



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

July 15, 2024

Skagit River System Cooperative
ATTN: Devin Smith
12559 Pulver Road
Burlington, WA, 98223

Re: Water Quality Certification Order No. **22954** (Corps No. **NWS-2023-0761**), Similk Estuary Restoration, Skagit County, Washington

Dear Devin Smith:

On February 16, 2024, Skagit River System Cooperative submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Similk Estuary Restoration Project, Skagit County, Washington.

On behalf of the state of Washington, the Department of Ecology certifies with conditions 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 Casey Vaughn at (564) 669-4201. 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. 22954, Corps No. NWS-2023-0761

Aquatics ID No. 143409

July 15, 2024

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Enclosure (1)

By certified mail: 9489 0090 0027 6381 5321 43

Sent via e-mail: dsmith@skagitcoop.org

E-cc: Kristin Murray, U.S. Army Corps of Engineers
Colin Wahl, Skagit River System Cooperative
Loree' Randall, Ecology
Casey Vaughn, Ecology
Chris Luerkens, Ecology
ECYREFEDPERMITS@ecy.wa.gov

**In The Matter of Granting a Water Quality
Certification with Conditions to Skagit River System Cooperative
pursuant to 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW
90.48.260 and Chapter 173-201A WAC**

Skagit River System Cooperative
Attn: Devin Smith
12559 Pulver Road
Burlington, WA, 98223

WQC Order No.	22954
Corps Reference No.	NWS-2023-0761
Site Location	Similk Estuary Restoration located within Similk Bay, near Anacortes, Skagit County, Washington.

Skagit River System Cooperative submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the Similk Estuary Restoration, Skagit County, Washington. The following required processing dates are listed below:

- On January 4, 2024, Skagit River System Cooperative submitted a pre-filing meeting request.
- On February 16, 2024, Ecology received a request for Clean Water Section 401 Water Quality Certification.
- On March 15, 2024, the U.S. Army Corps of Engineers (Corps) sent an email notification to Ecology that they are reviewing the project for authorization under the Nationwide Permit (NWP) Program.
- On March 26, 2024, Ecology issued a public notice for the project.
- Ecology’s “Reasonable Period of Time” for this project has been established as September 11, 2024.

This project proposes to restore approximately 17 acres of tidal marsh habitat along the northern shoreline of Similk Bay by removing a portion of the roadway and installing a bridge over an excavated tidal channel network. The project will also restore 1430ft of coastal stream by daylighting and removing culverts and re-meandering the stream in a natural channel and planting riparian areas.

The project site is located at Satterlee Road along Similk Bay, near Anacortes, Skagit County, Washington, Section 8, Township 34 N., Range 02 E., within Water Resource Inventory Area (WRIA) 3 Lower Skagit.

With this WQC Order, Ecology is granting with conditions Skagit River System Cooperative's request for a Section 401 Water Quality Certification for the Similk Estuary Restoration project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on February 16, 2024, and the following supporting documentation:

1. Final Water Quality Monitoring and Protection Plan, submitted on July 8, 2024.

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, Skagit River System Cooperative 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 Skagit River System Cooperative 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 Skagit River System Cooperative from liability for contamination and any subsequent cleanup of surface waters, ground waters, or sediments resulting from project construction or operations.

Special Conditions:

1. This Certification is not effective until the U.S. Army Corps of Engineers (Corps) Seattle District issues a Department of the Army (DA) permit for this project. WQC Order No. **22954** will remain valid until December 31, 2026.
 - Justification – Certifications are required for any license or permit that authorizes an activity that may result in a discharge or fill material into waters. This WQC Order is not valid until the Federal agency issues a permit. Additionally, Ecology needs to be able to specify how long the WQC Order will be in effect.
 - Citation – Chapter 90.48 RCW, Chapter 173-201A WAC, and WAC 173-225-010.
2. Skagit River System Cooperative shall send a copy of the final Federal permit via e-mail to fednotification@ecy.wa.gov and cc to Federal Permit Manager prior to the starting of any work authorized by this WQC Order.
 - Justification - This condition is needed to ensure that the federal permit has been issued and all the conditions of the WQC Order have been included into the federal permit.
 - Citation - 40 CFR 121.10, 40 CFR 121.11, and Chapter 90.48 RCW.

3. To transfer this WQC Order to a new owner or operator Skagit River System Cooperative shall:
 - a. Complete a Request for Transfer of Order with a specific transfer date of the WQC Order's obligations, coverage, and liability and submit it to Ecology at fednotification@ecy.wa.gov and cc to Federal Permit Manager. Link to form: <https://apps.ecology.wa.gov/publications/SummaryPages/ECY070695.html>;
 - b. Provide a copy of this WQC Order to the new owner or operator; and
 - c. The transfer is not considered valid until the Project Proponent receives written notification from Ecology that the transfer has been approved.
 - Justification – Ecology has independent state authority to ensure protection of state water quality. Ecology needs to ensure that anyone conducting work at the project, including any new owners or operators, are aware of and understand the required conditions of this WQC Order to ensure compliance with the water quality standards and other applicable state laws.
 - Citation – 40 CFR 121.5, Chapter 90.48 RCW, RCW 90.48.030, Chapter 173-201A WAC, and WAC 173-225-010.
4. Any work that causes distressed or dying fish, or discharges of oil, fuel, or other chemicals into state waters or onto land with a potential for entry into state waters is prohibited. If such work, conditions, or discharges occur, immediately notify Ecology's Regional Spill Response Office at 360-407-6300 and the Washington State Department of Fish & Wildlife with the nature and details of the problem, any actions taken to correct the problem, and any proposed changes in operation to prevent further problems. You will also need to notify the Washington Emergency Management Division at 1-800-258-5990, for spills to water only. This condition is necessary to prevent oil and other hazardous materials spills from causing environmental damage and to ensure compliance with water quality requirements. The sooner a spill is reported, the quicker it can be addressed, resulting in less harm.
 - Justification - This condition is necessary to prevent oil and hazardous materials spills from causing environmental damage and to ensure compliance with water quality requirements. The sooner a spill is reported, the quicker it can be addressed, resulting in less harm. 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 90.56 RCW, RCW 90.56.280, Chapter 173-201A WAC, WAC 173-201A-300 - 330, WAC 173-204-120, WAC 173-225-010, and WAC 173-303-145.

5. The Project Proponent shall implement the approved Water Quality Monitoring and Protection Plan (WQMPP).

- Justification - This condition is necessary to ensure that the monitoring and BMPs that are proposed by the Project Proponent and authorized by Ecology are conducted to protect water quality. 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 with conditions to the Skagit River System Cooperative for the Similk Estuary Restoration project.

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 information 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

Americans with Disabilities Act Information

Accommodation Requests

To request ADA accommodation including materials in a format for the visually impaired, call Ecology at 360-407-6831 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:

Casey Vaughn
Department of Ecology
(564) 669-4201
Casey.Vaughn@ecy.wa.gov

More Information

- **Pollution Control Hearings Board Website**
<https://eluh0.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 15th day of July 2024 at the Department of Ecology, Lacey, Washington.



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