STATE OF WASHINGTON

DEPARTMENT OF ECOLOGY

P.O. Box 47600 • Olympia, Washington 98504-7600
(360) 407-6000 • TDD Only (Hearing Impaired) (360) 407-6006

June 18, 2012

Seattle Public Utilities
Mr. Gary Lockwood
Post Office Box 34018
Seattle, Washington 98124

RE: Water Quality Certification Order No. **9318** for Corps Nationwide Permit 3, NWS-2012-408-WRD for the 49th Avenue NE and 51st Avenue NE Sediment Removal, Unnamed Tributary to Thornton Creek, King County, Washington

Dear Mr. Lockwood:

On May 3, 2012, Seattle Public Utilities submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification under the federal Clean Water Act for the proposed 49th Avenue NE and 51st Avenue NE Sediment Removal project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and Nationwide Permit 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.

On May 3, 2012, Seattle Public Utilities submitted a Certification of Consistency with the Washington State Coastal Zone Management Program (CZMP). Pursuant to Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended, Ecology concurs with Seattle Public Utilities' determination that the proposed work is consistent with Washington's CZMP. This concurrence is based upon compliance with all applicable enforceable policies of the CZMP, including Section 401 of the CWA.

If you have any questions, please contact Jessica Moore at 360-407-7421. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

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

by Certified Mail 7009 0820 0001 9056 1189

Enclosure

e-cc: Jacalen Printz, U.S. Army Corps of Engineers, Seattle District
Gail Coburn, Seattle Public Utilities
Loree' Randall, Ecology, HQ-SEA
ecyrefedpermits@ecy.wa.gov

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO SEATTLE PUBLIC UTILITIES in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)))))))	**ORDER # 9318** **Corps Reference No. NWS-2012-408-WRD** **Nationwide Permit 3** Removal of accumulated sediment from channelized stream and associated culvert located in King County, Washington.

TO: Seattle Public Utilities
Attn: Mr. Gary Lockwood
Post Office Box 34018
Seattle, Washington 98124

On May 3, 2012, Seattle Public Utilities submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice regarding the request was distributed by Ecology for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on May 23, 2012.

The proposed project entails the removal of up to 6 cubic yards of accumulated sediment from an Unnamed Tributary to Thornton Creek and adjacent culverts near 49th Avenue NE and 51st Avenue NE at Seattle, King County, Washington 98115, Section 34, Township 26N, Range 4E, WRIA# 8, Cedar-Sammamish.

AUTHORITIES:

In exercising authority under 33 U.S.C. § 1341, 16 U.S.C. § 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has examined 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 not violate 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 the Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC), ground water standards (Chapter 173-200 WAC) or sediment quality standards (Chapter 173-204 WAC). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters, ground waters or sediments occurring as a result of project construction or operations.

A. General Conditions:

1. For purposes of this Order, the term "Applicant" shall mean Seattle Public Utilities and its agents, assignees and contractors.

2. All submittals required by this Order shall be sent to Ecology's HQ, Attn: Federal Project Coordinator, PO Box 47600, Olympia, WA 98504 or via e-mail (preferred), if possible, to the ecyrefedpermits@ecy.wa.gov. The submittals shall be identified with Order No. 9318 and Corps Reference #NWS-2012-408.

3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on May 4, 2012, unless otherwise authorized by Ecology.

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. The Applicant shall obtain Ecology review and approval before undertaking any changes to the proposed project that might significantly and adversely affect water quality, other than those project changes required by this Order.

6. 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.

7. 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.

8. 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. Further, 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.

9. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order.

10. 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. Water Quality

1. This Order does not authorize temporary exceedances of the turbidity standard beyond the limits established in WAC 173-201A-200.

C. Timing Requirements

1. This Order will expire on May 21, 2014.

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
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503 **Pollution Control Hearings Board** 1111 Israel RD SW STE 301 Tumwater, WA 98501	**Department of Ecology** Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608 **Pollution Control Hearings Board** PO Box 40903 Olympia, WA 98504-0903

SIGNATURE

Brenden McFarland, Section Manager
Shorelands and Environmental Assistance Program
Headquarters Office – Ecology
State of Washington

June 18, 2012