

12/4/2025

Letter No. 286
BY-CRE-04136

Evelyn Pao, P.E., Project Director
Washington State Department of Transportation
18911 N Creek Pkwy S, Suite 150
Bothell, WA 98011

Project: I-405, Brickyard to SR 527 Improvement Project
Contract No: 009727

Subject: Supplement to Notice of Protest 008 – Juanita Creek Angular Rock Replacement

Dear Ms. Pao:

Skanska hereby provides our written protest with the following supplemental information per 1-04.5.

a. The Date and nature of the protested determination.

WSDOT provided the following determination in WSDOT SL No. 9727-192, dated November 6, 2025:

After careful review of the serial letter and the Contract, WSDOT's determination remains as previously presented under WSDOT SL Nos. 151 and 174. WSDOT will neither issue an OIC nor retract the related NCI. Skanska SL No. 258 did provide clarifying points in response to WSDOT's application of HPA Provision No.67 as it relates to angular rock but did not address fundamental Contract obligations.

Please see attached Section A for additional information.

b. Full Discussion of the circumstances which caused the protest, including names of persons involved, time, duration and nature of the Work involved, and a review of the Contract Documents/Design Documents referenced to support the protest.

Please see attached Section B for information required.

c. The estimated dollar cost, if any, of the protested Work and a detailed breakdown showing how the estimate was determined.

Total cost of work is approximately calculated at \$39,048.29. Please see attached for the detailed breakdown.

d. An analysis of the progress schedule showing the schedule change or disruption of the Design-Builder is asserting a schedule change or disruption.

There is no time impact associated with this work.



Skanska reserves its rights under the contract and applicable laws to seek equitable compensation for cost and time impacts incurred to perform this scope of work.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to be "P. Prendergast", written over a horizontal line.

Patrick Prendergast, Project Executive
Skanska USA Civil
18911 N Creek Pkwy S, Suite 300
Bothell, WA 98011

Attachments

Atlas - Supplement to the Written Protest_2025-12-01

Atlas – Exhibit A

Supplemental to Protest 008 - Juanita Creek Angular Rock Replacement Costs



17619 NE 67th CT, #100, Redmond, WA 98052
425.429.7800 | oneatlas.com

December 1, 2025

Evelyn Pao, P.E., Project Director
Washington State Department of Transportation
18911 N Creek Pkwy S, Suite 150
Bothell, WA 98011

PROJECT: Contract No.: 9727, I-405, Brickyard to SR 527 Improvement Project

SUBJECT: **Supplement to the Written Protest:** Submitted Under Contract Section 1-04.5(2) – *Procedure, Protest, and Dispute by the Design-Builder*

WORK ELEMENT: Juanita Creek – Temporary Stream Diversion Plan (TSDP) & Use of Angular Rock

The following is a supplement to the written protest intended to comply with Section 1-04.5(2) of the General Provisions. The following sections provide the information as outlined in that section:

(A) DATE AND NATURE OF THE PROTESTED DETERMINATION

The protest concerns the issuance of a Non-Compliance Incident (NCI) and the refusal to issue an Owner Initiated Change (OIC) for rework performed at Juanita Creek. The rework involved removal of angular rock used for a temporary stilling basin and replacing it with a similar structure constructed of rounded rock pursuant to a new WDFW interpretation issued after construction.

The protested Written Determination was issued by WSDOT on November 6, 2025, asserting that the Design-Builder failed to comply with a requirement that a WDFW Habitat Biologist “inspect and approve the temporary stream diversion channel prior to implementation,” citing RFP Section 2.8.4.2.2.6 and referencing a provision purportedly contained in the governing Hydraulic Project Approval (HPA).

However, this inspection/approval requirement does not appear in the Brickyard HPA, which governs all Juanita Creek work. Instead, the requirement originates from the SR 522–SR 527 HPA, a different permit governing a different location of the contract.

This determination from WSDOT was the latest within a series of letter regarding the use of angular rock for a temporary stilling basin and the August 19, 2025, determination by WDFW that it was not allowed. The Design-Builder protested this determination and now supplements that protest with this letter in accordance with Section 1-04.5(2).



December 1, 2025

(B) FULL DISCUSSION OF THE CIRCUMSTANCES CAUSING THE PROTEST

The circumstances that caused the protest center on the fact that the Design Builder performed all Work at Juanita Creek in compliance with the Contract Documents and governing permits in effect at the time of construction. The TSDP that included the use of angular rock was approved and incorporated into the permit record through a modification. The August 19 reinterpretation by WDFW introduced a new requirement that was not previously communicated. The Non-Compliance Incident (NCI) that was issued is not supported. The following subsections detail the individuals involved, the timing and nature of the Work and the Contract Documents and design documents that demonstrate the Work was conforming when installed.

Name of Persons Involved:

The individuals involved in the TSDP development, approval, and construction included Atlas (see below), WSDOT Hydraulics staff, WSDOT permit coordinators, WDFW habitat biologist Jesse Dykstra, a Skanska Subcontractor JJH, and Skanska project management and field supervisors/crews.

Atlas Technical Consultants personnel:

Mike Foster, CPESC – Environmental Compliance Manager (ECM)
Josh Earl, PE – Designer
Mika Miyamoto, CESCL – Deputy to the ECM
Bret Fessenden – Fisheries Biologist
Katherine Feldmann – Assistant Fisheries Bio
Cameron Stecki – Assistant Fisheries Bio

WDFW

Jesse Dykstra – WDFW Habitat Biologist

Time, duration and nature of the Work involved:

Development and approval of Juanita Creek Temporary Stream Diversion Plan (TSDP).

- **May 20, 2025** – Initial TSDP submitted to WSDOT for review (no rock fortification)
- **June 10, 2025** – WSDOT Hydraulics and the City of Kirkland requested additional scour protection using rock.
- **June 20, 2025** – Atlas issued a revised TSDP incorporating RESP Class C angular rock as an energy-dissipation stilling basin per Hydraulic Manual §3-4.7.
- **June 23, 2025** – WSDOT reviewed and accepted the revised configuration and transmitted it to WDFW through APPS for modification.
- **July 7, 2025** – WDFW issued a formal HPA modification approving the updated TSDP, materials, and angular rock.
- **July 10, 2025** – Final comment resolution among WSDOT, Skanska, and Atlas.



Construction period:

- **July 22, 2025** - Atlas biologists set nets and exclude fish. JJH, a Skanska subcontractor begins work on the overwinter bypass pipe and stilling basin.

Post Construction Reinterpretation:

- **August 19, 2025** - WDFW issued reinterpretation prohibiting angular rock (first time stated)

Rework:

- **September 3, 2025** – Skanska and Atlas worked together to exclude fish and remove Angular rock to comply with the WDFW request.
- **September 25, 2025** – Skanska and Atlas worked together to exclude fish and install stilling basin with rounded rock. This action was approved by all parties and the over winter condition was achieved before the in-water work window closed.

Review of the Contract Documents/Design Documents referenced:

A. Brickyard Hydraulic Project Approval (Permit No. 2021-4-857+01)

Key provisions:

- Provision 3 – Approved Plans: Requires work to follow WDFW-approved plans uploaded to APPS.
- Provision 66 – HPA Modification: Requires WDFW review and authorization of updated design drawings and streambed mix prior to construction.
- *No provision requires WDFW inspection or approval of the channel before wetting.*
- *No provision prohibits angular rock in temporary bypass structures.*

B. Temporary Stream Diversion Plan (TSDP) for Juanita Creek

These documents constitute the approved plans under HPA provision 3:

- May 20 TSDP submittal (no stilling basin)
- June 20 revised TSDP using angular rock
- June 23 WSDOT acceptance and submission to WDFW
- July 7 approved HPA modification that incorporates the document

C. WSDOT Contract Requirements

WSDOT cites RFP Section 2.8.4.2.2.6 (“note that the HPA requires inspection and approval...”).

However:

- This language is does not apply to Juanita Creek.
- RFP 2.8.4.2.2.6 instructs the Design-Builder only to note this language; it does not incorporate unrelated permit provisions into the Brickyard scope.



D. WSDOT Hydraulics Manual (M23-03.11)

Section 3-4.7 supports the use of RESP Class C angular rock for high-velocity outlet energy dissipation. This confirms that the design met technical criteria from WSDOT.

Core Basis for the Protest

- The Work matched the approved TSDP incorporated into the Contract and HPA.
- WDFW's July 7 approval satisfied all permitting requirements.
- Neither the Contract nor the governing HPA prohibited angular rock.
- No document required WDFW field inspection prior to wetting.
- A reinterpretation issued after construction cannot render previously conforming Work non-conforming.
- General Provision 1-03.7 does not apply because the Work was conforming when installed.
- General Provision 1-02.1 does not apply because the design was compliant and formally approved by both WSDOT and WDFW prior to construction.
- Retroactive reinterpretation cannot be the basis for a Non-Conformance Issue.

(C) ESTIMATED DOLLAR COST OF PROTESTED WORK

Atlas Technical Consultants - **\$13,804.35** (Exhibit A)

(D) AN ANALYSIS OF THE PROGRESS SCHEDULE

N/A - Atlas claims no schedule impact.

Respectfully,



Mike Foster
Design-Build Environmental Compliance Manager
ATLAS TECHNICAL CONSULTANTS, LLC

CC, P. Prendergast, R. Prescott



December 1, 2025



Exhibit A

December 1, 2025

Cost of Rework at Juanita Creek for Atlas Technical Consultants

Name	Date	Hours	Billing Amount	Posted	Comment
Bret Fessenden	9/2/2025	1	\$ 124.38	Checked	communication on site visit and prep
Bret Fessenden	9/3/2025	7	\$ 870.66	Checked	E fishing/ stand by for excavator/ defishing
Bret Fessenden	9/4/2025	8	\$ 995.04	Checked	de-fishing/ rock removal/ fish monitoring
Bret Fessenden	9/7/2025	1	\$ 124.38	Checked	comms, follow up from previous week, salvage log
Bret Fessenden	9/10/2025	0.5	\$ 62.19	Checked	comms and prep for field work
Bret Fessenden	9/15/2025	2.5	\$ 310.95	Checked	decon from previous work
Bret Fessenden	9/29/2025	2	\$ 248.76	Checked	communications, QC salvage logs
Cameron Stecki	9/3/2025	9	\$ 1,022.13	Checked	Fish passage
Cameron Stecki	9/4/2025	5	\$ 567.85	Checked	Fish passage
John Foster	9/23/2025	1	\$ 183.87	Checked	prep for Juanita Stilling basin installation
John Foster	9/24/2025	5	\$ 919.35	Checked	Juanita Stilling Basin field oversight.
Joshua Earl	8/5/2025	2	\$ 367.74	Checked	TSD update for Juanita
Joshua Earl	8/6/2025	2	\$ 367.74	Checked	TSD update for Juanita
Joshua Earl	8/7/2025	3	\$ 551.61	Checked	TSD update for Juanita
Joshua Earl	8/24/2025	2	\$ 367.74	Checked	Juanita
Joshua Earl	8/28/2025	2	\$ 367.74	Checked	Juanita
Joshua Earl	9/2/2025	3	\$ 551.61	Checked	Finishing the TSD
Joshua Earl	9/4/2025	2	\$ 367.74	Checked	Finishing the TSD
Katherine Feldmann	9/23/2025	2	\$ 248.76	Checked	Cleaned fish equipment and dropped it off at Brickyard
Katherine Feldmann	9/24/2025	7	\$ 870.66	Checked	Brickyard dewatering, dropped and cleaned gear at Redmond office
Mika Miyamoto	9/24/2025	7	\$ 976.71	Checked	WQ monitoring at Juanita Creek and stilling basin field oversight.
Mika Miyamoto	9/24/2025	3	\$ 373.14	Checked	Dewatering Juanita Creek

Reimbursable Expenses at Billing

Resource	Date	Units	Billing Amount	Posted	Comment
Vehicles	9/20/2025	4	\$ 259.60		Daily vehicle charge for defishing
Electrofishing Backpack	9/20/2025	1	\$ 2,704.00		Backpack charge for electrofishing

TOTAL
\$ 13,804.35

Contractor Price Breakdown Summary

Project Name: I-405/Brickyard to SR527 Improvements

Project No. 009727

Source Documents: Protest 008 - Juanita Creek Replacement of Angular Rock

Date: 12/3/2025

Contractor: Skanska Civil USA West

Description: Costs associated with replacing angular rock material as directed by WSDOT that was placed per the approved modifications to the HPA in order to implement the temporary stream diversion plan.

Line	Item	Cost
A	SKA Labor Costs	\$ 10,091.00
B		Direct Costs \$ 10,091.00
C		Indirect Costs \$ -
D		31% Markup \$ 3,128.21
E	SKA Equipment Costs	\$ 2,809.00
F		Direct Costs \$ 2,809.00
G		Indirect Costs \$ -
H		21% Markup \$ 589.89
I	SKA Materials/Services Costs	\$ 4,733.00
J		Direct Costs \$ 4,733.00
K		Indirect Costs \$ -
L		21% Markup \$ 993.93
M	Materials/Services Tax	\$ -
N	Services	\$ 16,703.26
O		\$ 13,804.35
P		21% Markup \$ 2,898.91
R	Total Skanska Cost (A+B+C+D+E+F+G)	\$ 39,048.29
S		
T	Subcontractor Costs	\$ -
U		Direct Cost \$ -
V		Indirect Cost \$ -
W		7% Markup \$ -
X	Total Subcontractor Cost (J+K)	\$ -
Y		
Z	Total Cost of Change Work (H+L)	\$ 39,048.29

Services Cost Breakdown

Project Name: I-405/Brickyard to SR527 Improvements

Project No. 009727

Contractor: Skanska Civil USA West

Date: 12/3/2025

Description	Hours	Base Wage	Subtotals
			Cost
Atlas			\$ 13,804.35
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
Subtotal AECOM			\$ 13,804.35
Subconsultants			
			\$ -
Subtotal Subconsultants			\$ -
			\$ -
			\$ -
Subtotal Skanska Survey			\$ -
Rule 171: Yes or No? Tax Rate			\$ -
Total Cost of Work			\$ 13,804.35

