STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

May 13, 2005

REGISTERED MAIL
RR 359 893 567 US

Puget Sound Energy, Inc.
ATTN: Roque Bamba, Land Planner
PO Box 90868 XRD-01W
Bellevue, WA 98009

Dear Mr. Bamba:

RE: **Order # 2452**
U.S. Army Corps Reference No. 200401038
Water Quality Certification/Coastal Zone Consistency Determination for Puget Sound Energy, Inc. Upper Baker Fish Passage Facility Temporary Construction & Launch Site Project, Baker Lake, Whatcom County, Washington

The request for certification for proposed work in and adjacent to Baker Lake has been reviewed. On behalf of the State of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This letter also serves as the State response to the Corps of Engineers.

Pursuant to 16 U.S.C. 1456 et. seq. (Section 307(c)(3) of the Coastal Zone Management Act of 1972 as amended), Ecology concurs with the applicant's determination that this work will be consistent with the approved Washington State Coastal Zone Management Program. This concurrence is based upon the applicant's compliance with all applicable enforceable policies of the Coastal Zone Management Program, including Section 401 of the Federal Water Pollution Control Act.

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. Written comments can be sent to Rebekah at the Department of Ecology, 3190 160th Avenue SE, Bellevue, WA 98008, or at rpad461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Jeannie Summerhays

Jeannie Summerhays, Section Manager
Shorelands and Environmental Assistance Program

Enclosure

JS:rc
cc: Olivia Romano, U.S. Army Corps of Engineers
Kendra Smith, Skagit County

IN THE MATTER OF GRANTING A	)	**ORDER # 2452**
WATER QUALITY	)	**Corps Reference No. 200401038**
CERTIFICATION TO	)	Construction of a temporary fabrication and
Puget Sound Energy	)	launch site for the construction of a Floating
in accordance with 33 U.S.C. 1341	)	Surface Collector in Baker Lake, near Concrete;
FWPCA § 401, RCW 90.48.120, RCW	)	located in Section 31, T. 37 N., R. 09 E.,
90.48.260 and Chapter 173-201A WAC	)	Whatcom County, Washington.

TO: Puget Sound Energy
ATTN: Roque Bamba
PO Box 90868 XRD-01W
Bellevue, WA 98009-0868

On April 22, 2005, the U.S. Army Corps of Engineers issued a Nationwide Permit 33 (Temporary Construction, Access and Dewatering) to Puget Sound Energy for
During the review of the Joint Aquatic Resource Permits Application (JARPA), the Department of Ecology (Ecology) determined that an individual Section 401 water quality certification would be required for this project. On February 10, 2005, Ecology distributed a public notice for a proposed water quality certification from the State of Washington pursuant to the provisions of 33 U.S.C. 1341 (FWPCA §401). No comments were received.

The proposed project consists of construction of a temporary fish passage structure launch site on 6.6 acres. The launch site will provide a location for fabrication and deployment of a floating fish passage structure, a floating surface collector (FSC), to be used to enhance passage for fish migrating downstream past Upper Baker Dam. The launch site will consist of a working platform for fabrication of the fish passage structure, surrounded by excavated slopes inland and an embankment on the sides toward the lake. Sheet piling and an impermeable membrane will be placed along most of the east side of the site to facilitate launching of the FSC. Once the FSC is built, the site will be flooded to the level of the lake, the sheet piling removed by a barge-mounted crane, and the floating structure moved out through the opening in the sheet piling and moved to the forebay of Upper Baker Dam. The site will then be restored to its original condition and upland areas will be revegetated.

AUTHORITIES:

For purposes of this Order, the term "Applicant" shall mean Puget Sound Energy and its agents, assigns, and contractors.

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 investigated 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. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 303, 306 and 307);

2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; 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.

CONDITIONS OF ORDER # 2452 AND WATER QUALITY CERTIFICATION:

In view of the foregoing and in accordance with 33 U.S.C. 1341, RCW 90.48.120, RCW 90.48.260, and Chapter 173-201A WAC, water quality certification is granted to the Applicant subject to the following conditions:

A. No Impairment of Water Quality:

A1. Certification of this proposal does not authorize Applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification shall absolve Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

A2. Turbidity: WAC 173-201A-110(3) allows a 150-foot mixing zone in lakes for temporary exceedances of the turbidity standards during and immediately after necessary in-water construction activities that result in the disturbance of in-place sediments. This certification does not authorize a temporary turbidity mixing zone greater than that allowed by WAC 173-201A-110(3). The Applicant shall fully apply all known, available, and reasonable methods of prevention, control, and treatment (AKART). Within the temporary turbidity mixing zone, the Class AA standard for turbidity is waived. All other applicable water quality standards shall remain in effect within the temporary turbidity mixing zone and all other water quality standards are to be met outside of the authorized mixing zone.

A3. The waiver of specified standards within the temporary turbidity mixing zone is intended for brief periods of time (such as a few hours) and is not an authorization to exceed those

standards for the entire duration of construction. In no case shall turbidity exceedances cause degradation of water quality that significantly interferes with or becomes injurious to characteristic water uses, including fisheries habitat, or causes long-term harm.

B. **In-Water Construction Water Quality Sampling Protocol:**

B1. Sampling shall occur as described in the **Stormwater Pollution Protection and Water Quality Plan** found in Appendix B of Baker river Hydroelectric Project, FERC No. 2150, Biological Assessment and Essential Fish Habitat Consultation for Threatened and Endangered Species, Floating Surface Collector Construction and Launch Site Facility, dated January 2005, with the following additions:

B2.
a. Sampling for turbidity and oil shall be collected hourly during sheet pile extraction.
b. Sampling for turbidity shall be collected every two hours during all other in-water construction activity, including sheet pile installation.
c. A background sample shall be collected before construction begins each day.
d. Location of samples: Samples shall be collected at a minimum at the point of compliance 150 feet radially from the construction or activity. Sampling 100 feet from the point of activity will provide a margin of safety to respond to potential exceedances.
e. Reporting of results: Results of water quality monitoring shall be submitted to Department of Ecology, Federal Permit Coordinator, 3190 – 160th Avenue SE, Bellevue, WA, 98008-5452, fax 425-649-7098.

If no exceedances are detected, results shall be submitted once a week.

If exceedances are detected:

i. Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem. Additional samples shall be taken to verify that an exceedance has occurred.
ii. Notify Ecology of the failure to comply. Notification shall be provided within 24 hours to Ecology's Alice Kelly at (425) 649-7145.
iii. Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of samples taken, and any other pertinent information.

C. Construction Stormwater:

C1. Erosion:

a. All conditions of the Construction Stormwater NPDES Permit for this project shall be implemented.

b. The following erosion control and storm water measures shall be implemented to prevent any uncontrolled discharge of pollutants to state waters, which violate or contribute to a violation of state water quality standards, and additional measures Best Management Practices (BMPs) shall be implemented as necessary to control pollutant runoff from the site:

i. All sediment control devices including sediment ponds, perimeter silt fencing, and other sediment trapping BMPs shall be installed before grading.
ii. All exposed and unworked soils, including sediment control devices, shall be stabilized by suitable and timely application of BMPs.
iii. Adjacent and downstream properties shall be protected from erosion and sediment deposition by wind or water action.
iv. All temporary conveyance channels and pipe outlets shall be stabilized to prevent erosion.
v. All construction access routes that are subject to water or wind erosion shall be stabilized.
vi. All temporary and permanent erosion control BMPs shall be regularly inspected, maintained and repaired as needed to assure continued performance of their intended function.
vii. All temporary BMPs and accumulated sediments shall be removed or stabilized after final site stabilization.
viii. Prior to discharging stormwater from the site to waters of the state, all known available and reasonable methods of prevention, control and treatment (AKART) shall be implemented so that such discharges do not cause or contribute to a violation of water quality standards.

C2. Construction:

a. Turbid water generated from construction activities, including turbid dewatering water, shall <u>not</u> be discharged directly to waters of the state. Temporary sediment traps shall be used to allow the turbid water to settle and, if necessary, be made available for the application of other BMP's, including, but not limited to, on site infiltration and chemical treatment. Water detained within temporary sediment traps shall not be discharged until such water has been determined to meet the

water quality standards for turbidity.

b. Stormwater and groundwater from the site that is free of turbidity or other pollutants may be discharged directly to waters of the state after testing has been completed to determine and demonstrate such discharges will be in compliance with the water quality standards. The discharge outfall method shall be designed and operated so as to not cause erosion or scour in the stream channel, banks or vegetation. The flow rate of such storm or ground water discharges from the site into the receiving water shall not exceed one-tenth of the natural flow rate of the water at the time of discharge.

c. Impacts to bank and shoreline vegetation shall be limited to the maximum extent possible, and replanted where destroyed or damaged.

d. Approach material used to access a project sites shall be of clean composition and placed or stored in a manner to prevent erosion and siltation that might result from high water and/or heavy rains. Approach material shall not be placed in wetlands or other waters of the state unless authorized by Ecology.

C3. **Construction Stormwater Monitoring:**

a. Discharges from construction activities, including dewatering water, shall be monitored for compliance with the water quality standards during project construction. The Applicant shall submit a written Monitoring Plan for these discharges to Ecology for review at least 30 days prior to the start of the planned construction activity. Ecology may determine upon review of the Plan that additional monitoring shall be required. The Applicant shall implement and comply with the Plan, and any additional requirements added by Ecology.

b. The Monitoring Plan shall include the following:

i. The location of all construction activities at the site that may have a discharge (e.g. dewatering water, construction stormwater, etc.) to surface water or ground water shall be identified;

ii. Surface water monitoring points shall be indicated and shall include the following locations:

a) At the discharge point (or points if there is more than one location);
b) 150 feet radially from the discharge(s); and
c) background conditions

iii. All parameters that will be monitored (at a minimum, the monitoring parameters shall include DO, and turbidity, and pH if concrete work is involved);

iv. The frequency of monitoring;

v. The protocol used at the site for collecting samples, testing, recording rainfall (e.g. 0.5 inches per 24 hours during a rain event), conducting site inspections, noting and predicting weather conditions, and documenting the results.

vi. A schedule for visual monitoring (inspections) that includes, but is not limited to, conducting inspections of all BMP's and discharge point(s) on site at least once every seven days and within 24 hours of any rainfall event > 0.5 inches per 24 hours.

vii. A procedure for immediately contacting Ecology staff if site inspections or water quality monitoring show there is a discharge of pollutants from the site that is causing or contributing to a violation of water quality standards.

viii. A list of alternative BMP's that will be implemented if existing BMP's implemented on site are detected to be ineffective and/or discharges from the site are causing or contributing to a violation of water quality standards.

c. The Applicant shall retain the monitoring plan on site during construction activities or within reasonable access to the site and make it immediately available upon request by Ecology.

d. The monitoring plan shall be updated as necessary to adequately represent site changes.

e. Monitoring results shall be logged and retained on site during construction activities, and shall be immediately available upon request by Ecology.

D. General Construction:

D1. 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. For equipment that is not barge-mounted and will be in contact with waters of the State, equipment must be cleaned before coming on-site.

D2. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.

D3. 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.

D4. Clean Fill Criteria: Applicant shall ensure that fill placed for the proposed project does not contain toxic materials in toxic amounts.

D5. Temporary impacts to vegetation shall be limited to the amount necessary for construction, access, and stockpiling/staging areas. These disturbed areas shall be replanted with native vegetation within the first appropriate planting season after construction is completed and maintained or replanted as necessary to ensure 80% survival after three years.

D6. A contingency plan shall be developed detailing actions to be made in the event of adverse weather conditions or other foreseeable undesirable conditions.

E. Emergency/Contingency Measures:

E1. In the event Applicant is unable to comply with any of the permit terms and conditions due to any cause, Applicant shall:

- Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.

- Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000, and within 24 hours to Ecology's Rebekah Padgett at (425) 649-7129.

- Submit a detailed written report to Ecology within five days that describes the nature of the violation, 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 Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

E2. 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. No refueling of equipment shall occur over, or within 50 feet of creeks or wetlands.

F. Notification:

F1. Applicant shall provide notice to Ecology's Rebekah Padgett at least 3 days prior to the start of construction. Notification can take place by e-mail to rpad461@ecy.wa.gov, telephone to (425) 649-7129, fax to (425) 649-7098, or in writing.

G. General Conditions:

G1. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

G2. Applicant will be out of compliance with this certification if the project is constructed and/or operated in a manner not consistent with the project description contained in the Public Notice for certification, or as otherwise approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.

G3. Applicant will be out of compliance with this certification and must reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the Public Notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval prior to implementation of such action.

G4. This Order is valid for a period of not more than five years after the signature dated on the last page of this Order. The Applicant shall reapply with an updated application for certification if five years elapse between the date of the issuance of this Order and the beginning of construction and/or discharge for which the federal license or permit is being sought.

G5. 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 foremen, and state and local government inspectors. To avoid violations or non-compliance with this Order, Applicant shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects of this Order, the NPDES permit if applicable, and any subsequent revision or Ecology-approved plans.

G6. Applicant shall provide access to the project site and mitigation site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.

G7. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines 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 the public interest.

G8. Liability: Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars ($10,000) per violation for each day of continuing noncompliance.

Appeal Process:

Any person aggrieved by Order #2291 may obtain review thereof by appeal. Pursuant to Chapter 43.21B. RCW, a person can appeal this order to the Pollution Control Hearings Board within 30 days of the date of receipt of this Order. Any such appeal must be sent to the Washington Pollution Control Hearings Board, PO Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, Attn: Loree' Randall, PO Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated 5/13/05 at Bellevue, Washington.

Jeannie Summerhays, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington