoreline through uplands in the upstream direction to the new fishway intake structure. Associated work will include excavation of 150 cubic yards of rock in the area where the intake structure will be constructed. An auxiliary water intake structure with trash rack will also be installed. A coffer dam to allow dewatering of the construction area and protect downstream water quality will also be installed.

The proposed improvements will facilitate fish access during low flow, will upgrade the adult trapping facility, and will improve fisheries monitoring capabilities by adding a state of the art PIT-tag detector and a video monitoring system. Proposed mitigation measures to compensate for permanent impacts are described in the "Mitigation Action Plan for Lyle Falls Fish Passage Project", by Bonneville Power Administration (BPA), Confederated Tribes and Bands of the Yakama Nation, Washington Department of Fish and Wildlife, U.S. Forest Service (February 2009), which includes re-vegetation of areas disturbed during the project, protection of water quality by installation of BMPs and identification of project boundary areas in the field.

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 water quality standards and other state laws. 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, Ecology grants water quality certification 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. The term "Applicant" shall mean the Yakama Nation, and its agents, assignees and contractors.
2. All required submittals shall be sent to Ecology's Central Regional Office, Attn: 401 Federal Project Coordinator, 15 West Yakima Avenue, Suite 200, Yakima, WA 98902. Any submittals shall reference Order No. 6928 and Corps No. NWS 2009 214 Lyle Falls Fishway.

3. Authorized work is limited to that described in the June 8, 2009 JARPA and supplemental information. The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA or supplemental information becomes void by unauthorized changes to the project.
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 an amendment to this Order is required.
5. This Order shall be rescinded if the US Army Corps of Engineers does not issue a section 404 permit.
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 upon Ecology's request for site inspections, monitoring, data collection to ensure compliance.
8. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to protect water quality. Further, Ecology retains jurisdiction to modify this order, if additional impacts due to project construction or operation are identified.
9. The Applicant shall ensure that all project engineers and contractors at the project site with responsibility for directing work have read and understand the relevant conditions of this Order and all referenced permits, approvals, and documents. Prior to commencing construction, the Applicant shall provide Ecology a signed statement from each project engineer and contractor that he or she has read and understands this Order's conditions and the referenced permits, plans, documents and approvals. (see Attachment A for an example)
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 herein.
11. 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

1. This Order does not authorize temporary exceedances of the turbidity standard beyond the limits established in WAC 173-201A.

2. If a "soldier pile" cofferdam is installed, BMP measures (sand bags, for example) shall be taken to isolate the River from the drilling and grout pour which is needed to anchor the piles. If a soldier pile cofferdam is not used, then the contractor shall submit the revised plan for isolation of the work area to Ecology for review before construction begins.

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. The Applicant shall periodically inspect and maintain all erosion control structures. Inspections shall be conducted no less than every seven (7) days from the start of the project to final site stabilization. Additional inspections shall be conducted after rainfall events greater than 0.5 inches per 24-hour period, to ensure erosion control measures are in working condition. These inspections shall be conducted within 24 hours after the event. Any damaged structures shall be responded to immediately. If it is determined during the inspection that additional measures are needed to control stormwater and erosion, such measures shall be implemented immediately. Inspections shall be documented in writing and shall be available for Ecology's review upon request.
5. 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 establish and maintain a designated area for washing down equipment and vehicles so that wash waters are managed and treated to avoid a violation of water quality standards.
6. Machinery and equipment used during construction shall be serviced, fueled, and maintained on uplands in order to prevent contamination to surface waters.

7. All excess excavated material shall be disposed of above the ordinary high water mark and shall be contained so as to prevent its re-entry into waters of the state.
8. Dewatering water that is not turbid may be discharged directly to the Klickitat River provided that:
 - o the waste water has not been in contact with raw concrete or other harmful material; and
 - o the water will meet all the water quality standards at the point of discharge.

D. Timing Requirements

This Order is valid for a time period as determined by the Corps of Engineer's umbrella 404 permit NWS-2009-214, unless otherwise rescinded by Ecology. Extension requests should be directed both to the Corps and Ecology.

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 seven (7) days prior to any preconstruction meetings, and seven (7) days prior to the start of construction at the project
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.

G. 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.
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.

H. 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 July 7, 2009 at Yakima, Washington.



Jeffrey Lewis, Section Manager,
Shorelands and Environmental Assistance Program
Department of Ecology, Central Regional Office
State of Washington