



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

May 25, 2023

WA Department of Transportation
ATTN: Victoria Book
PO Box 47440
Olympia, WA 98504-4744

Re: Water Quality Certification Order No. **21758** (Corps No. **NWS-2022-924-DOT**), SR 16
Black Jack Creek Fish Passage, Kitsap County, Washington

Dear Victoria Book:

On March 7, 2023, the WA Department of Transportation submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the SR 16 Black Jack Creek Fish Passage project in Kitsap 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

WQC Order No. 21758, Corps No. NWS-2022-924-DOT
Aquatics ID No. 142316
May 25, 2023
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Shorelands and Environmental Assistance Program

Enclosure (1)

By certified mail: 9489 0090 0027 6383 9286 54

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

E-cc: Jennifer Lang, U.S. Army Corps of Engineers
Carson Masse, WSDOT
Loree' Randall, Ecology
Penny Kelley, Ecology
Caroline Corcoran, Ecology
ECYREFEDPERMITS@ecy.wa.gov

In The Matter of Granting a Water Quality
Certification to WA Department of Transportation
pursuant to 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120,
RCW 90.48.260 and Chapter 173-201A WAC

WA Department of Transportation
Attn: Victoria Book
PO Box 47440
Olympia, WA 98504-4744

WQC Order No.	21758
Corps Reference No.	NWS-2022-924-DOT
Site Location	SR 16 Black Jack Creek Fish Passage located on Black Jack Creek in Kitsap County, Washington.

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 16 Black Jack Creek Fish Passage in Kitsap County, Washington. The following required processing dates are referenced below:

- On 1/11/2023, WSDOT submitted a pre-filing meeting request.
- On 3/7/2023, Ecology received a request for Clean Water Section 401 Water Quality Certification.
- On 3/9/2023, WSDOT submitted additional information, and the Department of Ecology (Ecology) considered the Request valid on this date.
- On 4/10/2023, Ecology issued a public notice for the project.

This project proposes to replace three culverts under SR 16 (a southbound off-ramp, the main roadway, and a northbound on-ramp) with two new bridges located 350 feet north of the existing culverts. The on and off ramps will be realigned to connect with the bridge structures and the stream channel will be realigned to flow underneath the bridges as an open channel. Temporary detour lanes will be constructed to manage traffic during construction. Items of work entail roadway excavation and embankment for the alignment, paving, striping, installing guardrail and constructing stormwater treatment facilities.

This project will impact existing wetlands but will increase aquatic resource functions. The design of new channel and bridges will replace three culverts that are currently acting as barriers to fish passage, opening up 15.6 miles of habitat upstream. The new channel design will incorporate not only in stream habitat features utilizing wood, but also riparian corridors

through planting of native species. Temporary impacts will be restored using native plant species.

The project site is located on SR 16 at milepost 25.3, on Black Jack creek in Kitsap County, Washington, Section 11, Township 23 N., Range 1 E., within Water Resource Inventory Area (WRIA) 15, Kitsap.

With this WQC Order, Ecology is granting WSDOT's request for a Section 401 Water Quality Certification for the SR 16 Black Jack Creek Fish Passage project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on 3/7/2023, and the following supporting documentation:

1. E-mail letter to Ecology dated 3/9/2023, regarding the project's SEPA documentation and the pre-filing meeting request form receipt from Ecology.

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.

Special Conditions:

1. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or detlerious materials shall be allowed to enter waters of the state.
 - Justification – Ecology must protect waters of the state from all discharges and potential discharges of pollution that can affect water quality to protect aquatic life and beneficial uses.
 - Citation – Chapter 90.48 RCW, RCW 90.48.030, RCW 90.48.080, Chapter 173-201A WAC, WAC 173-201A-300 – 330, WAC 173-204-120, and WAC 173-225-010.

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 the WSDOT for the SR 16 Black Jack 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. **21758** 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 Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21b.001(2).

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 Chapter 43.21B RCW and Chapter 371-08 WAC.

Filing an appeal with the PCHB:

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

Address and Location Information

Street Addresses:

Department of Ecology

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

Pollution Control Hearings Board

1111 Israel RD SW
STE 301
Tumwater, WA 98501

Mailing Addresses:

Department of Ecology

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

Pollution Control Hearings Board

PO Box 40903
Olympia, WA 98504-0903

E-Mail Address:

Department of Ecology

Not currently available (see Chapter 371-08 WAC)

Pollution Control Hearings Board

Pchb-shbappeals@elaho.wa.gov

Americans with Disabilities Act Information

Accommodation Requests

To request ADA accommodation including materials in a format for the visually impaired, call Ecology at 360-407-7668 or visit <https://ecology.wa.gov/accessibility>. People with impaired hearing may call Washington Relay Service at 711. People with speech disability may call TTY at 877-833-6341.

Contact Information

Please direct all questions about this WQC Order to:

Penny Kelley
Department of Ecology
360-280-8856
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

Dated this 25th day of May 2023 at the Department of Ecology, Olympia, Washington.



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