



Christine O. Gregoire

ATTORNEY GENERAL OF WASHINGTON

Ecology Division

629 Woodland Square Loop SE 4th Floor • Lacey WA 98503  
Mailing Address: PO Box 40117 • Olympia WA 98504-0117

June 30, 1999

Mr. Michael P. O'Connell  
Stoel Rives  
One Union Square Suite 3600  
600 University Street  
Seattle, WA 98101-3197

RE: Ecology Permits for Condit Dam Removal

Dear Michael:

I received your letter dated June 23 asking for confirmation of my comments made in a meeting between us in June 1998. I wrote informal comments titled "Condit Dam Removal Plan: Dept. of Ecology Permits w/ Relevant Cites," which you attached to your letter. These comments were intended to facilitate our discussion last year.

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In regard to WAC 173-201A-110, I have advised the Ecology Water Quality Program (Bob Barwin, CRO Yakima) to modify the regulation or adopt a new regulation to accommodate projects such as this one. The water quality standards now in effect do not account for projects the purpose of which is to restore habitat and improve long-term water quality. The federal Clean Water Act and the state's Water Pollution Control Act (RCW 90.48) authorize Ecology to give special consideration to projects with results beneficial to long-term water quality. Under this authority, Ecology may adopt a regulation designed to permit water quality impacts arguably not now permitted by the water quality standards. This rule adoption is roughly a two-year process. Water quality standards are routinely reviewed and revised by Ecology on a regular basis. Mr. Barwin and Mr. Luster are aware that the current regulations may not permit the proposed method of removal. The agency supports the concept of removing Condit Dam and hopes to work with PacifiCorp, the affected tribes, other agencies and the public to accomplish removal expeditiously.

This letter reflects the opinion of the author and is not an official expression Ecology policy. Please feel free to contact me or Bob Barwin directly (509-457-7107) if you have any additional questions.

Yours,

MARK C. JOBSON  
Assistant Attorney General  
(360) 459-6156

MCF:cc  
cc: Bob Barwin, Ecology CRO  
Tom Luster, Ecology SEAP HQ

DOE 0915

**CONFERENCE CALL**

**Date:** January 25, 2001

<b>Participants:</b>	Katherine Ransel	Gail Miller
	Neil Wise	Brian Barr
	Tim Weaver	Michael O'Connell <i>→ PC's Attorney</i>
	Brian Faller	

**Discussion:**

**Dept of Ecology Rule Revisions / 401 Certification**

- Discuss Ecology's proposed revisions to short-term modifications, water anti-degradation rules relating to dam removal coverage
- Michael O'Connell to circulate suggested revisions for review by the Settlement Agreement (SA) attorneys this week
- Brian Faller will check on Mark Hicks and Polly Zehm's schedule to arrange a conference call between Ecology and the SA attorney re Ecology's rule revisions
- Ecology's comment period on their rule revisions ends 2/16/01

**Next Conference Call**

- January 31, 2001 at 10:00 am
- Gail will arrange the call

**CZMA Review**

- New Rules to be discussed at 1/31 teleconference

**404 Permit**

- Research is ongoing regarding whether a Nationwide or individual Permit is applicable

**Federal Pre-emption of state and local permits**

- Some discussion occurred, but held over until the next conference call when Bob Nelson, Stoel Rives, could join the call

**Status of response to FERC AIR**

- PacifiCorp is on track to provide response to FERC by the January 29, 2001 deadline
- Consultants hired to assist with the Cultural Resource Management Plan and spoil site issues

**Implementation Team Meetings**

- Begin in March and conduct quarterly

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DOE 0997

**CONFERENCE CALL**

**Date:** January 31, 2001

<b>Participants:</b>	Barbara Scott-Brier	Tim Weaver
	Katherine Ransel	Gail Miller
	Brian Faller	Michael O'Connell
	Neil Wise	Bob Nelson

**Discussion:**

**Department of Ecology rule revisions**

- Discussion concerning Michael O'Connell's draft revisions to ensure the revisions cover dam removal
- Michael to re-draft document in preparation for a face-to-face meeting with Mark Hicks, Dept of Ecology
- Katherine Ransel, Michael O'Connell and Brian Faller to attend meeting with Ecology
- Katherine to let Michael know if a meeting with Ecology can occur on February 8

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**Pre-emption issue**

- The participants discussed FPA pre-emption issues as applied to Project removal under Condit Settlement Agreement
- PacifiCorp and Stoel Rives will continue to analysis of issue
- FERC staff stated in 1996 FEIS that FPA pre-empts Washington's Hydraulic Permit Approval as applied to the new license considered in 1996 FEIS according to Neil Wise

**CZMA**

- Ecology's position is that CZMA review is not required for project removal under Settlement Agreement because the project is outside the coastal zone, Ecology has not geographically described areas outside coastal zone in which it seeks review of FPA licensed projects, and Ecology had actual knowledge of application for amended license and potential impacts of Project removal on coastal resources but did not request CZMA review
- Local shoreline permits might be required if a CZMA review is applicable

*Grant Dam, re O'Connell attempt at draft,  
same rule.*

WAC 173-201A-070 Antidegradation. The antidegradation policy of the state of Washington, as generally guided by chapter 90.48 RCW, Water Pollution Control Act, and chapter 90.54 RCW, Water Resources Act of 1971, is stated as follows:

(1) Existing beneficial uses shall be maintained and protected and no further degradation which would interfere with or become injurious to existing beneficial uses shall be allowed. **No provision in this chapter is to be interpreted as suspending this basic protection; however, this provision is not intended to prevent the restoration of beneficial uses that existed prior to human-caused alteration of a waterbody.**

(2) Whenever the natural conditions of said waters are of a lower quality than the criteria assigned, the natural conditions shall constitute the water quality criteria.

(3) Water quality shall be maintained and protected in waters designated as outstanding resource waters in WAC 173-201A-080.

(4) Whenever waters are of a higher quality than the criteria assigned for said waters, the existing water quality shall be protected and pollution of said waters which will reduce the existing water quality shall not be allowed, except in those instances where:

(a) It is clear, after satisfactory public participation and intergovernmental coordination, that overriding considerations of the public interest will be served;

(b) All wastes and other materials and substances discharged into said waters shall be provided with all known, available, and reasonable methods of prevention, control, and treatment by new and existing point sources before discharge. All activities which result in the pollution of waters from nonpoint sources shall be provided with all known, available, and reasonable best management practices; and

(c) When the lowering of water quality in high quality waters is authorized, the lower water quality shall still be of high enough quality to fully support all existing beneficial uses.

(5) Short-term modification of water quality may be permitted as conditioned by WAC 173-201A-110.

[Statutory authority: Chapter 90.48 RCW 92-24-037 (Order 92-29), § 173-201A-070, filed 11/25/92, effective 12/26/92.]

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WAC 173-201A-110 Short-term modifications. The criteria and special conditions established in WAC 173-201A-030 173-201A-140 may be modified for a specific waterbody on a short-term basis when necessary to accommodate essential activities, respond to emergencies, or to otherwise protect the public interest, even though such activities may result in a temporary reduction of water quality conditions below those criteria and classifications established by this regulation. Such activities must be conditioned, timed, and restricted (i.e. hours or days rather than weeks or months) in a manner that will minimize water quality degradation to existing and characteristic uses. In no case will any degradation of water quality be allowed if this degradation significantly interferes with or becomes injurious to characteristic water uses or causes long-term harm to the environment. **It is recognized, however, that when conducting watershed restoration activities or other activities which will result in restoration of waterbody structures or environmental conditions (e.g., dam removal), it may sometimes be necessary to allow disturbances that cause significant impacts to waterbody structures and environmental conditions to levels that will provide greater benefits to the health of the aquatic system in the long-term.**

(1) A short-term modification may be issued in writing by the director or his/her designee to an individual or entity proposing the aquatic application of pesticides, including but not limited to those used for control of federally or state listed noxious and invasive species, and excess populations of native aquatic plants, mosquitoes, burrowing shrimp, and fish, subject to the following terms and conditions:

(a) A short-term modification will in no way lessen or remove the project proponent's obligations and liabilities under other federal, state and local rules and regulations.

(b) A request for a short-term modification shall be made to the department on forms supplied by the department. Such request shall be made at least thirty days prior to initiation of the proposed activity, and after the project proponent has complied with the requirements of the State Environmental Policy Act (SEPA);

\* 1 moved from here; text not shown

(d)(c) Appropriate public notice as determined and prescribed by the director or his/her designees shall be given, identifying the pesticide, applicator, location where the pesticide will be applied, proposed timing and method of application, and any water use restrictions specified in USEPA label provisions;

(e) The pesticide application shall be made at times so as to:

(i) Minimize public water use restrictions during weekends; and

(ii) Avoid public water use restrictions during the opening week of fishing season, Memorial Day weekend, Independence Day weekend, and Labor Day weekend;

(f) Any additional conditions as may be prescribed by the director or his/her designee.

(2) A short-term modification may be issued for the control or eradication of noxious weeds identified as such in accordance with the state noxious weed control

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law, chapter 17.10 RCW and Control of spartina and purple loosestrife, chapter 17.26 RCW. Short-term modifications for noxious weed control shall be included in a water quality permit issued in accordance with RCW 90.48.445, and the following requirements:

(a) Water quality permits for noxious weed control may be issued to the Washington state department of agriculture (WSDA) for the purpose of coordinating and conducting noxious weed control activities consistent with their responsibilities under chapter 17.10 and 17.26 RCW. Coordination may include noxious weed control activities identified in a WSDA integrated noxious weed management plan and conducted by individual landowners or land managers.

(b) Water quality permits may also be issued to individual landowners or land managers for noxious weed control activities where such activities are not covered by a WSDA integrated noxious weed management plan.

(3) The turbidity criteria established under WAC 173-201A-030 shall be modified to allow a temporary mixing zone during and immediately after necessary in-water or shoreline construction activities that result in the disturbance of in-place sediments. A temporary turbidity mixing zone is subject to the constraints of WAC 173-201A-100(4) and (6) and is authorized only after the activity has received all other necessary local and state permits and approvals, and after the implementation of appropriate best management practices to avoid or minimize disturbance of in-place sediments and exceedances of the turbidity criteria. A temporary turbidity mixing zone shall be as follows:

(a) For waters up to 10 cfs flow at the time of construction, the point of compliance shall be one hundred feet downstream from activity causing the turbidity exceedance.

(b) For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be two hundred feet downstream of activity causing the turbidity exceedance.

(c) For waters above 100 cfs flow at the time of construction, the point of compliance shall be three hundred feet downstream of activity causing the turbidity exceedance.

(d) For projects working within or along lakes, ponds, wetlands, estuaries, marine waters or other nonflowing waters, the point of compliance shall be at a radius of one hundred fifty feet from activity causing the turbidity exceedance.

(e) **Nothing in this chapter shall preclude the department from granting written authorizations for exceedance of turbidity criteria in accordance with this chapter.**

**\*\* 1 (e)(4)** A short-term modification shall be valid for the duration of the activity requiring modification of the criteria and special conditions in WAC 173-201A-030 through 173-201A-140, or for one year, whichever is less. Ecology may authorize a longer duration where the activity is part of an ongoing or long-term operation and maintenance plan, integrated pest or noxious weed management plan, waterbody or watershed management plan, ~~or restoration plan~~ **restoration plan or other activity which results in restoration of waterbody structures or environmental conditions**

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which existed prior to human-caused alteration of a waterbody. Such a plan must be developed through a public involvement process consistent with the Administrative Procedure Act (chapter 34.05 RCW) and be in compliance with SEPA, chapter 43.21C RCW, in which case the standards may be modified for the duration of the plan, or for five years, whichever is less;

[Statutory Authority: Chapter 90.48 RCW and 40 CFR 131, 97-23-064 (Order 94-19), § 173-201A-110, filed 11/18/97, effective 12/19/97. Statutory Authority: Chapter 90.48 RCW 92-24-037 (Order 92-29), § 173-201A-110, filed 11/25/92, effect 12/26/92.]

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----- COMPARISON OF FOOTERS -----

-FOOTER 1-  
Seattle-3090399.2 0058815-00059

-FOOTER 2-  
Seattle-3090399.2 0058815-00059

Seattle-3090399.2 0058815-00059