



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000  
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

October 25, 2016

Gary Goodall  
Whatcom County Public Works, River and Flood  
322 N. Commercial Street, Suite 120  
Bellingham, WA 98225

**RE: Water Quality Certification Order #13830 for U.S. Army Corps of Engineers  
Public Notice #NWS-2016-657, Swift Creek Channel Maintenance Project,  
Swift Creek, Everson, Whatcom County, Washington**

Dear Mr. Goodall:

On October 14, 2016, Whatcom County Public Works, River and Flood submitted a Joint Aquatic Resource 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 Swift Creek Channel Maintenance project.

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.

If you have any questions, please contact Rebekah Padgett at (425) 649-7129. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Joe Burcar, Interim Section Manager  
Shorelands and Environmental Assistance Program

JB:rrp:ap

Enclosure



By certified mail: 9171 9690 0935 0107 0221 17

Cc: Randel Perry, U.S. Army Corps of Engineers  
Joel Ingram, Washington Department of Fish and Wildlife  
Wendy Cole, Washington Department of Fish and Wildlife  
Steve Fox, Whatcom County Public Works  
Paula Harris, Whatcom County Public Works  
Elly Hale, U.S. Environmental Protection Agency  
Barb Trejo, Washington State Department of Health

E-cc: Chad Yunge – BFO  
Cris Matthews – BFO  
Mary O’Herron – BFO  
Doug Allen – BFO  
Kurt Baumgarten – BFO  
Paul Anderson – NWRO  
Loree’ Randall – HQ  
Greg Stegman – NWRO  
[ecyrefedpermits@ecy.wa.gov](mailto:ecyrefedpermits@ecy.wa.gov)

**IN THE MATTER OF GRANTING A ) ORDER #13830**  
**WATER QUALITY ) Corps Reference #NWS-2016-657**  
**CERTIFICATION TO ) Swift Creek Channel Maintenance Project; Swift**  
**Whatcom County Public Works, ) Creek, Everson, Whatcom County, Washington.**  
**River and Flood )**  
in accordance with 33 U.S.C. 1341 )  
(FWPCA § 401), RCW 90.48.120, RCW )  
90.48.260 and Chapter 173-201A WAC )

TO: Whatcom County Public Works, River and Flood  
Attn: Gary Goodall  
322 N. Commercial, Suite 120  
Bellingham, WA 98225

On October 14, 2016, Whatcom County Public Works, River and Flood submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. The U.S. Army Corps of Engineers (Corps) distributed a joint public notice regarding the request for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on August 22, 2016.

The project entails implementation of a five-year sediment management and flood prevention plan to include:

- Excavation of up to 8,500 cubic yards of accumulated sediments from within the creek channel annually.
- Placement of riprap along up to 1,200 linear feet (up to 700 cubic yards below Ordinary High Water Mark [OHWM]) annually for bank stabilization.
- Placement of the excavated sediments on existing levees within the existing levee footprint or within the approved upland fill area on site.
- Maintenance or emergency prevention work, such as cleanup and removal of sediment and wood debris, revetment repair, and limited channel dredging and stockpiling, if it does not exceed the limits described above.

The project would relieve aggradation and flooding problems and reduce downstream transport of naturally contaminated sediments.

A large, complex landslide in the upper watershed on Sumas Mountain causes the excessive sediment in Swift Creek. Approximately 150,000 cubic yards of material move into the creek system annually. The exposed slide material contains naturally occurring, elevated levels of asbestos, nickel, manganese, cobalt, chromium, and magnesium. These chemicals are present in amounts toxic enough to prevent vegetation from growing on the slide material, and Swift Creek has no resident fish. The movement of sediment downstream in Swift Creek contributes to water quality problems in the Sumas River.

The project is located in and adjacent to approximately 6,000 lineal feet of the Swift Creek channel from a point 1,000 feet downstream of Oat-Coles Road to the upstream limit of the

County road right-of-way at the Goodwin Road Bridge, Everson, Whatcom County, Washington, Section 33, T. 40 N., R. 4E., WRIA 1.

**AUTHORITIES:**

In exercising authority under 33 U.S.C. § 1341, 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.
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 it has reasonable assurance 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 because of project construction or operations.

**A. General Conditions:**

- A1. For purposes of this Order, the term "Applicant" shall mean Whatcom County Public Works, River and Flood, and its agents, assignees and contractors.
- A2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Northwest Regional Office, Attn: 401/CZM Federal Permit Manager, 3190

160<sup>th</sup> Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #13830 and Corps Reference #NWS-2016-657.

- A3. Work authorized by this Order is limited to the work described in the:
- JARPA received by Ecology on October 14, 2016, and
  - Sheets 1 of 5 to 5 of 5, revised August 16, 2016.

The Applicant will be out of compliance with this Order and must reapply with an updated application if the information contained in the JARPA is voided by subsequent changes to the project not authorized by this Order.

- A4. Within 30 days of receipt of an updated JARPA, 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.
- A5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue an individual Section 404 permit.
- A6. The Applicant shall provide to Ecology's 401/CZM Federal Permit Manager a copy of the final Corps permit within two weeks of receipt of the permit. A copy shall be submitted per condition A2 above.
- A7. Copies of this Order shall be kept 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.
- A8. 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.
- A9. 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.
- A10. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understood 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 project engineer and contractor that they have read and understood the conditions of this Order and the above-referenced permits, plans, documents, and approvals. These statements shall be provided to Ecology before construction begins at the project or mitigation sites.

A11. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state (including wetlands) or related aquatic resources, except as specifically provided for in conditions of this Order.

A12. Failure of any person or entity to comply with this Order may result in the issuance of civil penalties or other actions, whether administrative or judicial, to enforce its terms.

**B. Material Management Plan:**

B1. The Applicant shall work with Ecology and the U.S. Environmental Protection Agency (EPA) to finalize a plan for long-term management of the dredged material.

B2. The Applicant shall work with Ecology and EPA to develop a plan for permanent storage of the dredged material.

B3. The dredged material from Swift Creek shall be placed in an upland location so that it does not re-enter state waters, including but not limited to streams, wetlands, lakes, rivers, estuaries, marine waters, or any other waters of the state.

**C. Water Quality Conditions:**

C1. This Order does not authorize a temporary turbidity exceedance beyond the limits established in WAC 173-201A-200(1)(e)(i) for Swift Creek. Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

C2. The Applicant shall monitor water quality during in-water construction according to the protocols outlined in the *Water Quality Monitoring Protocol, 2016 Swift Creek Sediment Removal Project*, prepared by Whatcom County Public Works, River and Flood, dated October 20, 2016, or as modified by this Order or revised and approved by Ecology.

C3. If no exceedances are detected, results of water quality sampling, as determined by the Plan, shall be forwarded to Ecology on a monthly basis in accordance to Condition A2.

C4. If exceedances are detected through water quality sampling and monitoring, the Applicant shall immediately take action to stop, contain, and prevent unauthorized discharges or otherwise stop the violation and correct the problem. After such an event, the Applicant shall assess the efficacy of the site BMPs and update or improve the BMPs used at the work site in an effort to reduce or prevent recurrence of the turbidity exceedance.

- C5. Notification of exceedances detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #13830, Attn: 401/CZM Federal Permit Manager, by telephone at (425) 649-7129 or (425) 649-7000, or by fax to (425) 649-7098. The Applicant shall, at a minimum, provide Ecology with the following information:
- i. A description of the nature and cause of exceedance.
  - ii. The period of non-compliance, including exact dates, duration, and times and/or the anticipated time when the Applicant will return to compliance.
  - iii. The steps taken, or to be taken, to reduce, eliminate, and prevent recurrence of the non-compliance.
  - iv. In addition, within five (5) days after notification of an exceedance, the Applicant shall submit a written report to Ecology that describes the nature of the exceedance, turbidity results and location, photographs, and any other pertinent information.

**D. Conditions for Construction Activities:**

**General Conditions:**

- D1. Construction stormwater, sediment, and erosion control best management practices (BMPs; e.g., filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting construction at the site.
- D2. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- D3. All construction debris shall be properly disposed of in a manner to prevent it from entering the waters of the state.
- D4. Machinery and equipment used during construction shall be serviced, fueled, and maintained upland, unless otherwise approved by Ecology, in order to prevent contamination to any surface water.
- D5. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- D6. All manmade debris that has been deposited below the Ordinary High Water Line within the construction work area shall be removed and disposed of upland such that it does not enter waters of the state. Concrete blocks, metal debris, cables, submerged timbers, and

other debris in the construction work corridor that have washed into freshwater areas shall be removed from the project area.

D7. Stockpile areas adjacent to the stream shall be covered with wood chip mulch, or other material as approved by Ecology, to prevent dredged material from eroding back into the channel during rain events.

D8. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology that fisheries resources may be adversely affected.

**In-Water Conditions:**

D9. The Applicant shall conduct excavation of the channel in the dry to the maximum extent practicable, as follows:

a. Goodwin Road Section: Excavation shall only be undertaken when stream flow is low enough to allow relocation of the stream to the opposite side of the braided channel so that excavation can be done in the dry. If streamflow is elevated during a rain event, work shall stop until the flow drops to a manageable level.

b. Oat Coles Road Section: Excavation shall only occur when stream flow is low enough that no flow escapes the work area during excavation. Excavation shall start at the downstream extent of the work area and proceed upstream so the excavated channel will trap any sediments that are mobilized from upstream.

**E. Emergency/Contingency Measures:**

E1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.

E2. The Applicant shall have adequate and appropriate spill response materials on hand to respond to emergency release of petroleum products or any other material into waters of the state.

E3. 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.

E4. Any work that is out of compliance with the provisions of this Order, or conditions causing distressed or dying fish, or any discharge of oil, fuel, or chemicals into state waters, or onto land with a potential for entry into state waters, is prohibited. If these occur, the Applicant shall immediately take the following actions:

a. Cease operations at the location of the violation or spill.

- b. Assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further environmental damage.
- c. Notify Ecology of the failure to comply. All oil spills shall be reported immediately to Ecology's 24-Hour Spill Response Team at 1-800-258-5990, **and** within 24 hours of spills or other events to Ecology's 401/CZM Federal Permit Manager at (425) 649-7129 or (425) 649-7000.
- d. 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.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

#### **F. Timing Requirements**

- F1. This Order expires five (5) years from its date of issuance.

#### **G. Reporting and Notification Requirement Conditions**

- G1. Applicant shall provide notice to Ecology's 401/CZM Federal Permit Manager:
- At least three (3) days prior to the start of construction.
  - Within 14 days after completion of construction at the project site.
- Notification, referencing Corps Reference #NWS-2016-657, Order #13830 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.
- G2. If the project construction is not completed within 13 months of issuance of this Order, the Applicant shall submit per Condition A2 a written construction status report and submit status reports every 12 months until construction is completed.

#### **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. Chapter 43.21B RCW and Chapter 371-08 WAC govern the appeal process. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both 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.) Email 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
<p><b>Department of Ecology</b>                      Attn: Appeals Processing Desk                      300 Desmond Drive SE                      Lacey, WA 98503</p> <p><b>Pollution Control Hearings Board</b>                      1111 Israel Road SW                      STE 301                      Tumwater, WA 98501</p>	<p><b>Department of Ecology</b>                      Attn: Appeals Processing Desk                      PO Box 47608                      Olympia, WA 98504-7608</p> <p><b>Pollution Control Hearings Board</b>                      PO Box 40903                      Olympia, WA 98504-0903</p>

### CONTACT INFORMATION

Please direct all questions about this Order to:

Rebekah Padgett  
 Department of Ecology  
 Northwest Regional Office  
 3190 160<sup>th</sup> Avenue SE  
 Bellevue, WA 98008  
 (425) 649-7129  
[rebekah.padgett@ecy.wa.gov](mailto:rebekah.padgett@ecy.wa.gov)

### MORE INFORMATION

- Pollution Control Hearings Board Website**  
[www.eho.wa.gov/Boards\\_PCHB.aspx](http://www.eho.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 90.48 RCW – Water Pollution Control**  
<http://apps.leg.wa.gov/RCW/default.aspx?cite=90.48>
- Chapter 173-204 WAC – Sediment Management Standards**  
[www.ecy.wa.gov/biblio/wac173204.html](http://www.ecy.wa.gov/biblio/wac173204.html)

**Chapter 173-200 WAC – Water Quality Standards for Ground Waters of the State of Washington**

[www.ecy.wa.gov/biblio/wac173200.html](http://www.ecy.wa.gov/biblio/wac173200.html)

**Chapter 173-201A WAC – Water Quality Standards for Surface Waters of the State of Washington**

[www.ecy.wa.gov/biblio/wac173201A.html](http://www.ecy.wa.gov/biblio/wac173201A.html)

**SIGNATURE**



Joe Burcar, Interim Section Manager  
Shorelands and Environmental Assistance Program  
Northwest Regional Office

10-25-2016

Date

**ATTACHMENT A**

**WHATCOM COUNTY PUBLIC WORKS, RIVER AND FLOOD  
SWIFT CREEK CHANNEL MAINTENANCE PROJECT  
Water Quality Certification Order #13830**

**Statement of Understanding of  
Water Quality Certification Conditions**

I have read and understood the conditions of Order #13830 Section 401 Water Quality Certification for the Whatcom County Public Works, River and Flood, Swift Creek Channel Maintenance Project. I have also read and understood all permits, plans, documents, and approvals associated with the project referenced in this Order.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company