



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

March 27, 2025

Washington Department of Transportation
Attn: Mark Stamey
1019 Andis Road
Burlington, WA 98233

Re: Water Quality Certification Order No. **23540** (Corps No. NWS-2025-0035-DOT), I-5
Tributaries to Friday, Lake, and Chuckanut Creeks – Fish Passage (Lake Creek), Whatcom
County, Washington

Dear Mark Stamey:

On January 7, 2025, WA Department of Transportation submitted a request for a Section 401
Water Quality Certification (WQC) under the federal Clean Water Act for the I-5 Tributaries to
Friday, Lake, and Chuckanut Creeks – Fish Passage (Lake Creek), Whatcom 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 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 & Transportation Section
Shorelands and Environmental Assistance Program

WQC Order No. 23540, Corps No. NWS-2025-0035-DOT
Aquatics ID No. 145035
March 27, 2025
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Enclosure (1)

By certified mail: 91 7199 9991 7036 8715 4782

Sent via e-mail: Mark.Stamey@wsdot.wa.gov

E-cc: Samantha Standford, U.S. Army Corps of Engineers
Camille Felkins, Atlas Technical Consultants
Erin Hanlon Brown, Ecology
Penny Kelley, Ecology
ecyrefedpermits@ecy.wa.gov

In The Matter of Granting a Water Quality
Certification with Conditions 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

Washington Department of Transportation
Attn: Mark Stamey
1019 Andis Road
Burlington, WA 98233

WQC Order No.	23540
Corps Reference No.	NWS-2025-0035-DOT
Site Location	I-5 Tributaries to Friday, Lake, and Chuckanut Creeks – Fish Passage (Lake Creek) located within Lake Creek and adjacent wetlands, near Bellingham, Whatcom County, Washington.

Washington Department of Transportation (WSDOT) submitted a request for a Section 401 Water Quality Certification (WQC) under the federal Clean Water Act for the I-5 Tributaries to Friday, Lake, and Chuckanut Creeks – Fish Passage (Lake Creek), Whatcom County, Washington. The required processing dates are listed below:

- On 11/21/2024, the WSDOT submitted a pre-filing meeting request.
- On 1/7/2025, Ecology received a request for Clean Water Section 401 Water Quality Certification.
- On 1/13/2025, WSDOT submitted additional information, and the Department of Ecology (Ecology) considered the Request valid on this date.
- On 1/22/2025, 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 1/27/2025, Ecology issued a public notice for the project.
- Ecology's "Reasonable Period of Time" for this project has been established as 7/21/2025.

This project proposes to install two new fish passable culverts: one under the northbound lanes and one under the southbound lanes of Interstate 5. The existing culverts located to the south of the new structures will be abandoned in place by filling them with a concrete density fill. The new culverts are single span buried structures approximately 60 to 62 feet long by 28 feet wide. The stream will be re-graded and re-aligned to the new culverts. Other mitigation elements

include adding meander bars inside the new culverts as well as placement of large woody debris in and around the new structures. The work will permanently impact existing wetlands, but these impacts have been minimized to the extent practicable. The new culverts will provide an overall net increase in aquatic resources by increasing channel length, incorporating elements to increase habitat complexity, and restoring all disturbed areas with native species.

The project site is located on Interstate 5 at milepost 245.76, on Lake Creek and adjacent wetlands in Whatcom County, Washington, Section 23, Township 37 N., Range 3 E., within Water Resource Inventory Area (WRIA) 3 Lower Skagit-Samish.

With this WQC Order, Ecology is granting with conditions WSDOT's request for a Section 401 Water Quality Certification for the I-5 Tributaries to Friday, Lake, and Chuckanut Creeks – Fish Passage (Lake Creek) project, provided that the activity is conducted in accordance with the Section 401 Water Quality Certification request and attachments Ecology received on 1/7/2025, and the following supporting documentation:

1. Wetland and Stream Assessment Report, dated 5/16/2023 and made available to Ecology on 1/13/2025 via WSDOT FTP Site.
2. Updated I-5 Tributaries to Friday, Lake & Chuckanut Creeks – Fish Passage Water Quality Monitoring Plan/Lake Creek dated February 18, 2025 and submitted to Ecology on February 20, 2025.

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

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. **23540** will remain valid until November 30, 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. WSDOT shall send a copy of the final Federal permit via e-mail to fednotification@ecy.wa.gov and cc to penny.kelley@ecy.wa.gov prior to the starting of any work authorized by this WQC Order. If the Federal Agency determines the proposed project does not require a Federal permit, WSDOT shall immediately inform Ecology.
- 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. 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 the WSDOT for the I-5 Tributaries to Friday, Lake, and Chuckanut Creeks – Fish Passage (Lake Creek) 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 by 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.

Address and Location Information

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 Address:

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

Mailing Address:

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:

Penny Kelley
Department of Ecology
360-280-8856
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>

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- **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 27th day of March 2025 at the Department of Ecology, Lacey, Washington.



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