



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

15 West Yakima Avenue, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490

July 13, 2005

**CERTIFIED MAIL 7004 1160 0002 6157 3476**

U. S. Department of the Interior, Bureau of Indian Affairs  
Attn: Pierce Harrison, Project Administrator  
PO Box 220  
Wapato, Washington 98951

**RE: Order # 2594- Water Quality Certification for US Department of the Interior,  
Bureau of Indian Affairs; Wapato Irrigation Project**

Dear Mr. Pierce Harrison:

The request for certification for proposed work in wetlands and adjacent to the Yakima River has been reviewed. On behalf of the State of Washington, we **certify** that the proposed work, as conditioned by the enclosed Order, will comply 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 letter also serves as the State response to the Corps of Engineers.

This certification covers activities conducted within waters and adjacent uplands subject to jurisdiction of the State of Washington. This certification was developed in consultation with the Environmental Protection Agency, which will be issuing a separate 401 certification for this project's activities that are conducted within waters and adjacent uplands subject to **Yakama** Nation jurisdiction.

This certification is subject to the conditions contained in the enclosed Order. If you have any questions, please contact Catherine Reed at (509) 575-2616. Written comments can be sent to her at the Department of Ecology, Central Regional Office or at [craj461@ecy.wa.gov](mailto:craj461@ecy.wa.gov). The enclosed Order may be appealed by **following** the procedures described in the Order.

Sincerely,

**Jeff Lewis**, Section Manager  
Shorelands and Environmental Assistance Program

JL:CR:jw070509

Enclosure

cc: Corps of Engineers – Joe Brock  
WDFW – Eric **Bartrand**  
Yakima County – Dean Patterson  
Ecology SEA HQ – Penny Keys



**IN THE MATTER OF GRANTING** )  
**A WATER QUALITY** )  
**CERTIFICATION TO:** )  
U.S. Department of the Interior )  
    Bureau of Indian Affairs )  
in accordance with 33 U.S.C. 1341 )  
FWPCA §401, RCW 90.48.260 )  
and WAC 173-201A )

**ORDER # 2594**  
**[Corps number 200401331]**  
place 3,550 cubic yards of riprap  
within the ordinary high water mark  
to construct rock weirs associated  
with protection of Wapato Dam and  
enhancement of fish habitat

TO: U.S. Department of the Interior  
    Bureau of Indian Affairs  
    Attn: Pierce Harrison, Project Administrator  
    Post Office Box 220  
    Wapato, Washington 98951

On January 20, 2005, a public notice for a proposed water quality certification from the State of Washington was distributed for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401). The proposed project entails placement of 3,550 cubic yards of riprap within the ordinary high water mark to construct rock weirs and an access road in order to protect Wapato Dam from flood flow erosion, to improve fish passage, and to create juvenile salmonid rearing habitat.

The applicant proposes to lower the elevation of the earthen dike portion of the dam by 8.5 feet to create a spillway for high flows. To accomplish this, gravel upstream of the lowered dike area will be removed from an area outside the ordinary high water mark (OHWM), a rock weir would be constructed upstream of the dike, and the dike would be armored with rock. Also, rock weirs would be constructed on the island flood channel below the dam and within both the east and west channels within the OHWM, also downstream of the existing dam. There will be four rock weir structures placed within the OHWM of the east channel below the dam, and three rock weir structures placed within the OHWM of the west channel below the dam.

The applicant also proposes to divert water (10 to 20 cfs) from the east channel of the river into the flood channel on the island to create off-channel rearing habitat for juvenile fish. A channel approximately 10 feet wide by 400 feet long would be constructed in uplands to allow water to flow from the river into the flood channel. The diverted water would flow down the flood channel, 3,200 feet, and return to the Yakima River at the southern end of the island.

For purposes of this Order, the term "the Applicant" shall mean U.S. Department of the Interior Bureau of Indian Affairs and its agents and contractors

Work authorized by this Order is limited to the work described in the October 24, 2004 Joint Aquatic Resource Permit Application (JARPA), as amended on December 20, 2004, unless modified by other permit conditions.

**AUTHORITIES:**

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, and RCW 90.48.260, Ecology has investigated 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 with other appropriate 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.

**CONDITIONS OF ORDER # 2594 AND WATER QUALITY CERTIFICATION:**

In view of the foregoing, and in accordance with 33 U.S.C. 1341, 90.48.260 RCW and Chapter 173-201A WAC, water quality certification is granted to the U.S. Department of the Interior Bureau of Indian Affairs subject to the following conditions:

**A. No Impairment of Water Quality:**

- A.1. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (173-201A WAC) or sediment quality standards (173-204 WAC) beyond the limits established in 173-201A-110(3).
- A.2. The Yakima River (WRIA#37) are Class A waters of the state. Water quality criteria contained in 173-201A-030(1) WAC and 173-201A-040 WAC shall apply to this project, unless otherwise authorized by Ecology. This Certification does not authorize temporary exceedances of water quality standards beyond the limits established in 173-201A-110(3), except as outlined below in condition B2.
- A.3. This segment of the Yakima River has been identified on the Washington State's current 303(d) list as exceeding state water quality standards for turbidity. Certification of this project does not authorize the applicant to exceed the turbidity standard for Class A waters beyond the mixing zone described below at condition B2. Turbidity in Class A waters shall not exceed 5 NTU over background turbidity when turbidity is 50 NTU or less, or have more than a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. Furthermore, nothing in this certification shall absolve the Bureau of Indian Affairs/Yakama Nation from liability for contamination and any subsequent cleanup of surface waters or sediments **occurring** as a result of project construction or operations.

**B. Project Mitigation:**

B1. Impacts to aquatic resources shall be mitigated through measures described in the following documents, except as modified by this Certification:

- Yakima River Wapato Dam Flood Control Measures, Channel Stabilization and Habitat Enhancement prepared by Geomax (December 20,2004 revision)
- Biological Assessment report prepared by Eco-Northwest, dated March 2001
- Biologic Opinion report dated May 12,2003
- Environmental Assessment report dated November 2003
- Finding of No Significant Impact letter dated December 19,2003
- Wetlands evaluation letter dated May 26,2004
- Erosion and Sediment Control Plan dated May 5,2005
- Shoreline Exemption dated January 18,2005 (Yakima County Public Services)
- Hydraulic Project Approval (HPA) number ST-G1747-01, issued November 9, 2004
- Spill Prevention and Countermeasure Plan (May 25,2005)

Mitigation elements are more fully described in the above-referenced **document[s]** and are incorporated below as conditions of this Certification. Mitigation elements include the following:

- B.1. 1. Removal or destruction of overhanging bank vegetation shall be limited to that necessary for the construction of the project. Disturbed areas will be revegetated with native riparian species (native willows, cottonwoods, red osier dogwood, etc.) upon completion of construction.
- B.1.2 Native woody plants adapted to stream sides shall be established along all banks disturbed by this project. Plants shall be established immediately above the ordinary high water mark, spaced at a maximum interval of three feet (on center) and maintained as necessary for three years to ensure 80 percent survival.
- B.1.3. Big cottonwoods in all work areas shall be salvaged and transplanted with roots for re-vegetation of work areas once the work is complete. All disturbed areas shall be reseeded with native plants or grasses when work is completed.
- B.1.4. Every adult cottonwood tree (20-feet or taller) destroyed during floodplain construction activities will be replaced with rooted cottonwood stock at a ratio of 10 to 1. These rooted stock will be planted on pre-existing or constructed areas that exhibit the best possible growth conditions.

- B1.5. Native woody riparian plants (e.g. native willows, cottonwoods, red osier dogwood, etc. and/or woody cuttings of these trees and shrubs shall be planted in the weir keyway at the time of construction. This plant material shall extend into the water table and the keyway shall be backfilled with suitable material to support the growth of planted woody vegetation.
- B.1.6. Temporary sediment barriers shall contain all work areas as a last line of defense to prevent sediment and construction debris entering the ordinary high water area. Construction and maintenance of effective sediment barriers in the most waterward areas are required without exception.
- B.1.7. Entire perimeters of all sediment barriers shall be inspected at least once weekly and within 24 hours following any storm event with more than ½ inch cumulative rainfall. Repairs/restoration of failed barriers shall be completed within 24 hours.
- B.1.8. Sediments accumulated at sediment barriers on surfaces sloping directly into the ordinary high water area shall be removed and disposed of in an approved upland site, rather than 'stabilized.
- B.1.9. All earth areas adjacent to the watercourse which have been exposed or disturbed by this project are to be graded to a stable grade, seeded with a suitable erosion control seed mix which includes native grasses and forbs and protected from erosion with a straw mulch or equivalent within seven (7) days of project completion.
- B.1.10. The hydraulic systems of all equipment performing in-stream work will use commercially available "fish safe" biodegradable, non-toxic hydraulic fluid or vegetable oils.
- B.1.11. During construction of the rock drops and barbs, work will progress from the bank of the river towards the center and the excavator will travel on previously placed rocks.
- B2. In addition to conditions contained in the above-referenced documents, as modified in B.1. above, the following condition applies to all mitigation sites:
- Consistent with WAC 173-201A-100(7) and 173-201A-100(3) a mixing zone is established within which the turbidity standard is waived. The mixing zone is established to allow only temporary exceedances(s) of the turbidity criteria during and immediately after project construction. The temporary turbidity mixing zone shall be as follows:
- For waters up to 10 cfs flow at the time of construction, the point of compliance shall be 100 feet downstream from activity causing the turbidity exceedances.

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- For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be 200 feet downstream from activity causing the turbidity exceedances.
- For waters above 100 cfs flow at the time of construction, the point of compliance shall be 300 feet downstream from activity causing the turbidity exceedances.

B3. Water Quality Sampling and Monitoring:

- B3.1 During construction in upland areas, and within 24 hours after any storm event of greater than 0.5 inches of rain per 24 hour period, the contractor shall monitor the River for turbidity. Any areas of sediment discharge shall be reviewed for compliance with the Erosion and sediment control plan (May 5,2005) and .additional protection measures shall be taken if needed. Monitoring for turbidity shall take place at two locations: upstream of the construction area to obtain a background reference measurement and at the downstream edge of the point of compliance of the dilution zone (see B.2. above for appropriate distances).
- B3.2. During in-water River construction, monitoring for turbidity shall take place during the first hour after the start of in-water work and at least once each day approximately one hour before the completion of in-water work. Monitoring shall take place daily at three locations: upstream of the in-water work to obtain a background reference measurement; at one location down current of the point of construction within the dilution zone (in an area where redds are present if redds are present in this zone) and at one location at the downstream edge (point of compliance) of the dilution zone (see B2. above for appropriate distances).
- B3.3<sup>1</sup>
- B3.4 The locations of sampling points shall be recorded on a site map and the results of daily sampling shall be tabulated and forwarded to Department of Ecology on a weekly basis to Catherine Reed at e-mail [craj461@ecy.wa.gov](mailto:craj461@ecy.wa.gov), or fax at (509) 575-2809.

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<sup>1</sup> There is no B.3.3. condition. EPA will deal with water quality issues on the island and on the west bank of the River. In order to keep numbers of this order consistent with that of the EPA 401 certification, this condition number will be skipped in Ecology's document.

**C. Construction:**

**C1. Construction Stormwater and Erosion Control:**

Sediment and erosion control measures shall be employed to ensure sedimentation of adjacent areas does not occur. The contractor shall be responsible for monitoring and maintaining all erosion control measures regularly to assure that discharges of dredge or fill material are not placed outside of the permitted boundary and that water quality impacts to adjacent wetland and stream communities do not occur.

- C.1.1. Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (*e.g.*, hay bales, detention areas, filter fences, etc.), shall be in place before starting clearing, filling, and grading work at the impact sites.
- C.1.2. Applicable provisions of the Eastern Washington Stormwater Manual ([www.ecy.wa.gov/programs/wq/stormwater](http://www.ecy.wa.gov/programs/wq/stormwater)) shall be used as guidance to meet water quality standards for the Yakima River.
- C.1.3. Prior to clearing and grading, the work area shall be clearly identified with flagging tape or fencing. Brightly colored construction fencing or flagging shall be placed at no less than twenty-five foot (25') intervals.
- C.1.4. Adjacent river channel areas shall be protected **from** construction impacts. All project staff shall be trained to recognize construction fencing or flagging that identifies construction or staging boundaries. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be filled or otherwise impacted.
- C.2. During clearing and filling at the various project sites, Applicant shall take all necessary measures to minimize the alteration or disturbance of existing wetland and upland vegetation.
- C.3. 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.
- C.4. All temporary erosion and sedimentation control Best Management Practices (**BMPs**) shall be removed within 30 days after final soil stabilization is achieved. Trapped sediment shall be removed or stabilized on site.
- C.5. 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.

- C.6. No temporary stockpiling of excavated material shall occur in wetlands, wetland buffers or open water areas. All stockpiled material shall be placed in the designated and approved upland site identified in the Erosion and Sediment Control Plan dated May 5, 2005. The western edge of this stock pile area shall be sufficiently set back from the Yakima River and surrounded with siltation barriers to prevent sediment from leaving the site. The footprint of the stock pile area shall be clearly flagged.
- C.7. Notification: Applicant shall provide notice to Ecology at least 7 working days prior to beginning construction and within 7 days after completion of construction at each project site and mitigation site. Notification should be made to Catherine Reed by e-mail at [craj461@ecy.wa.gov](mailto:craj461@ecy.wa.gov) or telephone at (509) 575-2616.
- C.8. Clean Fill Criteria: Applicant shall ensure that fill placed for the proposed project does not contain toxic materials in toxic amounts.

**D. Emergency/Contingency Measures:**

- D1. In the event Applicant is unable to comply with any of the permit terms and conditions due to any cause, the Applicant shall:
- Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
  - Notify EPA and Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (509) 575-2490, and within 24 hours to Ecology's 401 permit reviewer (Catherine Reed) at (509) 575-2616.
  - Submit a detailed written report to EPA and Ecology within five (5) days that describes the nature of the violation, 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 Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

- D2. 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. No refueling of equipment shall occur over, or within 50 feet of creeks or wetlands.

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**E. General Conditions:**

- E1. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

All conditions in the following permits, approvals, and documents are incorporated herein and are specific conditions of this Order unless otherwise modified by this document:

SEPA Determination of Non-significance, and adoption of Existing Environmental Document; Washington Department of Fish and Wildlife (December 2, 2004)

- Hydraulic Project Approval (HPA) number ST-G1747-01, issued November 9, 2004
  - Shoreline Permit Exemption dated January 18, 2005 (Yakima County Public Services)
- E2. Applicant will be out of compliance with this Order if the project is constructed and/or operated in a manner not consistent with the project description contained in the Public Notice for certification, or as otherwise approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.
- E3. Applicant will be out of compliance with this Order and must reapply with an updated application if five years elapse between the date of the issuance of this certification and the beginning of construction and/or discharge for which the federal license or permit is being sought.
- E4. Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the public notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval prior to implementation of such action.
- E5. 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 foremen, and state and local government inspectors.

To avoid violations or non-compliance with this Order, Applicant shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects of this Order, the HPA, the NPDES permit, and any subsequent revisions or Ecology-approved plans.

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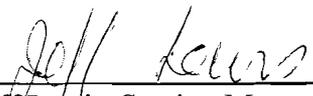
Applicant shall provide to Ecology a signed statement from each project manager and construction superintendent working at the project and mitigation sites that they have read and understand the conditions of the above-referenced permits, plans, and approvals. These statements shall be provided to Ecology no less than seven (7) days before construction begins at each project or mitigation site.

- E6. Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.
- E7. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines 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 the public interest.
- E8. Liability: 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.

**Appeal Process:**

Any person aggrieved by this Order may obtain review thereof by appeal, within thirty (30) days of receipt of this Order, to the Washington Pollution Control Hearings Board, P.O. Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Enforcement Section, and P.O. Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated July 12, 2005 at Yakima, Washington.

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