



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600, Olympia, WA 98504-7600 • 360-407-6000

February 9, 2023

WA Department of Transportation
ATTN: Ruth Park
PO Box 330310
Seattle, WA 98133-9710

Re: Water Quality Certification Order No. **21568** (Corps No. **NWS-2022-0757-DOT**),
SR 20 Unnamed Tributary to Red Creek Fish Passage, Skagit County, Washington

Dear Ruth Park:

On December 14, 2022, WA Department of Transportation (WSDOT) submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the SR 20 Unnamed Tributary to Red Creek Fish Passage project in Skagit County, Washington.

On behalf of the state of Washington, the Department of Ecology certifies that the work described in the Water Quality Certification Request and supplemental documents 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 enclosed Water Quality Certification Order (WQC Order).

Please ensure that anyone doing work under this WQC Order has read, is familiar with, and is able to follow all of the provisions within the attached WQC Order.

If you have any questions about this decision, please contact Penny Kelley at 360-280-8856. The enclosed WQC Order may be appealed by following the procedures described within.

Sincerely,

Brenden McFarland, Section Manager
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program

WQC Order No. 21568, Corps No. NWS-2022-0757-DOT
Aquatics ID No. 142082
February 9, 2023
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By certified mail: 9489 0090 0027 6383 9285 31

Sent via e-mail: ParkRE@wsdot.wa.gov

Enclosure

E-cc: Nicole Evans, U.S. Army Corps of Engineers
Jason Lewis, WSDOT
Joelle Blais, WSDOT
Kristie Dunkin, WSDOT
Loree' Randall, Ecology
Caroline Corcoran, Ecology
ECYREFEDPERMITS@ecy.wa.gov

IN THE MATTER OF GRANTING A)	WQC ORDER No. 21568
WATER QUALITY CERTIFICATION TO)	Corps Reference No. NWS-2022-0757-DOT
WA Department of Transportation)	<i>Replace an existing culvert with a larger, fish</i>
pursuant to 33 U.S.C. 1341 (FWPCA §)	<i>passage culvert on SR 20, MP 69.08, on an</i>
401), RCW 90.48.120, RCW 90.48.260 and)	<i>unnamed tributary to Red Creek in Skagit</i>
Chapter 173-201A WAC)	<i>County, Washington</i>

WA Department of Transportation
 Attn: Ruth Park
 PO Box 330310
 Seattle, WA 98133-9710

On December 14, 2022, the WA Department of Transportation (WSDOT) submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the SR 20 Unnamed Tributary to Red Creek Fish Passage in Skagit County, Washington. The following required processing dates are referenced below:

- On October 21, 2022, WSDOT submitted a pre-filing meeting request.
- On October 3, 2022, the U.S. Army Corps of Engineers (Corps) sent an email notification to Ecology that they are reviewing the project for authorization under Nationwide Permit No. 14.
- On January 10, 2023, Ecology issued a public notice for the project.

This project proposes to replace and an existing 18-inch x 50-foot-long concrete culvert under SR 20 with a 11-foot-wide x 42-foot-long split box culvert and wingwalls carrying an un-named tributary to Red Creek. A temporary road bypass will be constructed on the northside of SR 20 to keep traffic moving through the area. If the stream is flowing at the time of construction, a temporary bypass will be installed to route the stream around the construction site and protect water quality. Prior to installing a bypass, fishnets will be installed, and fish removed from the isolated area. In addition to installing a new culvert, the following stream habitat components include:

- Removing accumulated sediment and grading a stream channel for ~235 feet downstream of the existing culvert in Wetland 9.
- Placing streambed materials 20 feet upstream and 50 feet down stream of the new structure.
- Incorporating large wood material into the channel and banks of the stream at select locations to enhance aquatic habitat.

The project site is located SR 20 at milepost 69.08 on an unnamed tributary that connects to Red Creek in Skagit County, Washington, Section 16, Township 35 N., Range 5 E., within Water Resource Inventory Area (WRIA) 3, Low Skagit - Samish.

With this Order, Ecology is granting WSDOT's request for a Section 401 Water Quality Certification for the SR 20 Unnamed Tributary to Red Creek Fish Barrier Removal project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on December 14, 2022, and the following supporting documentation:

Table 1 Supporting Documents

Date Received	Document Type	Title and Date	Author
12/14/2022	PCN for Section 404/10 & 401	Fish Passage Preconstruction Notification SR 20 Unnamed Tributary to Red Creek Fish Passage (dated September 22, 2022)	WSDOT
12/14/2022	Drawings	SR 20 Unnamed Tributary to Red Creek Fish Passage Plan sheets (dated July 29, 2022)	WSDOT
12/14/2022	Wetland and Stream Assessment Report	SR 20 Unnamed Tributary to Red Creek Mileposts 68.86 to 69.26, Wetland and Stream Assessment Report (dated June 2022)	WSDOT
12/14/2022	Water Quality Monitoring Plan or Water Quality Monitoring and Protection Plan	In-Water Work Water Quality Monitoring & Protection Plan for Individual 401 Certification XL6415 SR 20 Unnamed Tributary to Red Creek Fish Passage (dated December 14, 2022)	WSDOT

Based on the information submitted, Ecology has determined that the discharge from the project will comply with state water quality requirements. Prior to undertaking any changes that materially alter the project, WSDOT must contact Ecology to determine whether a new Section 401 Water Quality Certification is required.

Issuance of this Section 401 Water Quality Certification for this proposal does not authorize WSDOT to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water quality standards (Chapter 173-200 WAC), or sediment quality standards

(Chapter 173-204 WAC). Furthermore, nothing in this Section 401 Water Quality Certification absolves the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

In view of the foregoing and 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, this WQC is granted to WSDOT for the SR 20 Unnamed Tributary to Red Creek Fish Passage project.

This Certification is not effective until the U.S. Corps of Engineers (Corps) Seattle District issues a Department of the Army (DA) permit for this project. WQC Order No. **21568** will remain valid for the duration of the associated DA permit. WSDOT should send a copy of the final DA permit to fednotification@ecy.wa.gov within two weeks of receiving it.

Your right to appeal

You have a right to appeal this Order to the Pollution Control Hearings Board (PCHB) within 30 days of the date of receipt. The appeal process is governed by RCW 43.21B and WAC 371-08. “Date of receipt” is defined in RCW 43.21b.001(2). More information is available at <https://eluhwa.wa.gov/content/11>.

To appeal, you must do all of the following within 30 days of the date of receipt of this Order:

- File your notice of appeal and a copy of this Order with the PCHB (see filing options below). “Filing” means actual receipt by the PCHB during regular business hours as defined in WAC 371-08-305 and -335. “Notice of appeal” is defined in WAC 371-08-340.
- Serve a copy of your notice of appeal and this Order on the Department of Ecology, in paper form, by mail or in person (see addresses below). E-mail is not accepted.

You must also comply with other applicable requirements in RCW 43.21B and WAC 371-08.

Filing an appeal with the PCHB:

For the most current information regarding filing with the PCHB, visit:
<https://eluhwa.wa.gov/content/11>

Filing by mail

Mailing Address:

Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

Filing in person (or by certified mail/courier)

Street Address:

Pollution Control Hearings Board
1111 Israel RD SW, STE 301
Tumwater, WA 98501

Filing electronically

E-mail Address:

pchb-shbappeals@elaho.wa.gov

Serving a copy of the appeal on Ecology:

Electronic copies of appeals are not accepted at the Department Ecology per WAC 371-08-305(10).

Filing by mail

Mailing Address:

Department of Ecology
Attn: Appeals Processing Desk
PO Box 47608
Olympia, WA 98504-7608

Filing in person (or by certified mail/courier)

Street Address:

Department of Ecology
Attn: Appeals Processing Desk
300 Desmond Drive SE
Lacey, WA 98503

Contact Information

Please direct all questions about this Order to:

Penny Kelley
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600
penny.kelley@ecy.wa.gov

More Information

- **Pollution Control Hearings Board Website**
<http://www.elaho.wa.gov/content/11>
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
<http://app.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice and Procedure**
<http://app.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**
<http://app.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Chapter 90.48 RCW – Water Pollution Control**
<http://app.leg.wa.gov/RCW/default.aspx?cite=90.48>

- **Chapter 173.204 WAC – Sediment Management Standards**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-204>
- **Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-200>
- **Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

Signature



Brenden McFarland, Section Manager
Environmental Review and Transportation Section
Shorelands and Environmental Assistance Program

February 9, 2023

Date