



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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

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November 20, 2012

Alan Soicher  
Department of Transportation  
P.O. Box 330310  
Seattle, WA 98133-9710

RE: Water Quality Certification Order #9625 for Corps Public Notice No. NWS-2010-783 for the SR 20 Skagit River CED project in the Skagit County, Washington

Dear Mr. Soicher:

On February 17, 2012, the Washington Department of Transportation (WSDOT), submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act for the proposed .

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the public notice 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 conditions contained in the enclosed Order.

The project proposes to have 0.19 acre of long-term temporary indirect wetland impacts. To mitigate for this indirect impact, WSDOT will debit 0.057 wetland credits from the Nookachamps Wetland Mitigation Bank, in Skagit County.

If you have any questions, please contact Kerry Carroll at 360-407-7503. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

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



Alan Soicher  
November 20, 2012  
Page 2 of 2

by Certified Mail 7010 2780 0000 2503 4287

Enclosure

e-cc: Stan Walsh, Skagit River System Cooperative  
MAP Team  
Angela Angrove, WSDOT  
Loree' Randall, Ecology  
Stephanie Barney, Ecology  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

|                                    |   |   |
|------------------------------------|---|---|
| <b>IN THE MATTER OF GRANTING A</b> | ) | <b>ORDER # 9625</b>                             |
| <b>WATER QUALITY</b>               | ) | <b>Corps Reference No. NWS-2010-783</b>         |
| <b>CERTIFICATION TO</b>            | ) | Stabilize approximately 1300 linear feet of     |
| WA Department of Transportation    | ) | stream bank on the Skagit using 4 ELJ's         |
| in accordance with 33 U.S.C. 1341  | ) | interspersed with log revetments on the Skagit  |
| (FWPCA § 401), RCW 90.48.120, RCW  | ) | River. The project is located in Skagit County, |
| 90.48.260 and Chapter 173-201A WAC | ) | Washington.                                     |

TO: Alan Soicher  
 WA Department of Transportation  
 Northwest Region  
 P.O. Box 330310  
 Seattle, WA 98133-9710

On February 17, 2012, Ecology received a Joint Aquatic Resources Permit Application (JARPA) from the Washington Department of Transportation (WSDOT) requesting a 401 Water Quality Certification (WQC). The U.S. Army Corps of Engineers (Corps) issued a public notice for the project on April 4, 2012.

WSDOT is proposing to construct five (5) Engineered Log Jams (ELJs) interspersed with log-based revetments in the Upper Skagit River along SR 20 at Mile Post (MP) 100.7. These bank protection structures are being installed to address repetitive damage to SR 20 caused by bank erosion/scour that required emergency repairs in 2004, 2006, and 2007.

Approximately 1,300 linear feet of the SR 20 embankment (river bank) will be protected using four (4) ELJs interspersed with log revetments and approximately 100 feet of continuous log revetments will be installed along the shoreline of an adjacent forested parcel. The fifth ELJ will be constructed on a mid channel island acting in concert with the riverbank ELJs to deflect concentrated flow away from SR 20. All ELJs will be constructed using dolotimbers (concrete dolosee and large woody material) and additional large woody material and the revetments will be constructed using logs/woody material. These bank protection structures will be placed along the south side of SR 20, immediately adjacent to the road prism after removing approximately 1300 cubic yards of existing riprap down to the water line that exists at the time of construction. A temporary water crossing will be constructed to access the island and excavate a foundation for ELJ 5. Other materials will be transported using a helicopter or crane.

Other project elements include a staging area on the north side of SR 20 and building a temporary bypass road to move traffic through the construction zone. The project will impact 2 existing wetlands and wetland buffers on the north side of SR 20 and one wetland on the mid channel island. A retaining wall will be built to minimize impacts to one existing wetland on the north side. All other impacts are unavoidable and will be mitigated for at the Nookachamps mitigation bank. Compensatory mitigation will be provided at the Watson property for stream impacts resulting from this project.

The project is located on SR 20 at MP 100.7 (between 100.6 and 101.0), 4 miles east of the town of Rockport, in Skagit County, WA.

WRIA 4 Upper Skagit  
Section 20 T35N R10E  
Section 21 T35N R10E  
Section 29 T35N R10E

## **AUTHORITIES**

In exercising authority under 33 U.S.C. § 1341, RCW 90.48.120, and RCW 90.48.260, Ecology has reviewed this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. §§1311, 1312, 1313, 1316, and 1317 (FWPCA §§ 301, 302, 303, 306 and 307);
2. Conformance with the state water quality standards contained in Chapter 173-201A WAC and authorized by 33 U.S.C. §1313 and by Chapter 90.48 RCW, and with other applicable state laws; and
3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

## **WATER QUALITY CERTIFICATION CONDITIONS**

Through issuance of this Order, Ecology certifies that it has reasonable assurance that the activity as proposed and conditioned will be conducted in a manner that will comply with applicable water quality standards and other appropriate requirements of state law. 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, water quality certification is granted to the Applicant subject to the conditions within this Order.

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

**A. General Conditions**

1. In this Order, the term "Applicant" shall mean the Washington State Department of Transportation and its agents, assignees, and contractors.
2. All submittals required by this Order shall be sent to Ecology's Headquarters Office, Attn: Federal Project Coordinator, P.O. Box 47600, Olympia, WA 98504 or via e-mail (preferred), if possible, to the Coordinator assigned to this project. The submittals shall be identified with Order #9625 and include the Applicant's name, project name, project location, the project contact and the contact's phone number.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on February 17, 2012. The Applicant will be out of compliance with this Order and must submit an updated JARPA if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.
4. Within 30 days of receipt of any updated information, Ecology will determine if the revised project requires a new water quality certification and public notice or if a modification to this Order is required.
5. This Order shall be rescinded if the Corps of Engineers does not issue an individual Section 404 permit.
6. The Applicant shall send (per A.2.) a copy of the final individual Section 404 permit to Ecology's Federal Project Coordinator within two weeks of receiving it.
7. The Applicant shall keep copies of this Order on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and lead workers, and state and local government inspectors.
8. The Applicant shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, and/or to ensure that conditions of this Order are being met.
9. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines that further actions are necessary to implement the water quality laws of the state. Furthermore, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (*e.g.*, violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect water quality.
10. The Applicant shall ensure that all project engineers, contractors, and other workers at the project site with authority to direct work have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The

Applicant shall provide Ecology a signed statement (see Attachment A for an example) from each signatory that s/he has read and understands the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins.

11. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources, except as specifically provided for in conditions of this Order.
12. Failure of any person or entity to comply with the Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce the terms of this Order.

#### **B. Notification Requirements**

1. Notification shall be made via phone or e-mail (e-mail is preferred) to Ecology's Federal Project Coordinator. Notifications shall be identified with Order #9625 and include the Applicant's name, project name, project location, project contact and the contact's phone number.
  - a. Immediately following a violation of state water quality standards, spill to waters of the state or when the project is out of compliance with any of this Order's conditions.
    - i. In addition to the phone or e-mail notification, the Applicant shall submit a detailed written report to Ecology within five (5) days that describes the nature of the event, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
  - b. At least ten (10) days prior to all pre-construction meetings.
  - c. At least ten (10) days prior to conducting initial in-water work activities for each in-water work window established in the most current HPA.
  - d. At least seven (7) days prior to the start of constructing the temporary water crossing to the mid channel island.
  - e. At least seven (7) days within project completion.

#### **C. Timing**

1. This Order is valid until the Applicant meets all its requirements and conditions.
2. In-water work is subject to a fishery closure window determined by Washington Department of Fish & Wildlife's Hydraulic Project Approval (HPA). All in-water work shall be completed within the work window identified in the most current HPA issued for this project.

#### **D. Water Quality Monitoring & Criteria**

1. The Skagit river is categorized as Core Summer Habitat and the criteria of the categorization apply as described in WAC 173-201A-200 (1), except as specifically modified by this Order.
2. This Order does not authorize the Applicant to exceed applicable state water quality standards for turbidity as described in WAC 173-201A-200 (1)(e).
3. Water Quality Compliance shall not exceed 5 NTUS over background turbidity when the background is 50 NTU or less. A 10 percent increase in turbidity is allowed when the background turbidity is more than 50 NTU. The extent of compliance shall not exceed 300 feet downstream of the source, except for areas with known spawning redds. If there are known spawning redds within the 300 feet, the point of compliance shall be at the upstream edge of the spawning redds.
4. The Applicant shall conduct a preconstruction spawning survey to determine the spawning locations in the main and side channel of the river within the project area. The survey shall be used to establish the point(s) of compliance for turbidity for the side channel and main channel per condition D.3. above.
5. The Applicant shall submit a Water Quality Monitoring and Protection Plan (WQMPP) to the Federal Project Coordinator for review and approval at least 20 days prior to beginning work activities below the ordinary high water line (OHWL), in-water and over-water. **Work is not authorized to begin until approval is received.** At a minimum, the WQMPP shall include:
  - a. The names(s) and phone numbers (s) of the Pollution control inspector and the person responsible for on-site monitoring and report;
  - b. The BMPs and procedures to be used to project water quality during specific proposed below the ordinary high water mark, in-water and over-water activities;
  - c. A water sampling plan for turbidity, which include sample locations and frequency;
  - d. Sampling locations for turbidity shall include, but are not limited to; background, half the distance to the point of compliance and at the point of compliance, unless otherwise approved by Ecology.
  - e. A map with numbered or named sampling locations associated with the in-water work activities.
  - f. A map with the location of spawning areas in the side and main channel and the point of compliance for turbidity at the time of construction.
  - g. Contingencies during in-water work activities
6. Ecology must approve, in writing, any changes or additions to the WQMPP.
7. Monitoring results shall be submitted monthly to the Ecology Federal Project Coordinator, per condition A.2.

8. Mitigation and/or additional monitoring may be required if the monitoring results indicate that the water quality standards have not been met.

## **E. Construction**

### General Conditions

1. The Applicant shall comply with the conditions of the current Construction Stormwater Permit (National Pollutant Discharge Elimination System – NPDES) issued for this project.
2. Within the project limits<sup>1</sup> all environmentally sensitive areas including, but not limited to, wetlands, wetland buffers, and mitigation areas shall be fenced with high visibility construction (HVF) prior to commencing construction activities. Construction activities include equipment staging, materials storage, and work vehicle parking. *Note: This condition does not apply to activities such as pre-construction surveying and installing HVF and construction zone signage.*
  - a. If the project will be constructed in stages<sup>2</sup> a detailed description and drawings of the stages shall be sent to Ecology for review at least 20 days prior to placing HVF.
  - b. All field staff shall be trained to recognize HVF, understand its purpose and properly install it in the appropriate locations.
  - c. HVF shall be maintained until all work is completed for each project or each stage of a staged project.
3. All clearing limits, stockpiles, staging areas, and trees to be preserved shall clearly be marked prior to commencing construction activities and maintained until all work is completed for each project.
4. No petroleum products, fresh concrete, lime or concrete, chemicals, or other toxic or deleterious materials shall be allowed to enter waters of the state.
5. All construction debris, excess sediment, and other solid waste material shall be properly managed and disposed of in an upland disposal site approved by the appropriate regulatory authority.
6. Turbid de-watering water associated with in-water work shall not be discharged directly to waters of the state, including wetlands. Turbid de-watering water shall be routed to an upland area for on-site or off-site settling.

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<sup>1</sup> Project limits include mitigation sites, staging areas, borrow sources, and other sites developed or used to support project construction.

<sup>2</sup> A stage is part of a project that has been separated into at least two distinct areas to be built during separate timeframes.

7. Clean de-watering water associated with in-water work that has been tested and confirmed to meet water quality standards may be discharged directly to waters of the state including wetlands. The discharge outfall method shall be designed and operated so as not to cause erosion or scour in the stream channel, banks, or vegetation.
8. All equipment being used below the ordinary high water mark shall utilize bio-degradable hydraulic fluid.

#### Equipment & Maintenance

9. Staging areas will be located a minimum of 50 feet and, where practical, 200 feet, from waters of the state including wetlands. If a staging area must be located within 50 feet of waters of the state, then the Applicant shall provide a written explanation and obtain approval from Ecology's Federal Permit Coordinator before placing the staging area in the setback area.
10. Equipment used for this project shall be free of external petroleum-based products while used around the waters of the state, including wetlands. Accumulation of soils or debris shall be removed from the drive mechanisms (wheels, tires, tracks, etc.) and the undercarriage of equipment prior to its use around waters of the state, including wetlands.
11. No equipment shall enter, operate, be stored or parked within any sensitive area except as specifically provided for in this Order or allowed in the HPA.
12. All cranes within the active construction zone (i.e. mid channel island and south side of SR 20) shall have secondary containment underneath the equipment when not in operation to catch any leaks, drips, etc.
13. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters.
14. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall not be discharged into state waters. The Applicant shall set up a designated area for washing down equipment.

#### Temporary Channel Crossing & Engineered Log Jam 5

15. The Applicant shall minimize disturbance of vegetation when constructing the temporary channel crossing for construction of ELJ 5.
16. Materials used for constructing the temporary channel crossing shall not consist of treated wood.

17. Installation of a turbidity curtain shall be done in a manner that minimizes disturbance of the river bed and sediment.

Bank Stabilization and Engineered Log Jams 1-4

18. Removal of riprap below the OHWM shall be done in a manner that prevents the discharge of sediment and other material into waters of the state.
19. Backfill material consisting of imported gravel or cobble shall be clean and free of sediment.
20. Flow in the side channel shall be maintained at all times to prevent any impacts to aquatic life present at the time of construction.
21. Materials used for any type of temporary work platform, if needed, shall not consist of treated wood.

**F. Wetland Compensatory Mitigation Conditions**

1. The Applicant shall mitigate wetland impacts as described in the SR 20 Skagit River-CED Permanent Restoration Wetland Mitigation Plan (hereafter called the "mitigation plan") prepared by WSDOT Northwest Region, dated October 2012 or as revised and approved by Ecology.
2. The Applicant shall obtain and submit registered documentation from the bank sponsor identifying the first permit requiring a minimum of 0.057 credits for the project to Ecology (see A.2). This documentation must be submitted to Ecology (see A.2) within 60 days of the issuance of this certificate or before impacting wetlands, whichever is sooner for the debit project. This documentation must be registered at the Skagit County Auditor's office and must include the permit number, permit issuance date, and the amount of credits required by the permit.
3. The Applicant shall notify Ecology (see A.2) of any changes to the amount of wetland impacts, revision of the mitigation plan, and submittal of new information being registered at the Skagit County Auditor's office.
4. The Applicant shall complete the purchase of mitigation bank credits before the impacts to wetlands occur or Ecology may require additional compensation to account for additional temporal loss.

### **G. Stream Mitigation**

1. The Applicant shall mitigate for impacts to onsite stream buffer as described in the SR 20 Skagit River-CED Permanent Restoration Stream Mitigation Report, prepared by WSDOT Northwest Region and dated October 2012.
2. The Applicant shall submit to Ecology (see A.2) monitoring reports documenting the stream buffer site conditions for years 1, 2, 3 and 5. The monitoring reports must be submitted by May1 following each monitoring year.

### **H. Emergency/Contingency Measures**

1. The Applicant shall develop and implement a spill prevention and containment plan for this project and shall have spill cleanup material available on site at all times during construction.
2. Work that is out of compliance with the provisions of this Order, conditions causing distressed or dying fish, discharges of oil, fuel, or chemicals into state waters or onto land with a potential for entry into state waters, is prohibited. If such work, conditions, or discharges occur, the Applicant shall comply with WSDOT's most current Environmental Compliance Assurance Procedure for Construction Project and Activities, notify the Ecology Project Coordinator per condition B.1.a. and immediately take the following actions:
  - a. Cease operations at the location of the non-compliance.
  - b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
  - c. In the event of a discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, containment and cleanup efforts shall begin immediately and be completed as soon as possible, taking precedence over normal work. Cleanup shall include proper disposal of any spilled material and used cleanup materials.
  - d. Immediately notify Ecology's Regional Spill Response Office at 425-649-7000 and the Washington State Department of Fish & Wildlife the nature and details of the problem, any actions taken to correct the problem, and any proposed changes in operation to prevent further problems.
  - e. Immediately notify the National Response Center at 1-800-424-8802, for actual spills to water only.
3. Notify Ecology's Regional Spill Response Office at 425-649-7000 immediately if chemical containers (e.g. drums) are discovered on-site or any conditions present indicating disposal or burial of chemicals on-site that may impact surface water or ground water.

### YOUR RIGHT TO APPEAL

You have a right to appeal this Order to the Pollution Control Hearing Board (PCHB) within 30 days of the date of receipt of this Order. 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 appeal and a copy of this Order with the PCHB (see addresses below). Filing means actual receipt by the PCHB during regular business hours.
- Serve a copy of your appeal and this Order on 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.

### ADDRESS AND LOCATION INFORMATION

| Street Addresses   | Mailing Addresses   |
|--|---|
| <b>Department of Ecology</b><br>Attn: Appeals Processing Desk<br>300 Desmond Drive SE<br>Lacey, WA 98503 | <b>Department of Ecology</b><br>Attn: Appeals Processing Desk<br>PO Box 47608<br>Olympia, WA 98504-7608 |
| <b>Pollution Control Hearings Board</b><br>1111 Israel RD SW<br>STE 301<br>Tumwater, WA 98501            | <b>Pollution Control Hearings Board</b><br>PO Box 40903<br>Olympia, WA 98504-0903                       |

### CONTACT INFORMATION

Please direct all questions about this Order to:

Kerry Carroll  
Department of Ecology  
P.O. Box 47600  
Olympia, WA 98503-7600  
360-407-7503  
kstr461@ecy.wa.gov

#### **MORE INFORMATION**

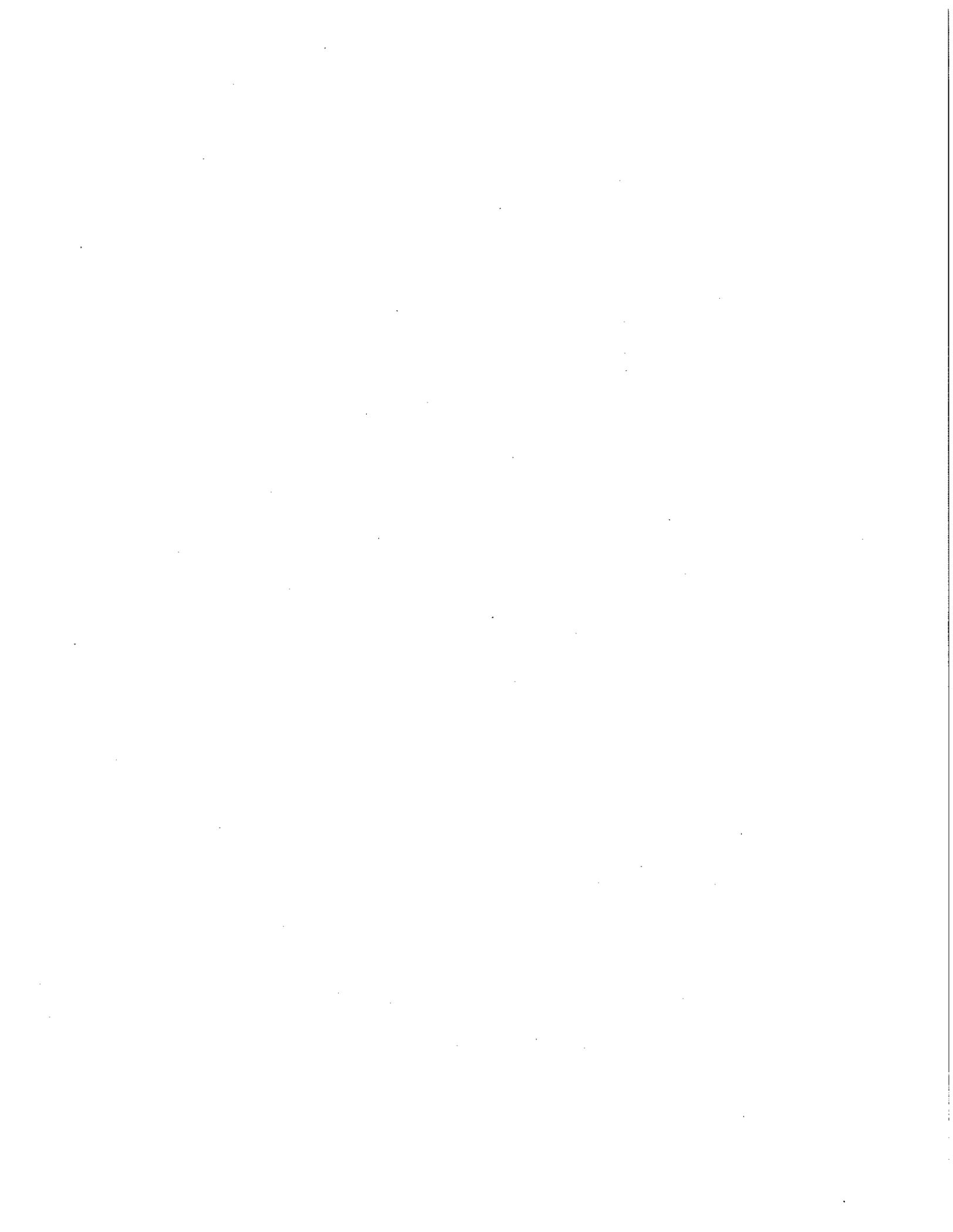
- **Pollution Control Hearings Board Website**  
[www.cho.wa.gov/Boards\\_PCHB.aspx](http://www.cho.wa.gov/Boards_PCHB.aspx)
- **Chapter 43.21B RCW - Environmental and Land Use Hearings Office – Pollution Control Hearings Board**  
<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice And Procedure**  
<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**  
<http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Chapter 90.48 RCW – Water Pollution Control**  
<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>
- **Chapter 173.204 Washington Administrative Code (WAC) Sediment Management Standards**  
<http://www.ecy.wa.gov/biblio/wac173204.html>
- **Chapter 173-200 WAC Water Quality Standards for Ground Waters of the State of Washington**  
<http://www.ecy.wa.gov/biblio/wac173200.html>
- **Chapter 173-201A WAC Water Quality Standards for Surface Waters of the State of Washington**  
<http://www.ecy.wa.gov/biblio/wac173201A.html>

#### **SIGNATURE**

Dated November 20, 2012 at Olympia, Washington



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



## Water Quality Certification Order #9625 Statement of Understanding

I, \_\_\_\_\_, state that, I will be involved as a WSDOT employee or an agent or contractor for Washington State Department of Transportation in SR 20 Skagit River Chronic Environmental Deficiency Permanent Restoration project in Skagit County, WA. I further state that I have read and understand the relevant conditions of Washington Department of Ecology **Water Quality Certification Order #9625** and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Company

\_\_\_\_\_  
Phone number

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, and Zip Code

