



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

July 16, 2024

Washington Department of Fish and Wildlife
Attn: Melissa Erkel
125 W Sunset Ave
Issaquah, WA 98027

Re: Water Quality Certification Order No. **22946** (Corps No. **NWS-2023-521**), McNeil Island
Floyd and Bodley Fish Passage Barrier Removal project, Pierce County, Washington

Dear Melissa Erkel:

On April 4, 2024, Washington Department of Fish and Wildlife submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the McNeil Island Floyd and Bodley Fish Passage Barrier Removal project in Pierce 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 Brook Swensen at 564-999-1749. The enclosed WQC Order may be appealed by following the procedures described within.

Sincerely,

Loree' Randall, Section Manager
Aquatic Permitting and Protection Section
Shorelands and Environmental Assistance Program

WQC Order No. 22946, Corps No. NWS-2023-521

Aquatics ID No. 143457

July 16, 2024

Page 2 of 2

Enclosure (1)

By certified mail: 9489 0090 0027 6381 5321 50

Sent via e-mail: Melissa.Erkel@dfw.wa.gov

E-cc: Jennifer Casper, U.S. Army Corps of Engineers
Brook Swensen, Ecology
ECYREFEDPERMITS@ecy.wa.gov

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

Washington Department of Fish and Wildlife
Attn: Melissa Erkel
125 W Sunset Ave
Issaquah, WA 98027

WQC Order No.	22946
Corps Reference No.	NWS-2023-521
Site Location	McNeil Island Floyd and Bodley Fish Passage Barrier Removal project located within Floyds Cove Pond, Bodley Creek, and wetlands, McNeil Island, Pierce County, Washington.

Washington Department of Fish and Wildlife submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the McNeil Island Floyd and Bodley Fish Passage Barrier Removal project, Pierce County, Washington. The following required processing dates are listed below:

- On January 17, 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 1, 2024, Washington Department of Fish and Wildlife submitted a pre-filing meeting request.
- On April 4, 2024, Ecology received a request for Clean Water Section 401 Water Quality Certification.
- On June 10, 2024, Washington Department of Fish and Wildlife submitted additional information, and the Department of Ecology (Ecology) considered the Request valid on this date.
- On June 17, 2024, Ecology issued a public notice for the project.
- Ecology’s “Reasonable Period of Time” for this project has been established as December 7, 2024.

This project proposes to replace two existing barrier stream crossings on Coastal Road, McNeil Island. The existing crossings restrict tidal exchange and fish passage and impound water upstream.

Floyds Cove Crossing (47.22467, -122.70526): The project would remove the existing undersized culverts, road fill, shore armor and associated debris and set back the road. The replacement crossing would be a 60-foot by 16-foot bridge. To facilitate work, 985 CY of material would be excavated, and 140 CY of fill material would be discharged along 20 linear feet of the creek. Fill would be natural material excavated from the channel upstream and placed in the new channel under the bridge. riprap armoring, wood piling shoreline armor, submarine cable, and a boulder pile would be removed from the shoreline at low tide using an excavator within a 25-foot work corridor. The shoreline would be set back with 1:1 slope rock revetment (520 CY below HTL) and 370 CY of beach nourishment would be discharged. Excavation over 20 SF of Wetland F-1, a Category III palustrine forested and emergent wetland, is proposed.

Bodley Creek Crossing (47.22863, -122.68899): The replacement crossing would be a 17-foot wide by 40 foot long by 16-foot-high concrete box culvert. Beaver dam analogs would be constructed upstream of the Bodley Creek road crossing. Fill material to be placed in Bodley Creek would be a streambed sediment mix following WSDOT 9-03.11(1) standard specifications. The material would be placed 46 ft downstream of the culvert, thought the culvert and 75 ft upstream from the inlet of the culvert. The streambed material would be placed to help shape the new channel (1,290 CY below the HTL). Wetland impacts include excavation over 65 SF and fill over 45 SF in wetland B-1, a Category III palustrine forested wetland; and excavation over 35 SF and fill over 25 SF in Wetland B-2, a Category I, estuarine intertidal emergent wetland. At both Crossings: A bypass method (pump or gravity) would be used to manage freshwater flows during work. All equipment would be staged in uplands. Grading would be conducted during low tide to minimize erosion and sedimentation impacts. Willow stakes and other native wetland and riparian vegetation would be installed. Invasive, non-native vegetation would be removed and replaced with native wetland and riparian vegetation adaptable to post-project conditions.

The project site is located within Floyds Cove Pond, Bodley Creek, and wetlands, McNeil Island, Pierce County, Washington, Section 9 and 17, Township 20 N., Range 01 E., within Water Resource Inventory Area (WRIA) 15 Kitsap.

With this WQC Order, Ecology is granting with conditions Washington Department of Fish and Wildlife's request for a Section 401 Water Quality Certification for the McNeil Island Floyd and Bodley Fish Passage Barrier Removal project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on April 4, 2024, and the following supporting documentation:

1. E-mail to Ecology dated June 10, 2024, regarding visual monitoring for a plume during in-water work.

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, Washington Department of Fish and Wildlife 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 Washington Department of Fish and Wildlife 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 Washington Department of Fish and Wildlife 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. Corps of Engineers (Corps) Seattle District issues a Department of the Army (DA) permit for this project. WQC Order No. **143457** will remain valid for the duration of the associated Corps permit for the project.
 - 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. Washington Department of Fish and Wildlife 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 Washington Department of Fish and Wildlife 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.

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 Washington Department of Fish and Wildlife for the McNeil Island Floyd and Bodley Fish Passage Barrier Removal 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://eluhwa.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:

Brook Swensen

Department of Ecology

564-999-1749

Brook.Swensen@ecy.wa.gov

More Information

- **[Pollution Control Hearings Board Website](https://elaho.wa.gov)**
<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)**
<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)**
<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)**
<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)**
<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)**
<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)**
<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)**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=173-201A>

WQC Order No. 22946, Corps No. NWS-2023-521

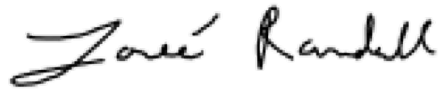
Aquatics ID No. 143457

July 16, 2024

Page 7 of 7

Signature

Dated this 16th day of July 2024 at the Department of Ecology, Lacey, Washington.

A handwritten signature in black ink that reads "Loree' Randall". The signature is written in a cursive style with a horizontal line underneath it.

Loree' Randall, Section Manager

Aquatic Permitting and Protection Section

Shorelands and Environmental Assistance Program