



STATE OF WASHINGTON  
**DEPARTMENT OF ECOLOGY**  
PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000  
TTY 711 or 800-833-6388 (for the speech or hearing impaired)

January 17, 2006

REGISTERED MAIL

Ron Berry  
Burlington Northern Santa Fe Railway Company  
4515 Kansas Avenue  
Kansas City, Kansas 66106-1199

RE: Water Quality Certification Order # 2985 for Corps Public Notice No. 200501107 to dredge up to 2000 cubic yards of material from the outlet of a culvert that is a stream crossing for Dog Creek under SR 14 and the BNSF Railroad. The dredged material will be disposed of in the Bonneville pool at a pre-determined location downstream of the dredged area.

On September 28, 2005, Washington State Department of Transportation (WSDOT), acting as the agent for Burlington Northern Santa Fe (BNSF) Railway Company, submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed SR 14 Dog Creek Culvert maintenance project. The proposed work entails dredging up to 2000 cubic feet of material that is partially blocking the culvert outlet that is the stream crossing for Dog Creek. The dredged material will be disposed of at a pre-determined location between 200 to 600 feet downstream of the dredging area and approximately 100 feet from the shoreline in the Bonneville Pool. The Dog Creek Culvert crosses under SR 14 at MP 55 72 and under the BNSF railroad at MP 65 7 in Skamania County, Washington.

On behalf of the State of Washington, Ecology certifies that the work proposed in the JARPA Ecology received on September 28, 2005 and the public notice complies with applicable provisions of Sections 301, 302, 303, 306, and 307 of the Clean Water Act, as amended, and other appropriate requirements of state law. This certification is subject to the conditions contained in the enclosed Order.



This letter also serves as a State Response to the Corps of Engineers Public Notice. The enclosed Order may be appealed by the following procedures described in the Order.

If you have any questions, please contact Penny Kelley, the Federal Project Manager for this project at 360-407-7298 or by e-mail at [pkel461@ecy.wa.gov](mailto:pkel461@ecy.wa.gov)

Sincerely,



Brenden McFarland, Section Manager  
Shorelands and Environmental Assistance Program

BM:pk  
Enclosure

Cc: Jim Green, Corps of Engineers  
David Richardson for Friends of the Columbia Gorge  
Scott Anderson, NOAA Fisheries  
Steve Willie, US Department of Fish & Wildlife  
Chuti Fielder, US Forest Service  
Candace Jochim, Department of Transportation  
Becky Michalezyn, Department of Transportation  
Michelle Guay, Department of Transportation  
Bill Weiler, Department of Fish & Wildlife  
Intermountain Resources for BNSF Railway  
Penny Keys, Ecology  
Loree' Randall, Ecology



**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 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. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 303, 306, and 307);
- 2) Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and other requirements of state law; 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 and Chapter 173-201A WAC, water quality certification is granted to the Burlington Northern Santa Fe Railway Company subject to the following conditions:

**A. General Conditions:**

1. For purposes of this Order, the term "Applicant" shall mean the Burlington Northern Santa Fe Railway Company, its agents, assignees, and contractors..
2. All submittals required by conditions of this Order shall be sent to Department of Ecology, Attn: Penny Kelley, Federal Project Manager – P.O.Box 47600, Olympia WA 98504-7600 or by e-mail at [pkel461@ecy.wa.gov](mailto:pkel461@ecy.wa.gov), with Order No. 2985 displayed.
3. Work authorized by this Order is limited to the work described in this JARPA received by Ecology on September, 28, 2005. 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. Ecology will determine within thirty (30) days of receipt of an updated JARPA if a modification of this Order is required..
5. This Order shall be withdrawn if the U.S. Army Corps of Engineers does not issue a 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 contractor foremen, and state and local government inspectors.
- 8 The Applicant's representative shall have adequate authority to ensure proper implementation of the Spill Prevention, Control and Countermeasures plan (SPCC Plan), as well as immediate corrective actions necessary because of changing field conditions. If the Applicant's representative issues a directive necessary to implement a portion of the SPCC or to prevent pollution to waters of the state, all personnel on site, including the contractor and the contractor's employees, shall immediately comply with this directive.
- 9.. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to comply with the state's water quality laws. Furthermore, 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 the public interest.
10. 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) per violation for each day of continuing noncompliance

**B. Water Quality Conditions:**

Certification of this proposal does not authorize the Applicant to exceed applicable sediment quality standards (Chapter 173-204 WAC) or state water quality standards (173-201A WAC) except as granted below in conditions 1-4.

**Short-term modification to Water Quality Standards**

- 1 The Bonneville Pool is part of the Columbia River which is classified as a Class A water, thus, the Class A water quality standards of 173-201A-030(2) apply, except as specifically modified by this order.
2. Consistent with WAC 173-201A-110, this order authorizes a short term modification to the turbidity standards for Class A waters by granting a temporary mixing zone where turbidity criteria may be exceeded. The short term modification only applies to dredging activities at the outlet of Dog Creek Culvert and to in-water disposal 200 to 600 feet downstream of the culvert outlet and approximately 100 feet from the shoreline.

3. The distance **granted for** a mixing zone is 1300 feet down stream at the point of dredging and 1300 feet **downstream** at the point of in-water disposal.
4. The shott term modification is **granted for** a total of 10 working days **occurring during** the month of February
5. Nothing in this certification shall absolve the Applicant **from** liability for contamination and any subsequent cleanup of **surface waters or** sediments occurring as a **result of** project construction **or** operations.

#### Monitoring

6. A water quality monitoring plan shall be developed and submitted to Ecology for **review and approval** 10 days **prior** to the start of dredging..
7. Water quality monitoring shall be conducted daily **during** dredging and in-water, disposal. Samples shall be collected during **dredging** at the specified locations in condition 8 when the loading capacity of the **barge** is at the halfway point  
Samples shall be collected during **in-water** disposal at the specified locations in condition 8 when **half of the dredged load** has been **deposited** at the **pre-determined** down stream location,
8. Sampling locations shall be upstream of the work **area**, 600 feet downstream, and at the edge of the mixing zone (1300 feet down stream) and at a depth of 3 feet below the surface
9. **Water quality monitoring results** shall be compiled and sent to Ecology's federal project **manager**, Penny Kelley, at P.O. Box 47600, Olympia WA 98504-7600 no later than 7 days **after** completing the in-water work.

#### C. Timing:

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

#### D. Notification Requirements:

1. Notification shall be made to Ecology's **Federal** Project Manager – Penny Kelley at 360-407-7298, Fax 360-407-6902, e-mail [pkel461@ecy.wa.gov](mailto:pkel461@ecy.wa.gov) or by mail at P.O.Box 47600, Olympia, WA 98504-7600 for the following activities:
  - At least 10 days **prior** to the onset of **any** work on site;
  - Immediately following a violation of the state **water** quality standards or conditions of **this Order**..

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

**E. Dredging and Disposal:**

In-water work

- 1 In-water work is subject to a fishery closure window described in Washington State Department of Fish and Wildlife's (WDFW) Hydraulic Project Approval (HPA). All in-water work shall be completed by the work window identified in the most current HPA issued for this project.
- 2 During excavation, each pass with the bucket shall be complete.
3. Dredged materials shall not be stockpiled in Dog Creek..
4. Work in or near waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.,
5. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state..

Equipment Staging & Maintenance

6. Equipment used during dredging and in-water disposal shall be serviced, fueled, and maintained on the barge in such a manner as to prevent contamination of surface waters. A spill containment kit shall be kept on the barge during in-water work.
- 7.. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state.
8. 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.

**F. Emergency/Contingency Measures Conditions:**

- 1.. The Applicant shall develop a spill prevention and containment plan for this project and shall have spill cleanup material available on site at all times during dredging and in-water disposal
- 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 immediately take the following actions:

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- 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 Southwest Regional Spill Response Office at (360)407-6300 and the Department of Fish and Wildlife of the nature of the problem, any actions taken to correct the problem, and any proposed changes in operations to prevent further problems.

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 Southwest Region Regional Spill Response Office at (360)407-6300

**Appeal Process:**

Any person aggrieved by Order # 2985 may obtain review thereof by appeal. Pursuant to Chapter 43.21B RCW, a person can appeal this Order to the Pollution Control Hearings Board within thirty (30) days of the date of receipt of this Order.

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:  
Washington Pollution Control Hearings Board  
4224- 6<sup>th</sup> Avenue SE, Rowe Six, Bldg. 2  
P.O. Box 40903, Lacey, WA 98504-0903

Your appeal must also be served on:  
, The Department of Ecology  
Appeals Coordinator,  
P.O. Box 47608, Olympia, WA 98504-7608

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In addition, please send a copy of your appeal to:  
Federal Project Appeal Coordinator  
Department of Ecology  
P.O. Box 47600, Olympia, WA 98504-7600.

*For additional information see 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 Jan 17, 2006 at Olympia, Washington

  
~~Brenden McFarland, Section Manager~~

Shorelands and Environmental Assistance Program  
Department of Ecology  
State of Washington