



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

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Gary Rowe
Washington State Association of County Engineers

Gary, thank you for reviewing SEPA for WDFW's Water Crossing Design Guidelines, 2013. I will respond to each of your comments below.

- 1. Thank you for the changes that have been made that address some of our concerns. Although the guidelines are better, we are still concerned over the potential impact the guidance will have on the proper design and construction of water crossings.**

We understand that building crossings that avoid or minimize impacts to fish and their habitat will influence other aspects of the structure and its cost. This is *yet another* factor to consider in an already complex design. Please remember that state law requires the protection of fishlife, just like load ratings protect public safety, and that these protections have been in place beginning in 1890 with a law to provide fish passage. You and I might differ on the relative value of these two protections, but they must both be considered in the design. Remember also that these are guidelines and you can choose other methods if you feel that they serve you better in proper design, providing, of course, that these alternative methods avoid or minimize impacts to fishlife.

- 2. The guidance is not based on Best Available Science. We recommend that the Department use something similar to the platform used by the Washington State Department of Ecology for their wetland guidance, i.e., a synthesis of science with guidance based on that.**

Please note that the WSDG is heavily referenced with current, relevant literature – there are some 140 direct references, not including our library of hundreds of other articles and books on the subject that we have read and considered over the years. We have had a staff working on fish passage and habitat enhancement for over 30 years, with people who are published and renowned worldwide in these areas. We have reviewed, designed and built 1000s of water crossings. In writing any practical guideline, some aspects are not as rigorously supported as others since not everything has been, or even can be determined so that no doubt remains. As you know, since it is the nature of our professional practice, that some judgment will always be required to design and build things in the real world. So, where we lack

direct references, there is considered judgment to inform our recommendations. There is also a *Water Crossings White Paper*, December 2006, similar in nature to Ecology's *Wetlands in Washington State Volume 1: A Synthesis of the Science*, a thoroughly referenced document, which considers the impacts of water crossings. The WCDG are guidelines that are not required and we give many alternative approaches to solve water crossing problems (each of which, I will venture to guess, have methods supported similarly to ours).

3. We are concerned that counties will be faced with requirements from other state agencies and federal agencies over design requirements that have been determined provide adequate protection, but may not be consistent with DFW's guidelines. We would like a statement that DFW's guidelines cannot make additional requirements beyond those in design requirements from other state and federal agencies.

We hope that there are no conflicts with other agencies in satisfying your requirements to protect fishlife. By publishing the WCDG through the Aquatic Habitat Guidelines program, we have sought to coordinate closely with other state agencies – they have all had a chance to read and comment, they know what's in it and how it will affect their various programs. The WCDG have also been reviewed by Federal Highways and we have received their support along with WSDOT's Local Programs, who fund many of the county's federally-funded projects. I am sorry I have to say this again, but, there are no requirements in these guidelines so please don't feel forced to follow them if there are good reasons not to. WDFW is the lead agency for the protection of fishlife so it is within our jurisdiction to write guidance documents that recommend appropriate design for fish passage and habitat protection. Other aspects of the crossing design – safety, load requirements, steel and concrete standards, and the many other aspects of the design – are not covered by these guidelines and are rightly in the jurisdiction of other state and federal agencies. We do not usurp their authority.

4. Proper training is important for consistent and appropriate application of the design guidelines. Thank you for including county personnel in the initial training. With constant turnover of personnel, it is important to provide training on a regular basis.

We agree that regular training is important. We have scheduled 4 classes this April and May in major locations in the state, that will be joint training with WDFW permitting staff (all area habitat biologists are required to attend) and water crossing designers. We recommend that your new employees who design water crossings read the WCDG, since our classes are based exclusively on that document. In fact, the summary at the beginning of chapters 1, 2, 3, 4, and 7 forms the outline of our presentation. The classes we are giving this spring are really just an introduction of water crossings – a brief overview. We would like to build on this and start an on-going series of seminars to focus on particular aspects of crossing design. We have had strong support for these seminars and we invite WSACE to help us put them on, suggesting case studies or specific areas of interest or controversy. Please write to me with you thoughts and suggestions for these seminars.

5. Without a doubt, there will be instances of disagreement over the application of design guidelines. DFW should institutionalize a process whereby issues over engineering design requirements can be brought forward for resolution without the need for appeals.

Fortunately, there is already a process in place. Please see the document also attached to this email, *August 10, 2010, Dispute Resolution Process*.

6. As was previously stated in a letter to the Department from the Washington State Association of Counties (WSAC), the methods described in the guidelines will likely increase project costs substantially. DFW should perform a project cost impact analysis prior final adoption of the guidelines.

We have consulted with our legal staff concerning this. A cost-benefit analysis is required for significant legislative rules under RCW 34.05.328. Clearly the guidelines are not significant legislative rules, so they would not require such an analysis. If any county feels as though an alternative crossing design method results in a lower cost and still complies with relevant WACs and RCWs, please don't hesitate to apply for a permit using that method.

Thank you again for your interest and participation in the whole review process. My colleagues and I look forward to working with the various counties on water crossing projects in the future and hope that these guidelines offer some help in the often difficult project development process.

Sincerely,

Bob Barnard, P.E.