

POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

U.S. Army Corps of Engineers

Appellant,

v.

Washington Department of Ecology

Respondent.

NOTICE OF APPEAL

**1. Appellant**

The appealing party is:

U.S. Army Corps of Engineers  
Northwestern Division  
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The U.S. Army Corps of Engineers is represented by:

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**2. Name of the agency, or local air authority, health department or conservation district  
whose decision is being appealed**

The respondent in this appeal is the Washington State Department of Ecology  
("Ecology").

### **3. Name of applicant**

The identified applicant in Ecology's 401 Water Quality Certification ("401 certification") is the Environmental Protection Agency ("EPA"). However, the U.S. Army Corps of Engineers ("Corps") is the applicant for the National Pollutant Discharge Elimination System (NPDES) permits that trigger the need for the 401 certifications. The Corps is identified as the permittee in the 401 certifications.

### **4. Decision Under Appeal**

This is an appeal of the 401 certification, Order No. 18146, Bonneville Project located near Cascade Locks, Oregon (NPDES Permit No. WA0026778), issued by Ecology on May 7, 2020. A copy of this 401 certification and Ecology's accompanying letter to EPA is attached (Attachment 1). As of the date of this appeal, the Corps has not received a copy of EPA's request for this 401 certification from either EPA or Ecology. The Corps does, however, have copies of the draft NPDES permits that triggered the need for the 401 certification, and have attached them (Attachment 2). The Corps has also attached its comments on the draft NPDES permits (Attachment 3). The Corps will amend its appeal to add the request if it obtains that document from either Ecology or EPA.

The Corps requests the Presiding Officer consolidate the appeals for the following eight (8) 401 certifications issued by Ecology for the NPDES permits for the four lower Snake River dams and four lower Columbia River dams, in accordance with WAC 371-08-390(9). Consolidation will expedite disposition of the appeals, avoid duplication of testimony, and will not prejudice the rights of the parties.

a. Order No. 18146, Bonneville Project located near Cascade Locks, Oregon (NPDES Permit No. WA0026778).

- b. Order No. 18143, The Dalles Lock and Dam located near The Dalles, Oregon (NPDES Permit No. WA0026701).
- c. Order No. 18145, John Day Project located near Rufus, Oregon (NPDES Permit No. WA0026832).
- d. Order No. 18144, McNary Lock and Dam located near Umatilla, Oregon (NPDES Permit No. WA0026824).
- e. Order No. 18149, Ice Harbor Lock and Dam located near Burbank, Washington (NPDES No. WA0026816).
- f. Order No. 18150, Little Goose Lock and Dam located near Dayton, Washington (NPDES Permit No. WA0026786).
- g. Order No. 18147, Lower Granite Lock and Dam located near Pomeroy, Washington (NPDES Permit No. WA0026794).
- h. Order No. 18148, Lower Monumental Lock and Dam located near Kahlotus, Washington (NPDES Permit No. WA0026808).

**5. Short and plain statement of the grounds for the appeal**

Section 301 of the Clean Water Act (CWA), 33 U.S.C. § 1311, prohibits the discharge of any pollutant by any person, including a federal agency, except in compliance with, *inter alia*, an NPDES permit under 33 U.S.C. § 1342. Section 401 of the CWA provides that an applicant for a Federal license or permit (which would include an NPDES permit issued by EPA), must provide the permitting agency a water quality certification from the State “that any such discharge will comply” with certain enumerated CWA provisions, as well as with certain applicable effluent limitations. 33 U.S.C. § 1341(a). The Corps acknowledges the important State role in issuing certifications, but cannot accept those conditions that conflict with

Congress' intent in authorizing the Corps to construct and operate these multi-purpose projects on the mainstem of the Lower Columbia and Snake Rivers. The eight 401 certifications contain largely identical conditions, with the exception of some location-specific information. The challenged 401 certifications contain conditions that appear to conflict with federal law that requires the Corps to operate and maintain eight dams for their authorized purposes. To the extent that the 401 certifications prevent the Corps from continuing to operate and maintain the dams in accordance with federal law, the 401 certifications conflict with federal law and are therefore unjust and unlawful. *See, e.g.*, 33 U.S.C. § 1371(a) (prohibiting States from imposing conditions in 401 certifications that could be construed as “limiting the authority or functions of any officer or agency of the United States under any other law or regulation not inconsistent with [the CWA]” or “affecting or impairing the authority of the Secretary of the Army . . . to maintain navigation”). In addition, to the extent that the conditions in the 401 certification are inconsistent with federal law, the conditions are unjust and unlawful. Accordingly, to the extent that the following conditions in each 401 certification (which would be incorporated into an NPDES permit) would require the Corps to take actions not in accordance with federal law, or to prevent the Corps from taking actions required by federal law, such conditions conflict with federal law and are unjust and unlawful. Furthermore, to the extent the conditions in each 401 certification do not state what the conditions require the Corps to do or prevent the Corps from doing, the conditions are impermissibly vague and, thus, unjust and unlawful. Further, in one condition, Ecology does not cite an appropriate requirement of state law for the requirement and, therefore, the condition is unjust and unlawful.

a. **Scope of the 401 Certification Conditions.** As stated above, Section 401(a)(1) of the CWA requires any applicant for a federal license or permit to provide the permitting

federal agency with a certification from the State that *the discharge* will comply with certain other CWA provisions, as well as with certain applicable effluent limitations. 33 U.S.C. § 1341(a)(1) (emphasis added). Similarly, EPA's current regulations (1971) state the 401 certification must include "[a] statement of any conditions which the certifying agency deems necessary or desirable with respect to *the discharge* of the activity[.]" 40 C.F.R. §121.2(a)(4) (emphasis added). The 401 certifications issued by Ecology in this case, however, are intended to regulate aspects of the dam and reservoir projects as a whole, not just the discrete point source discharges (outfalls) that are the subject of the NPDES permits. Ecology's 401 Certification Orders state:

In addition to the conditions of the NPDES permit, this Certification establishes conditions necessary to protect water quality in the river flow, including the dam forebay and pool, spill and generation tailrace water, and flow through fish passage structures that shall be incorporated into the final permit.

The Corps acknowledges EPA's current regulations (1971) also require the certification to include "A statement that there is a reasonable assurance that *the activity* will be conducted in a manner which will not violate applicable water quality standards[.]" 40 C.F.R. §121.2(a)(3) (emphasis added). Note that §121.2(a)(3) does not mention conditions, only a statement. The Corps is aware the U.S. Supreme Court has interpreted paragraph 121.2(a)(3) as a reasonable interpretation of Section 401. See *PUD No. 1 of Jefferson Cnty. v. Wash. Dep't of Ecology*, 511 U.S. 700, 712 (1994) ("EPA's conclusion that *activities* -- not merely discharges -- must comply with state water quality standards is a reasonable interpretation of § 401, and is entitled to deference.") (emphasis in original). However, it is important to note that this case involved Federal Energy Regulatory Commission (FERC) licensing of a new non-federal hydroelectric facility. The "activity" receiving a federal license in that case from FERC was for construction and/or operation of the facility as a whole. It was, therefore, arguably reasonable for the 401

certification in that case to assume a similar scope and for the Supreme Court to uphold the State's decision. The subject 401 certifications in this matter, however, involve Section 402 NPDES permits for discrete point-source discharges (outfalls) at existing federal hydropower projects. The NPDES permits are not intended to regulate the projects as a whole and the 401 certifications should likewise assume a similar regulatory scope. *See, e.g., Port of Seattle v. Pollution Control Hearings Bd. (PCHB)*, 151 Wash. 2d. 568, 612 (2004) (holding "PCHB erroneously interpreted and applied the law when it required that the Port do more than offset the impact of the third runway"). The unreasonably broad scope of the 401 certifications are, therefore, unjust and unlawful.

b. **Water Quality Standards Attainment.** Conditions B.2.a, B.2.c, and B.2.d, which are included under the heading, "Water Quality Standards Attainment," appear to impose requirements intended to address water quality concerns that are related to the existence of the hydroelectric dams and nonpoint source pollution, as opposed to water quality concerns related to the point source discharges of pollutants that will be authorized by the NPDES permits in connection with the discretionary operation and maintenance of the projects as required by federal law. Condition B.2.a imposes the requirement that the Corps "must implement temperature control strategies and meet the load allocations in the Columbia and Lower Snake Rivers Temperature Total Maximum Daily Load [TMDL] once issued." The TMDL was issued on May 18, 2020. Condition B.2.c. requires the Corps to develop a water quality attainment plan (WQAP). Condition B.2.d. requires a progress report for approval in year 6 and a summary report 9 years after the permit's effective dates, both presumably for the WQAP requirement in condition B.2.c. The primary temperature effects associated with the dams result from the existence of the physical structures in the rivers and the resultant pooling of the water upstream

of the structures or from nonpoint discharge sources from upstream of the dams, not from regulated point source discharges of heat from cooling water discharges of these mainly run-of-river dams. In upholding the District Court's opinion that the "navigation exception" in 33 U.S.C. § 1371(a) created an exception to the waiver of sovereign immunity, the U.S. Court of Appeals for the Eighth Circuit held a state "cannot enforce its water quality standards against . . . a federal agency, unless Congress has unequivocally waived the federal government's sovereign immunity from suit." *In re: Operation of the Missouri River Sys.*, 418 F.3d 915, 917 (8th Cir. 2009) (citation omitted). The CWA's waiver of sovereign immunity provides that federal agencies engaged in certain activities "shall be subject to, and comply with, all . . . State . . . and local requirements . . . respecting the control and abatement of water pollution in the same manner, and to the same extent as any nongovernmental entity . . ." 33 U.S.C. § 1323(a). This requires that "the discretionary operations of the dams...comply with state water law standards." *Nat'l Wildlife Fed'n v. U.S. Army Corps of Engineers*, 384 F.3d 1163, 1178 (9th Cir. 2004). However, if "state regulatory exceedances occur as a result of water impoundment required for operation of the federal dams, despite good-faith and diligent efforts of the Corps to do all that is feasible to avoid such exceedances," those exceedances cannot be "construed as a violation of the CWA." *Id.* at 1179. As the Ninth Circuit has recognized, "[t]he CWA's directive to federal agencies requiring compliance with state water standards must be construed *in pari materia* with the River Harbor Act's [sic] directive that the dams be built in the first instance." *Id.* at 1178. To the extent conditions B.2.a, B.2.c, and B.2.d violate these or other principles of federal law, including without limitation the CWA, they are unjust and unlawful.

c. **Total Dissolved Gas.** Condition B.2.b would require the Corps to comply with the total dissolved gas (TDG) standards. The Corps' operations generally comply with TDG

standards, but there are certain situations, including without limitation, high river flows, that result in releases of water that cause exceedances of the TDG standards. Such releases that are required for operation of the dams and result in exceedances that are not feasible to avoid are not subject to the standards. *See Nat'l Wildlife Fed'n*, 384 F.3d at 1178–79. Accordingly, Condition B.2.b is unjust and unlawful.

d. **Best Management Practices (BMP) Plan.** Condition B.4 would require a more quantitative approach to BMPs than included in the draft NDPEs permits and the use of adaptive management that is not included in the draft NPDES permits. In the Corps' comments to EPA on the draft NPDES permits, the Corps has requested the removal of the BMP requirement because it is unnecessary. Condition B.4 is similarly unnecessary and inappropriate here. In addition, it is unclear how EPA will provide greater quantification, sampling, and data analysis in BMPs and incorporate adaptive management into the existing BMP framework and whether these changes would impact BMPs for any particular pollutants. This requirement is vague and provides no standard to determine what is required. Accordingly, Condition B.4 is unjust and unlawful.

e. **Environmentally Acceptable Lubricants (EAL).** Condition B.5 would add the requirement that the feasibility of using EALs must be consistent with the "state's interpretation of technical feasibility." EPA provided a definition of technical infeasibility in the draft NPDES permits. Ecology did not provide the State's definition of "technical infeasibility." Ecology is not a dam operator and does not have experience or expertise in maintaining the safety of these projects, nor the knowledge or expertise of EALs that the Corps and EPA do. This requirement is vague and provides no standard to determine what is required. Accordingly, Condition B.5 is unjust and unlawful.

f. **PCB Management Plan.** Condition B.6 would add the requirement that Ecology review and approve the initial PCB management plan. In its comments to EPA on the draft NPDES permits, the Corps requested removal of the PCB management permit condition because there is no reason to believe that the permitted discharges/outfalls may include PCBs in the future. Similarly here, the requirements are not justified, and are unnecessary and overly burdensome, especially because the permits specifically prohibit the discharge of PCBs and there is no reason to believe the permitted discharge points will discharge PCBs. Accordingly, Condition B.6 is unjust and unlawful.

g. **Cooling Water Intake Structures.** Condition B.7 would impose requirements related to cooling water intake structures (CWIS), which are regulated under Section 316(b) of the CWA (33 U.S.C. § 1326(b)) and EPA's implementing regulations at 40 C.F.R. §§125.90–.98. CWA Section 316(b) and EPA's implementing regulations are intended to minimize the adverse environmental impacts (impingement and entrainment of fish and shellfish) associated with a CWIS. Ecology has added a number of more stringent requirements than EPA's draft NPDES permits, including the requirement for additional information to enable Ecology to concur with EPA's best technology available (BTA) determination, a reopener provision if Ecology does not agree with EPA's BTA determination (see Section h, below), and the development of an operation and maintenance manual. In its comments to EPA on the draft NPDES permits, the Corps requested removal of any CWIS requirements. Condition B.7 is similarly unnecessary and inappropriate here. In addition, under Section 401(d) of the CWA, a certification may include requirements necessary to comply with specified provisions of the CWA (which do not include CWA Section 316) and an "appropriate requirement of State law." 33 U.S.C. § 1341(d). Per EPA regulations, when the State adds more stringent conditions in the 401 certification, "the

certifying State agency shall cite the CWA or State law references upon which that condition is based. Failure to provide such a citation waives the right to certify with respect to that condition[.]” 40 C.F.R. § 124.53(e)(2). As discussed further below, the State has not cited an appropriate requirement of State law. Condition B.7 is unjust or unlawful for the following reasons:

i. EPA’s implementing regulations for Section 316(b) were not intended to apply to hydroelectric facilities. In the draft NPDES permits, EPA concluded that the Best Professional Judgment (BPJ) rule is a standard applicable to existing hydroelectric facility point sources. However, in EPA’s proposal to promulgate the existing facility rules, including the Best Professional Judgment (BPJ) rule, EPA explained that “hydro-electric plant withdrawals for electricity generation are not cooling water uses and are not addressed by today’s proposal.”<sup>1</sup> Consistent with this understanding, EPA did not evaluate control technology feasibility for hydroelectric dams in the rulemaking process. The final existing facility rules accordingly found the potential impact of the rules on hydroelectric generation capacity to be “NA.”<sup>2</sup>

ii. The requirements included in EPA’s regulations implementing Section 316(b) are established through the NPDES permits. 40 C.F.R. § 125.90(a). The State has not been delegated NPDES permitting authority for federal facilities, nor otherwise has the authority to require compliance with Section 316(b) or EPA’s implementing regulations.

iii. Section 316 of the CWA is not one of the listed statutory provisions in Section 401(d) of the CWA for which Ecology may condition a 401 certification. Nor is Section

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<sup>1</sup> National Pollutant Discharge Elimination System—Proposed Regulations for Cooling Water Intake Structures at Existing Facilities and Phase I Facilities, 76 Fed. Reg. 22,174, 22,190 (Apr. 20, 2011).

<sup>2</sup> National Pollutant Discharge Elimination System-Final Regulations To Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities, 79 Fed. Reg. 48,300, 48,395 (Aug. 15, 2014) (Ex. IX-11).

316 referred to anywhere else in Section 401 of the CWA.

iv. The requirements from EPA in the draft NPDES permit and those contained in the 401 certifications overlap and may conflict with the legal requirements related to compliance with the Endangered Species Act (ESA) that the Corps, and its fellow action agencies, implement following consultation with the U.S. Fish and Wildlife Service and NOAA's National Marine Fisheries Service on the Columbia River System. EPA and Ecology do not have a role in the ESA consultation or implementation of the action that results from that consultation.

v. Ecology fails to cite to an appropriate requirement of State law for which Ecology may condition a 401 certification under Section 401(d). Ecology cites to RCW 90.48.080 ("Discharge of polluting matter in waters prohibited"), which provides:

It shall be unlawful for any person to throw, drain, run, or otherwise discharge into any of the waters of this state, or to cause, permit or suffer to be thrown, run, drained, allowed to seep or otherwise discharged into such waters any organic or inorganic matter that shall cause or tend to cause pollution of such waters according to the determination of the department, as provided for in this chapter.

This statute pertains to the discharge of pollution and not the impingement or entrainment of fish and shellfish by a CWIS. On its face, RCW 90.48.080 applies to the "discharge" of "any organic or inorganic matter that shall cause or tend to cause pollution," and so it is unlawful for Ecology to base a condition intended to minimize fish impingement and entrainment on a state law focusing exclusively on the discharge of matter that causes pollution. Accordingly, Condition B.7 is unjust and unlawful.

h. **Reopeners or Modification Provisions.** Condition A.1 states that Ecology "retains continuing jurisdiction to make modifications hereto through supplemental orders, 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.” Condition B.7.c states that “Ecology reserves the right to reopen this certification in the event we do not agree with EPA’s BTA determination[.]” However, Ecology cannot unilaterally modify the certification. Per EPA regulations, “The certifying agency may modify the certification in such manner as may be agreed upon by the certifying agency, the licensing or permitting agency, and the Regional Administrator.” 40 C.F.R. § 121.2(b). The only grounds under which Ecology may be able to unilaterally modify the certification is “[i]f there is a change in the State law or regulation upon which a certification is based, or if a court of competent jurisdiction or appropriate State board or agency stays, vacates, or remands a certification[.]” 40 C.F.R. § 124.55(b). Accordingly, Conditions A.1 and B.7.c are unjust and unlawful.

i. **Civil Penalties.** The Corps objects to inclusion of General Condition A.7 under the Water Quality Certification Conditions stating “Failure of any person or entity to comply with this Certification may result in the issuance of civil penalties or other action, whether administrative or judicial, to enforce the terms of this Certification.” The waiver of federal immunity in Section 313 of the Clean Water Act (33 U.S.C. 1323) did not clearly and unambiguously waive immunity from state imposed civil penalties. *See United States Dep’t of Energy v. Ohio*, 503 U.S. 607 (1992).

#### 6. **Clear and concise statement of facts for grounds for appeal**

Congress authorized the construction and operation of the eight projects which are the subject of the 401 certifications at issue in this notice through a variety of laws including the National Industrial Recovery Act of 1933 (Bonneville Dam), Rivers and Harbors Act of 1935 (Bonneville Dam), Bonneville Project Act (Bonneville Dam), Rivers and Harbors Act of 1945

(McNary, Ice Harbor, Lower Monumental, Little Goose, and Lower Granite dams), and the Flood Control Act of 1950 (The Dalles and John Day dams). Construction of these facilities was completed from 1938 to 1975. In 2014, the Corps submitted NPDES permit applications to EPA for discharges of pollutants from outfalls at the eight hydroelectric facilities, which are the subject of the 401 certifications at issue in this notice. Although EPA has delegated Ecology authority to issue certain NPDES permits, EPA has retained authority to issue NPDES permits for federally-owned facilities and permits on tribal lands in the State of Washington. The Corps' applications sought authorization for discharges of certain pollutants (such as oil, grease, and heat (from the discharge of cooling water)) from outfalls. On March 18, 2020, EPA issued draft NPDES permits for public comment for discharges of pollutants from these eight hydroelectric facilities. As EPA stated in its Fact Sheet, the "proposed permits address wastewater discharged from outfalls[.]" However, "[t]he permits do not address waters that flow over the spillway or pass through the turbines." Fact Sheet at 18. The public comment period closed May 4, 2020, and the Corps submitted comments recommending changes to the draft permits. EPA has not yet issued final permits.

Also on March 18, 2020, EPA requested CWA Section 401 certification from Ecology. On March 23, 2020, Ecology issued a public notice seeking comments "on EPA's request [for 401 certification], in relation to water pollution control considerations[.]" The Corps' submitted comments to Ecology on proposed Section 401 certifications on April 10, 2020 (Attachment 4). In that comment letter, the Corps requested an opportunity to provide input on any proposed conditions and explained its intent "to work collaboratively with Ecology on the conditions that you are anticipating including in the Section 401 Certification to ensure that they are implementable." Ecology did not publish or otherwise provide the Corps a draft 401 certification

for review. Ecology issued the final 401 certifications through Orders dated May 7, 2020. The Orders do not cite or provide responses to any comments received. The 401 certifications add numerous additional and more stringent requirements above and beyond the draft NPDES permits. As stated in the 401 certifications, “In addition to the conditions of the NPDES permit, this Certification establishes conditions necessary to protect water quality in river flow, including the dam forebay and pool, spill and generation tailrace water, and flow through fish passage structures that shall be incorporated[] into the final permit.” Attachment I at 1 (footnote omitted).

The 401 certifications identify EPA as the “applicant” even though the Corps is the applicant for the federal permit at issue. Section 401 of the CWA refers to the applicant as the “applicant for a Federal license or permit.” 33 U.S.C. § 1341(a), (d); *see also* 40 C.F.R. § 124.53(d) (“The State shall send a notice of its action, including a copy of any certification, to the applicant and the Regional Administrator”).

While Ecology previously has issued certifications for non-federal hydroelectric facilities, in those situations the federal permit or license triggering the need for a 401 certification was a license to be issued by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act. A FERC license authorizes a licensee to construct and operate a hydroelectric project (original license) or to continue operating an existing project (relicense) for up to 50 years. Here, in contrast to the federal NPDES permits that prompt the need for the 401 certifications, these permits do not authorize the construction or operation of the federal hydroelectric facilities. Instead, Congress specifically authorized the construction and operation of these hydroelectric dams decades ago. The NPDES permits authorize the discharge of pollutants from outfalls.

To the extent that the 401 certifications are construed as preventing the Corps from continuing to operate and maintain the dams in accordance with federal law, the 401 certifications are invalid. Similarly, to the extent that conditions in each 401 certification incorporated into an NPDES permit require the Corps to take actions not in accordance with federal law, or prevent the Corps from taking actions required by federal law, such conditions are invalid. In addition, to the extent that the conditions in each 401 certification are inconsistent with federal law, including without limitation the CWA, its implementing regulations, and related caselaw, the conditions are unjust and unlawful. Furthermore, to the extent that the conditions in the 401 certifications do not provide a standard that specifies what is required for compliance, the conditions are unjust and unlawful and should be set aside]. Further, as noted earlier, under Section 401(d) of the CWA, a certification may include requirements necessary to comply with an “appropriate requirement of State law.” 33 U.S.C. § 1341(d). Per EPA regulations, when the State adds more stringent conditions in the 401 certification, “the certifying State agency shall cite the CWA or State law references upon which that condition is based. Failure to provide such a citation waives the right to certify with respect to that condition[.]” 40 C.F.R. § 124.53(e)(2). To the extent the conditions fail to cite an appropriate requirement of State law, they should be set aside.

#### **7. Relief Requested.**

With respect to the scope of the 401 certification, Appellant requests the Board issue an Order invalidating the subject 401 Certification and remand it to Ecology with the direction to: re-write the 401 Certification with appropriate conditions focused on the permitted discharges; issue the 401 Certification without conditions; or explicitly waive certification.

With respect to conditions B.2.a, B.2.c, and B.2.d. (Water Quality Attainment), Appellant

requests that the Board set aside these conditions as unjust and unlawful, at least to the extent that they apply to the existence of the dams, the nondiscretionary operation of the dams, or nonpoint source pollution. In the alternative, Appellant requests that the Board clarify that the conditions shall not be construed as requiring the Corps to (a) take actions that are in conflict with federal law, or (b) refrain from actions that are necessary in accordance with federal law.

With respect to condition B.2.b (TDG), Appellant requests that the Board issue an Order striking this condition as unjust and unlawful, at least to the extent that it applies to the existence of the dams, the nondiscretionary operation of the dams, or nonpoint source pollution.. In the alternative, Appellant requests that the Board clarify that the condition shall not be construed as requiring the Corps to (a) take actions that are in conflict with federal law, or (b) refrain from actions that are necessary in accordance with federal law.

With respect to condition B.4. (BMP Plan), Appellant requests that the Board issue an Order striking this condition in its entirety as unjust and unlawful.

With respect to condition B.5. (EALs), Appellant requests that the Board issue an Order directing striking the language “and concurs with the state’s interpretation of technical infeasibility” from the condition.

With respect to condition B.6. (PCB Management Plan), Appellant requests that the Board issue an Order striking this condition in its entirety as unjust and unlawful.

With respect to condition B.7. (Cooling Water Intake Structures), Appellant requests that the Board issue an Order striking this condition in its entirety as unjust and unlawful.

With respect to conditions A.1. and B.7.c., Appellant requests that the Board issue an Order striking these conditions in their entirety as unjust and unlawful.

Respectfully submitted this 8th day of June 2020.



ROBERT D. ESKILDSEN, JR.  
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Attorney for Respondent U.S. Army Corps of  
Engineers

CERTIFICATE OF SERVICE

I, Robert D. Eskildsen, Jr., certify and declare:

On the date given below, I caused to be served the above document in the manner noted upon the following:

Department of Ecology	<input checked="" type="checkbox"/> Via 1st Class U.S. Mail
Attn: Appeals Processing Desk	<input type="checkbox"/> Via Fax
PO Box 47608	<input checked="" type="checkbox"/> Via Email
Olympia, WA 98504-7608	<input type="checkbox"/> Via Hand Delivery

United States Environmental Protection Agency	<input checked="" type="checkbox"/> Via 1st Class U.S. Mail
Region 10	<input type="checkbox"/> Via Fax
1200 Sixth Avenue, Suite 155 (MC:19C09)	<input checked="" type="checkbox"/> Via Email
Seattle, WA 98101	<input type="checkbox"/> Via Hand Delivery

Pollution Control Hearings Board	<input checked="" type="checkbox"/> Via 1st Class U.S. Mail
PO Box 40903	<input type="checkbox"/> Via Fax
Olympia, WA 98504-0903	<input checked="" type="checkbox"/> Via Email Filing
	<input type="checkbox"/> Via Hand Delivery

I certify under penalty of perjury pursuant to the laws of the State of Washington that the foregoing is true and correct.

SIGNED in Walla Walla, WA this 8th day of June, 2020.

  
ROBERT D. ESKILDSEN, JR.  
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