



**STATE OF WASHINGTON**  
**DEPARTMENT OF ECOLOGY**

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

July 3, 2024

WA Department of Transportation  
ATTN: Steve Fuchs  
P.O. Box 47440  
Olympia, WA 98504-7440

Re: Amendment to 401 Water Quality Certification Order No. 20165 for U.S. Army Corps of Engineers Reference No. NWS-2020-864-DOT, SR 167/I-5 to SR 509 – New Expressway (Stage 1b), Surprise Lake Tributary, Hylebos Creek, and small streams, Pierce County, Washington

Dear Steve Fuchs:

Enclosed is an amendment to Water Quality Certification Order No. 20165, issued on July 8, 2021, for the above project. All other conditions of Water Quality Certification Order No. 20165 remain in effect.

The purpose of this amendment is to allow extensions of the in-water work windows, as approved by the Washington Department of Fish and Wildlife (WDFW), to be addressed through the Water Quality Monitoring and Protection Plan and to remove the in-water work window for Fife Ditch that is in Condition C.2 of the certification because WDFW did not assign one.

If you have any questions, please contact Penny Kelley at 360-280-8856. The enclosed Amendment may be appealed by following the procedures described in the Amendment.

Sincerely,

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

First Amendment to Order No. 20165  
Aquatics No. 139419, Corps No. NWS-2020-864-DOT  
July 3, 2024  
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Enclosure (1)

By certified mail: 9489 0090 0027 6381 5322 97

Sent via e-mail: [steve.fuchs@wsdot.wa.gov](mailto:steve.fuchs@wsdot.wa.gov)

E-cc: Sandi Manning, Corps  
Char Naylor, Puyallup Tribe  
Elizabeth Bockstiegel, WDFW  
Miles Penk, WDFW  
Vivian Erickson, WSDOT  
Caroline Corcoran, Ecology  
Penny Kelly, Ecology  
Loree' Randall, Ecology  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

In The Matter of Granting a Water Quality  
Certification (WQC) 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: Steve Fuchs  
P.O. Box 47440  
Olympia, WA 98504-7440

<b>WQC Order No.</b>	20165, First Amendment
<b>Corps Reference No.</b>	NWS-2020-864-DOT
<b>Site Location</b>	SR 167/I-5 to SR 509 – New Expressway (Stage 1b) project located within Surprise Lake Tributary, Hylebos Creek, and small streams, Pierce County, Washington.

On July 8, 2021, the Washington Department of Ecology (Ecology) issued a 401 Water Quality Certification to WA Department of Transportation (WSDOT) for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401).

Ecology received a request on May 16, 2024, to amend the 401 Certification allowing the review and approval of extensions to in-water work windows, as approved by Washington Department of Fish & Wildlife (WDFW), to be addressed through the Water Quality Monitoring Protection Plan. The request from WSDOT also requests the fish window for Fife Ditch be removed as WDFW has not assigned a fish window to this waterbody.

WQC Order No. 20165 dated July 8, 2021, is hereby amended as follows:

I. Condition number C.2 Timing which reads:

The following in-water work windows shall apply to this project unless otherwise authorized by Ecology.

- a. Hylebos Creek: July 15 thru September 30
- b. All other waterbodies: June 15 thru September 30

Is replaced with:

The following in-water work windows apply to the project. All activities within the wetted perimeter of the following waterbodies may be conducted between the following dates of any year. If work needs to be conducted outside of these windows, the applicant shall update the WQMPP for this project and submit it to Ecology.

- a. Hylebos Creek: July 15 thru September 30

- b. All other waterbodies, excluding Fife Ditch: June 15 thru September 30

No other conditions or requirements of the above referenced Order are affected by this amendment.

Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if it appears necessary to further protect the public interest.

Failure to comply with this amended Order may result in the issuance of civil penalties or other actions whether administrative or judicial, to enforce the terms of this amended Order.

## 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 mail, in person, or by email (see addresses below).

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

## Filing an appeal

### Filing with the PCHB

For the most current information regarding filing with the PCHB, visit: <https://elaho.wa.gov/> or call: 360-664-9160.

### Service on Ecology

#### Street Addresses:

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

**Mailing Addresses:**

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

**E-Mail Address:**

[ecologyappeals@ecy.wa.gov](mailto:ecologyappeals@ecy.wa.gov)

## Contact Information

Please direct all questions about this Order to:

Penny Kelley  
Department of Ecology  
360-280-8856  
[penny.kelley@ecy.wa.gov](mailto:penny.kelley@ecy.wa.gov)

## More Information

- **Pollution Control Hearings Board Website**  
<https://elaho.wa.gov>
- **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 3<sup>rd</sup> day of July, 2024 at the Department of Ecology, Lacey, Washington.



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