



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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

July 28, 2008

REGISTERED MAIL
RB 670 357 263 US

New RH L.L.C. and Roche Harbor Water System, Inc.
Attn: Richard W. Hobbs
PO Box 4001
Roche Harbor, WA 98250

**RE: Water Quality Certification Order #5684 for U.S. Army Corps of Engineers
Reference #200601346, Briggs Reservoir Dam Replacement, Wetlands and
Briggs Reservoir, San Juan County, Washington**

Dear Mr. Hobbs:

On November 3, 2006, New RH L.L.C. and Roche Harbor Water System, Inc., submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification (401 Certification) under the federal Clean Water Act (CWA) for the proposed Briggs Reservoir Dam Replacement project. The Corps issued a joint public notice for a Section 404 Permit on April 12, 2007, for the proposed project. A request to withdraw and re-apply for a 401 Certification was submitted along with a revised JARPA on October 17, 2007. Ecology issued a second public notice on October 23, 2007.

The applicant proposes to replace the Briggs Reservoir Dam in order to meet current seismic and stability standards, as well as to increase the water storage capacity in order to service increasing residential densities in the area.

On behalf of the State of Washington, through the enclosed Order, Ecology certifies that the work described in the October 17, 2007 JARPA and the October 23, 2007 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 or email at rpad461@ecy.wa.gov. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,



Erik Stockdale
Northwest Regional Office
Shorelands and Environmental Assistance Program

ES:rrp:cja
Enclosure

cc: Amy Klein, U.S. Army Corps of Engineers
Stephen Deem, WA Department of Health
Don Kehrer, San Juan County Community Development & Planning
Brendan Brokes, Washington Department of Fish and Wildlife
Scott Rozenbaum, Rozewood Environmental Services, Inc.
Richard Strathmann, Friday Harbor Laboratories

e-cc: Richard Robohm – NWRO
Buck Smith – NWRO
Doug Johnson – HQ
Loree' Randall – HQ
Bob Fritzen – BFO
Raman Iyer – NWRO

IN THE MATTER OF GRANTING A) ORDER #5684
WATER QUALITY) Corps Reference No. 200601346
CERTIFICATION TO) Briggs Reservoir Dam Replacement; Wetlands
New RH L.L.C. and Roche Harbor) and Briggs Reservoir, Roche Harbor, San Juan
Water System, Inc.) County, Washington.
in accordance with 33 U.S.C. 1341)
(FWPCA § 401), RCW 90.48.120, RCW)
90.48.260 and Chapter 173-201A WAC)

TO: New RH L.L.C. and Roche Harbor Water System, Inc.
Attn: Richard W. Hobbs
PO Box 4001
Roche Harbor, WA 98250

On November 3, 2006, New RH L.L.C. and Roche Harbor Water System, Inc., submitted a Joint Aquatic Resources Permit Application (JARPA) to the Department of Ecology (Ecology) for a Section 401 Water Quality Certification. A joint public notice regarding the request was distributed by the U.S. Army Corps of Engineers (Corps) for the above-referenced project pursuant to the provisions of Chapter 173-225 WAC on April 12, 2007. A request to withdraw and re-apply for a 401 Certification was submitted along with a revised JARPA on October 17, 2007. Ecology issued a second public notice on October 23, 2007.

Replacement of the Briggs Reservoir Dam includes the following components:

- Construct a new earthen dam: Dredge approximately 3,085 cubic yards of hydric soil and reservoir sediments from inside the wetland boundary and ordinary high water mark and use 5,660 cubic yards of fill material (impervious sandy silt, general fill, clean sand, and crushed rock) to create the new 16-foot-high, 290-foot-long, 12-foot-wide (crest width).
- Construct a temporary dam: Approximately 1,472 cubic yards of temporary fill (gravelly sandy pit run and sheet piles) will be used to construct a temporary dam in order to dewater the northern tip of Briggs Reservoir and allow for construction of the permanent primary dam. The temporary dam will be completely removed after construction of the new dam is complete.
- Remove existing earthen dam: The existing dam will be removed, and the area between the new dam and the old dam will be graded and developed into a mitigation site. Approximately 3,890 cubic yards of material will be removed and disposed of at an approved upland site.
- Install new water system piping network: An intake pipe will be installed along the northwestern side of the reservoir. The pipe will be weighted down with concrete collars along the bottom of the reservoir. The end of the intake pipe will be attached to a float assembly. The upland portion of the pipe will be buried.

- Raise reservoir water level: After the new dam is installed and the old dam is removed, the reservoir water level will be raised 5 vertical feet.
- Construct upland earthen dam: A secondary earthen dam will be constructed upland in order to contain the water when the reservoir is raised. This 100-foot-long, 6-foot-high, 10-foot-wide (crest width) dam is upland, with no in-water impacts.

The project proposes to fill 0.44 acre of deepwater habitat and Category III palustrine emergent and aquatic bed wetlands within the footprint of the new dam. The temporary dam will have a temporary impact to 0.185 acre of wetlands and deepwater aquatic habitat. Downstream hydrologic change caused by the project would drain about 0.05 acre of Category III palustrine emergent wetland. A gradual increase in the extent and depth of the impounded area would extend the reservoir flooded footprint by 7.28 acres and the depth by about 5 feet. Plants are expected to colonize this "lacustrine fringe succession area" naturally. Over a period of up to five (5) years, expected changes in the depth and extent of inundation would increase lacustrine limnetic aquatic bed and lacustrine emergent habitat by an estimated 7.38 and 6.64 acres, respectively. At the same time, these changes would reduce lacustrine littoral aquatic bed, palustrine scrub-shrub, and palustrine forested habitat by about 5.62, 0.90, and 0.22 acres, respectively. In addition, wetland creation or reestablishment would add 0.24 acre of palustrine scrub-shrub and forested habitat at the footprint of the existing dam, and wetland enhancement would convert 0.62 acre of palustrine emergent wetland to scrub-shrub and forested between the new primary dam and the existing dam.

The project is located southeast of the intersection of Roche Harbor Road and West Valley Road, in Roche Harbor, San Juan Island, San Juan County, Washington, in wetlands and Briggs Reservoir, Section 30, T. 36 N., R. 3W., WRIA 2.

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, 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:

- A1. For purposes of this Order, the term "Applicant" shall mean New RH L.L.C. and Roche Harbor Water System, Inc., 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 Project Manager, 3190 160th Avenue SE, Bellevue, WA 98008-5452. Any submittals shall reference Order #5684 and Corps Reference #200601346.
- A3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on October 17, 2007. 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. This Order does not exempt, and is provisional upon, compliance with other statutes and codes administered by federal, state, and local agencies.
- 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 understand 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 understand 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 or related aquatic resources, except as specifically provided for in conditions of this Order.
- A12. 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.

B. Project Mitigation for Wetlands:

- B1. Mitigation measures to compensate for proposed impacts on wetlands and deepwater habitats are described in the following documents, except as modified by this Order, and including any approved revisions:
- a. Wetland and Wildlife Assessment, Briggs Lake Reservoir Dam Replacement, San Juan County, Washington, by Raedeke Associates, Inc., dated October 24, 2006.
 - b. Plan sheets 1 through 5, New RH LLC, Briggs Reservoir – Final Mitigation Plan, by Raedeke Associates, Inc., dated March 24 and 25, 2008 (Final Mitigation Plan).
- B2. In addition to mitigation measures described in the above-referenced documents, the following requirement shall be conditions for the development and mitigation sites:
- a. Timing: The wetland mitigation plan shall be implemented as soon as site conditions allow during or following construction of the new dam. This includes excavating the

- site of the old dam and installing plants in wetland creation and enhancement areas within the first planting season after grading is completed.
- b. Field Supervision: The wetland mitigation implementation shall be field-supervised by a qualified wetland ecologist to ensure that grading was completed as planned and plants are appropriately placed.
- c. As-Built Report: Submit a final as-built report for the wetland mitigation projects, with drawings, to Ecology (per Condition A2) within 60 days of completing construction, including planting.
1. Provide one (1) electronic copy on compact disc and one (1) hard copy. Always prominently display the Corps Reference Number and Ecology Order Number.
 2. Include the following information in the As-Built Report:
 - i. Final site topography.
 - ii. Photographs taken from permanent reference points.
 - iii. Installed planting scheme with quantities, densities, sizes and approximate locations.
 - iv. Types of habitat features (snags, rootwads, etc.) and their locations.
 - v. Important dates including:
 - a. When the development project's construction began.
 - b. Starting and completion dates of the construction of the compensatory mitigation project, including grading and planting of the site.
 - vi. Name and contact information of the parties responsible for the mitigation site, including the applicant, landowner, and wetland professional on site during construction.
 - vii. Description of and reasons for any changes to the plan.
 - viii. Description of any problems that occurred during construction.
 - ix. List of any follow-up actions needed, with a schedule.
 - x. Copy of the deed notification.
- d. Permanent Protection: The Applicant shall provide documentation showing the means of permanent protection for the mitigation site (such as a deed restriction, conservation easement, or similar instrument) to Ecology's 401/CZM Federal Project Manager along with the as-built report.
- e. Performance Standards: Except as noted here, the performance standards for the wetland mitigation shall be as listed in the Mitigation Plan, which details standards for plant survival and plant cover. The standard for wetland hydrology for the wetland enhancement and creation areas shall be saturation to the soil surface or free water within 12 inches of the surface for a minimum of 42 consecutive days during the growing season (February 15 through October 31) during years of normal rainfall (within one standard deviation of the 30-year average), as averaged over the five-year monitoring period.

- f. Monitoring: Monitoring to ensure that the project performance standards are met shall be performed as described in the Final Mitigation Plan. In addition, all mitigation monitoring shall take place over a period of at least five (5) years, in years 1, 2, 3, and 5. If performance standards are not met in Year 5, additional monitoring shall be done in Year 7; and if performance standards are not met in Year 7, additional monitoring shall be done in Year 10. Two (2) copies of all monitoring reports shall be submitted to Ecology per Condition A2.
- g. Maintenance: Maintenance of the wetland mitigation sites is necessary to ensure that the required performance standards are met. Maintenance shall be performed as described in the Final Mitigation Plan.
- h. Year 5 Delineation: The mitigated wetlands shall be delineated using the 1997 Washington State Wetlands Identification and Delineation Manual (or as updated) during the 5th year monitoring period (or later as specified in Condition B2f above) to determine the actual area of wetlands restored.
- i. Year 5 Rating: The 2004 Washington State Wetlands Rating System (or as updated) shall be applied to the mitigation area at the end of the monitoring period to determine the classification and rating of the restored wetlands.
- j. Contingency Measures: The Applicant is responsible for the success of the onsite mitigation and the maintenance of existing functions of wetlands to remain on the development site. Contingency measures described on Plan Sheet 5 of the Final Mitigation Plan shall be implemented as soon as monitoring shows that one or more performance standards have not been met.

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 Briggs Reservoir.
- C2. In-Water Construction Water Quality Sampling and Monitoring: An in-water construction Water Quality Protection and Monitoring Plan shall be developed and implemented. "In-water construction" is defined as all work below the ordinary high water mark of Briggs Reservoir. Ecology may require changes and modifications to the Plan. The Plan shall include the following minimum requirements:
 - a. Locations of samples: Locations of water quality sampling sites shall be identified and described in the plan and on a map of the project area. At a minimum, sampling shall take place at the point of compliance as specified in WAC 173-201A-200(1)(e)(i), which allows a 150-foot temporary mixing zone for turbidity resulting from disturbance of in-place sediments in Briggs Reservoir. Background samples

shall be collected outside the area of influence of the in-water work. Background samples shall be collected at the same frequency as the point of compliance samples.

- b. Number of samples: Number and frequency of water quality samples to be taken.
- c. Parameter to be sampled: Turbidity shall be sampled for this project.
- d. Equipment: Sampling for turbidity is to be accomplished using a turbidometer properly calibrated according to the operator's manual.
- e. Best management practices: The best management practices described in the following documents shall be included in the plan:
 - i. E-mail from Scott Rozenbaum, Rozewood Environmental Services, Inc., to Rebekah Padgett, Washington State Department of Ecology, RE: Briggs Dam Replacement Corps NWS-2006-1346-NO, dated 7/10/08.
 - ii. E-mail from Scott Rozenbaum, Rozewood Environmental Services, Inc., to Rebekah Padgett, Washington State Department of Ecology, RE: Briggs Dam Replacement Corps NWS-2006-1346-NO, dated 7/12/08.
- f. Detection of exceedances: Water quality standards for turbidity in "Core Summer Salmonid Habitat" waters are as follows: turbidity shall not exceed 5 NTU over background conditions when the background is 50 NTU or less, or a 10 percent increase in turbidity when the background turbidity is more than 50 NTU. If exceedances of this standard at the point of compliance specified in WAC 173-201A-200(1)(e)(i) 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 Best Management Practices (BMPs) and update or improve the BMPs used at the work site in an effort to reduce or prevent recurrence of the turbidity exceedance.
- g. Reporting: 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.
- h. Notification of exceedances: Notification of exceedances that are detected through water quality sampling shall be made to Ecology within 24 hours of occurrence. Notification shall be made with reference to Order #5408, Attn: 401/CZM Federal Project 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. Applicant shall obtain and comply with a Construction Stormwater General Permit for this project.
- D2. 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.
- D3. Sediment and erosion control measures shall be inspected and maintained prior to and during project implementation.
- D4. 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.
- D5. 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.
- D6. 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.
- D7. Clean Fill Criteria: Applicant shall ensure that fill (soil) placed for the proposed project does not contain toxic materials in toxic amounts.

Work in Fresh Waters:

- D8. During all in-water work, a sediment curtain shall be deployed and maintained in a functional manner to contain suspended sediments at the work site.

- D9. Project activities shall be conducted to minimize siltation of the beach area and bed.
- D10. If cast in place, wet concrete/grout shall be prevented from entering waters of the state. Forms for any concrete/grout structure shall be constructed to prevent leaching of wet concrete/grout. Impervious materials shall be placed over any exposed concrete/grout not lined with the forms that will come in contact with state waters. Forms and impervious materials shall remain in place until the concrete/grout is cured.

E. Dam Construction Condition:

- E1. Applicant shall obtain and comply with a Dam Construction Permit for this project.

F. Emergency/Contingency Measures:

- F1. The Applicant shall develop and implement a Spill Prevention and Containment Plan for all aspects of this project.
- F2. 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.
- F3. 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.
- F4. 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 Project 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.

- F5. Work in or near the water that may affect fish migration, spawning, or rearing shall cease immediately upon a determination by Ecology or WDFW that fisheries resources may be adversely affected.

G. Timing Requirements

- G1. This Order is valid until all compliance requirements in this document have been met.
- G2. In-water work shall be subject to timing limitations imposed by WDFW.

H. Reporting and Notification Requirement Conditions

- H1. Applicant shall provide notice to Ecology's 401/CZM Federal Project Manager at least three (3) days prior to the start of construction and within 14 days after completion of construction at the project site. Notification, referencing Corps Reference #200601346, Order #5684 can take place by telephone to (425) 649-7129 or (425) 649-7000, fax to (425) 649-7098, or in writing.

I. Appeal Process:

You have a right to appeal this Order. To appeal this you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your Notice of Appeal.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

Deliver your appeal in person to:

The Pollution Control Hearings Board
PO Box 40903
Olympia, WA 98504-0903

OR

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey, WA 98503

2. To serve your appeal on the Department of Ecology

Mail appeal to:

Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, WA 98504-7608

OR

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey, WA 98503

3. And send a copy of your appeal to:

Department of Ecology
Northwest Regional Office
Attn: Rebekah Padgett
3190 160th Avenue SE
Bellevue, WA 98008

For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov>

To find laws and agency rules visit the Washington State Legislature Website:
<http://www1.leg.wa.gov/CodeReviser>

Your appeal alone will not stay the effectiveness of this Order. Stay requests must be submitted in accordance with RCW 43.21B.320. These procedures are consistent with Ch. 43.21B RCW.

Dated July 28, 2008 at Bellevue, Washington.



Erik Stockdale, Unit Supervisor
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington

ATTACHMENT A

**NEW RH L.L.C. AND ROCHE HARBOR WATER SYSTEM, INC.
BRIGGS RESERVOIR DAM REPLACEMENT PROJECT
Water Quality Certification Order #5684**

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

I have read and understand the conditions of Order #5684 Section 401 Water Quality Certification for the New RH L.L.C. and Roche Harbor Water System, Inc. Briggs Reservoir Dam Replacement Project. I have also read and understand all permits, plans, documents, and approvals associated with the project referenced in this Order.

Signature

Date

Title

Company