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September 18, 2007

**VIA E-MAIL AND HAND DELIVERY**

Chairman Mark Sidran  
Washington Utilities and  
Transportation Commission  
1300 South Evergreen Park Drive SW  
Olympia, WA 98504-7250

Commissioner Patrick Oshie  
Washington Utilities and  
Transportation Commission  
1300 South Evergreen Park Drive SW  
Olympia, WA 98504-7250

Commissioner Philip Jones  
Washington Utilities and  
Transportation Commission  
1300 South Evergreen Park Drive SW  
Olympia, WA 98504-7250

Re: Rosario Utilities – Rate Case (UW-070944) and Transfer to  
Washington Water Service (UW-071357)

Dear Chairman Sidran, Commissioner Oshie and Commissioner Jones:

The purpose of this letter is to offer the observations of Rosario Utilities, LLC (“RU”) on the items that were raised during the public hearing on the rate case and transfer to Washington Water Service. Despite all of the comments that were voiced at the public hearing, none presented a valid reason to further delay approval of the rate case filing or delay the approval of the transfer of the water system to Washington Water Service.

The comments break down into four major areas. The first is the “equity” concerns of the Orcas Highland Homeowner’s Association. The second is the concerns involved with the rate case adjustments. The third is the rate design issue. The fourth is the transfer to Washington Water Service. This letter will address each of those areas of comment in the order just set out.

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I. Orcas Highlands Homeowner's Association

Much of the testimony from the Orcas Highlands Homeowner's Association ("Highlands") was in the form of "equity." The Highlands is a wholesale customer. The Highlands owns its own water system and receives water on a bulk basis from RU. Despite this fact, the Highlands desires to be treated as if each of their customers is a distinct residential customer of RU.

Highlands' representatives also testified that their water system was old and required a great deal of maintenance.

The suggestion was even made that perhaps Washington Water Service would agree to take over the Highlands water system. As a result of this suggestion, Mr. Ireland, on behalf of Washington Water Service, has offered to take over the Highlands water system.

This means that this issue is effectively moot. If the Highlands accepts Washington Water Service's offer, then each of those customers will be an individual residential customer just like all other residential customers. If Highlands refuses Washington Water Service's offer, then they cannot be heard to complain about remaining as a wholesale customer.

In addition, as we will discuss under the rate design section below, Commission Staff's analysis and rate design demonstrates that all classes of customers are treated equitably, with their payments corresponding with the amount of water consumed.

II. Rate Case Adjustments

At the public hearing, Ms. Herta Fairbanks suggested that there should be an examination of three proposed ratemaking adjustments. One related to the prudence of the Hydroxyl treatment plant. The second related to the conversion of debt to equity for certain obligations associated with the hydroxyl plant. And the third was related to the purchase of the ten acre feet of water rights for \$100,000. During the course of the public hearing, other persons also commented on these issues.

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While we will address each of those issues below, the most important point to keep in mind is that even if these adjustments were made, the result would not be material for this rate case. In other words, the revenue requirement sought by the Company that is incorporated in the Commission Staff's recommendation would still be the same. The Company has justified a need for revenue far greater than what it filed for.

Thus, there is no good reason to delay approval of the rate case to consider what would become academic exercises in considering these issues. The Company is losing money at a tremendous rate. As it was when the customers talked about equity, it is not equitable to RU to further delay the rate increase.

1. Treatment Plant

The customers complained that RU should not have constructed the Hydroxyl treatment plant and should, instead, have used a slow sand treatment. However, the prudence of RU's decision was examined by Commission Staff in 2002 and found to be prudent. As is clear from the record, RU was under a DOH order to put in treatment and had been slow in responding. The current owners of RU assumed ownership in late 1998 in the midst of this issue. It appeared to the new owners that the prior owners had been lax and that DOH was becoming increasingly insistent that treatment be completed. A copy of the DOH order in question is attached. The Company moved forward on a basis that Commission Staff found to be prudent in 2002 to put in the hydroxyl plant, a process that received DOH approval. See the DOH approval letter attached.

RU believes that the present owners acted prudently. The Commission Staff agreed in 2002. There should be nothing about this issue that should delay approval of the rate case. Indeed, since even if the decision was that RU acted imprudently, it would not change the rate that is recommended by Commission Staff for approval in this case. The Company still needs the level of revenue requirement found by Commission Staff for this case whether or not the decision to install the hydroxyl plant in 1999 was a prudent decision.

On one minor matter, it appears that Mr. Gomez of Commission Staff

may have inadvertently left the impression that the Commission Staff was receiving new information from DOH. That is not, in fact, the case. The DOH order and DOH approvals have long been before the Commission Staff. It is our understanding that they were part of the examination in 2002 by Commission Staff. The attached DOH order and approval letters have always been available to Commission Staff.

2. Conversion of Debt to Equity

This adjustment relates to the conversion of debt to equity for some portion of the investment related to the hydroxyl plant. The debt is for funds borrowed from an affiliate. The concern expressed by the customers is that conversion of a debt to equity may result in higher rates because the return on equity is higher than the return on debt. However, that is a moot issue for this case. Even if the debt is not converted to equity, it would have no effect on the level of revenue requirement that is being recommended by Commission Staff for this matter. Further, if the approval of the transfer to Washington Water Service occurs, the issue will be moot on a forward-going basis. That is because the next rate case would take into account Washington Water Service's capital structure, not that of RU.

3. Water Rights

The customers are concerned about the level that is paid for water rights. For purposes of this filing, the payment of \$100,000 has no effect on the rates. If the investment is removed from rate base, there is no material effect on the revenue requirement recommended by Commission Staff for approval. The issue is just not relevant for this rate case.

The customers are also concerned about setting a "standard." However, the approval of rates in this case does not have to be viewed as setting a "standard" for future purchases of water rights. The issue of a "standard" for water rights pricing is not relevant to the Commission's oversight in any case. The market will set the going rate for water rights. What would be relevant in the future is whether the level paid for water rights is included in rate base. However, that is an issue for a future rate case.

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The customers have pointed to a study done by WestWater Research, LLC ("WestWater"). It should be understood that the WestWater report is not an independent valuation. It is an advocacy piece put together to try to support Eastsound Water User's Association's position that the water rights should be sold to it at a price that Eastsound prefers. It is not an independent valuation of water right price.

The study that was undertaken by RH2 Engineers was initially to be an independent study funded by both RU and Eastsound. The approach was to look at the avoided cost for water since there is no set of comparable sales that can be used to determine market price in the area.<sup>1</sup> The draft undertaken by RH2 showed an avoided cost of approximately \$20,000 per acre foot. When Eastsound saw the draft, they refused to proceed with the study and they did not make payment for half of the work that was done. In fact, RU negotiated a payment to RH2 Engineers for the Eastsound portion, which RU paid.

In any event, with a draft study showing avoided cost at \$20,000 per acre foot, Orcas Water Holdings felt that a price of \$10,000 per acre foot was eminently fair.

Perhaps some more background concerning negotiations between RU and Eastsound Water User's Association ("ESWUA") may be helpful. ESWUA commissioned its own study done by CDM to look at water capacity, usage and options for meeting future demand. That study was completed in April of 2004. Following completion of that study, ESWUA approached Oly Rose with the idea of purchasing water rights. Oly Rose expressed interest in the idea. Both parties agreed that the capacity of the water right needed to be verified. There was a joint study by RH2 Engineering which was completed in February of 2005, which concluded that there was an ample water supply to sell some water rights to ESWUA. Since, at that time, neither ESWUA nor Oly Rose knew the value of the water rights, both parties agreed to engage RH2 to conduct a valuation of the water rights. RH2's study was based in large part on data and findings in the earlier ESWUA study by CDM. In other words, the study used

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<sup>1</sup> One customer testified at the public hearing that there was a sale of water rights by Robert Moran for \$100. What that customer failed to point out is that the transaction took place in 1936. Obviously a sale that took place some seventy years ago does not have much credence today.

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ESWUA's own data. Using this data, the draft study came up with the avoided cost discussed above of \$20,000 per acre foot. ESWUA then walked away from the study. A short time later, ESWUA produced a low offer and made a veiled threat about commencing condemnation proceedings. At this point, we have reached early 2005.

There were several meetings that were conducted with both ESWUA and the Eastsound Sewer District up through March of 2006. By that time, it did not appear that either ESWUA nor Eastsound District would be able to purchase the water rights. Oly Rose and Orcas Water Holdings even offered to reduce the price from the \$10,000 per acre foot to a lower number if ESWUA could demonstrate that they could develop an alternative water source for less than that price. ESWUA said they would conduct those studies. Obviously, neither Oly Rose nor Orcas Water Holdings have heard back from ESWUA since that time. Thus, the issue over water rights was thoroughly negotiated. The customers raising the claims now are doing so only to try to gain further delay.

Customers also argued at the public hearing that RU owned the water rights and they should be "free." This issue has been explored in depth with Commission Staff. It is just not true. RU will not repeat those points here. However, it is important to keep in mind the water rights held by Orcas Water Holdings were originally for hydropower to serve the Resort, are still used for hydropower and have only been converted to availability for domestic use by the efforts and investment of the Resort owner, Oly Rose, not RU.

In any event, despite all of the fuss and bother about water rights, it is not an issue that should delay this matter any further. It has no bearing on the level of revenue requirement recommended by Commission Staff. If it is important to consider what portion of the water rights purchase cost is to be included in rate base, that can be examined in subsequent rate filings, if any, made by Washington Water Service.

### III. Rate Design

At the public hearing, Ms. Fairbanks indicated that she was developing an alternative rate design that would increase the base rate. RU understands that she is making a proposal to Commission Staff on this issue. RU has not

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seen the proposed rate design.

In any event, so long as the approval of rates is not delayed past September 26, 2007, RU is flexible on what rate design is put in place.

On the one hand, a rate design that increases the base rate provides more certainty in cash flow for a company's operations. On the other hand, putting more of the revenue requirement in usage seems consistent with conservation goals. Either approach is acceptable to RU, so long as relative equity among customer classes is maintained, which is the case under the Commission Staff recommended rate design. RU wants to put on the record its appreciation for the hard work of Commission Staff in developing a rate design that tied usage to financial responsibility in a very precise manner.

It is extremely important that the rate case be approved as soon as possible. The Company's revenue requirement demonstrates that it is losing substantial amounts of money each month. Those operations should not continue to lose money.

#### IV. Transfer to Washington Water Service

RU respectfully urges the Commission to approve the transfer to Washington Water Service. Mr. Ireland of Washington Water Service has submitted a letter contemporaneous with this letter stating Washington Water Service's intention to move forward with the purchase despite the annexation petition that was recently undertaken.

The annexation process is not a sure bet. It is a long and expensive process and could falter at any step. There are several steps in the annexation. The first is that the signatures on the petitions have to be certified that a sufficient number of eligible persons signed the petitions. Eastsound Sewer and Water District has to concur in the petition. Before it does that, there has to be an environmental review under the SEPA process.

As noted by Eastsound Sewer and Water District, a copy of their letter is attached, the District and its consultants have to analyze the logistical, operational and financial impacts to the District of the proposed application

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and then make a determination if it will concur in the petition. If it does concur in the petition, then the matter is submitted to San Juan County Council for approval. Assuming that it receives County Council approval, then it is submitted to a vote.

After the vote, the District will have to decide what price it would offer for the assets and if a price can not be negotiated, then a condemnation proceeding would ensue. All of this takes a lot of time and does not mean that annexation is certain.

In addition, as pointed out by Mr. Ireland, he believes that by Washing Water Service moving forward with the purchase Washington Water Service will have the opportunity to demonstrate to the customers the level of service quality that Washington Water Service can bring. After experiencing what Washington Water Service can bring to the table, the customers may realize that annexation is not the best course of action. Washington Water Service wants that opportunity and should be given that opportunity.

At the end of the day, the annexation petition should not have any bearing on the decision of whether to approve or not approve the transfer from RU to Washington Water Service.

#### CONCLUSION

RU wants to express its appreciation to Commission Staff for all of its hard work and analysis. Commission Staff did not leave any stone unturned. RU has spent a great deal of time and money responding to many sets of data requests propounded by Commission Staff. RU suspects that this proceeding has been a drain on the resources of the Commission given the amount of time and effort that the Commission Staff has put into the process.

RU also wants to express its appreciation to the Commission itself in its deliberate consideration of this matter. At times it has been hard for RU to remain patient, given that it has been acknowledged for some time now that RU is losing a considerable amount of money each month of operation. However, RU can appreciate the Commission's need to do a full analysis of these matters.



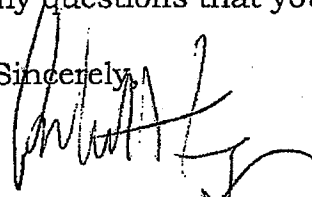
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RU respectfully requests that both the rate case and the transfer to Washington Water Service be approved no later than the end of this month.

RU remains available to respond to any questions that you might have.

Sincerely,



RICHARD FINNIGAN

RAF/km  
Enclosures

cc: Laurie Cameron (via e-mail)  
Robin Minick (via e-mail)  
Tom Pors (via e-mail)  
Chris Vierthaler (via e-mail)  
Mike Ireland (via e-mail)  
Jim Ward (via e-mail)  
Don Trotter (via e-mail)  
Jennifer Cameron-Rulkowski (via e-mail)  
Gene Eckhardt (via e-mail)



STATE OF WASHINGTON

NOV 21 1997

DEPARTMENT OF HEALTH

1511 Third Ave., Suite 719 • Seattle, Washington 98101-1632

November 20, 1997

MS CHRIS VIERTHALER  
ROSARIO UTILITIES LLS  
1 ROSARIO WAY  
EASTSOUND WA 98245

Subject: Rosario Water System (ID#74270J)  
San Juan County  
Water Treatment Plan Engineering Report Oct 1997  
Treatment Process Including: DAF, Pressure Filter, Bag Filtration, Ozone,  
Chlorination  
Submittal #97-0712

Dear Ms. Viertheler:

The project report for the above project received in this office November 3, 1997, has been reviewed and, in accordance with the provisions of WAC 246-290 is hereby APPROVED. The approval issued herein is only valid as it relates to current standards outlined in WAC 246-290, revised July 1994. Future revisions in the rules may be more stringent and require facility modifications or corrective action.

PROVIDED That:

As discussed, a two-week, full-scale, pilot testing regime must be implemented as outlined below. The two-week pilot testing period would commence after initial startup and shakedown operations have been completed, and the new facility is functioning as designed. The treatment plant must be operated at 170 gpm during the first week and 220 gpm (or full capacity) for the second week of the pilot testing period. In order to not waste water, product water from the new facility may be routed to the existing Keystone Plant. Otherwise, water produced during the two-week pilot testing phase must be run to waste. In addition to the monitoring parameters listed in the August 26, 1997 Technical Memo entitled "Demonstration Testing Protocol," the following parameters must be monitored:

1. Maximum Trihalomethane Formation Potential (7 days) MTHMFP - one sample each week – collected after ozone contact chamber (1) x 2 (2 samples total).
2. Total Organic Carbon (TOC) – one set of samples the first week, two sets of samples second week – samples collected prior to treatment, after DAF, after Kinetic, after Ozone (4) x 3 (12 samples total).
3. Particle Counts – one set of measurements each week - measurements taken prior to treatment, and after each unit treatment process (5) x 2 (10 samples total).



4. Color – one set of samples each week -- samples taken prior to treatment and after treatment (2) x 2 (4 samples total).
5. Haloacetic Acids (HAA5) – one sample each week after ozonation (1) x 2 (2 samples total).

The treatment facility must produce finished water that complies with turbidity standards, particle counts must show a two-log reduction in Giardia sized particles across the first three unit processes, and MTHMFP results must be below 100 micrograms per liter.

This Department has determined capacity limits for various water system facilities using the criteria set forth in the system's water system plan. Currently, the water right limits the system to 244 Equivalent Residential Units (eru). System has 351 existing erus connected. Once the new treatment plant (220 gpm) is constructed and certified (assuming increased water rights), source capacity would be 537 erus. Existing transmission main (170 gpm) capacity would be 415 erus. Existing storage (352,000 gal) capacity would be 497 erus (this applies only to direct service, resort, and commercial service area).

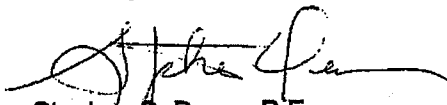
A complete operations and management manual (O&M) for the water system and for the treatment facility will be required. The O&M manual will have to be submitted along with project certification once the facilities are built.

Regulations establishing a schedule of fees for review of planning, engineering and construction documents have been adopted (WAC 246-290-990). An itemized invoice for \$815.00 is enclosed. Please remit your complete payment in the form of a check or money order within thirty days of the date of this letter to: DOH, Revenue Section, P.O. Box 1099, Olympia, WA 98507-1099.

WAC 246-290-120(4) provides that if construction of the project has not been started within two years of the date of this letter, this approval will become null and void unless you take action at that time to arrange for an extension of the approval in the manner prescribed.

Nothing in this approval shall be construed as satisfying other applicable federal, state, or local statutes, ordinances and regulations.

Sincerely,



Stephen S. Deem, P.E.  
Regional Engineer  
NW Drinking Water Operations

Enclosure

cc: Vicki Heater, San Juan County Health Department  
Bob Bergstrom, P.E., HCWL



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
1511 Third Ave., Suite 719 • Seattle, Washington 98101-1632

NOV 18 1999

November 16, 1999

MS CHRIS VIERTHALER  
ROSARIO UTILITIES LLC  
ONE ROSARIO WAY  
EASTSOUND WA 98245

Subject: Rosario Water System (ID#74270J)  
San Juan County  
New 1999 Water Treatment Facility: (220 GPM)  
Submittal #99-0615

Dear Chris:

The September 1999 revised project report, the specifications dated August 1999, and the November 5, 1999 Plans for the above project received in this office September 15, 21, and November 9, 1999, and the additional information received September 24, 29, and October 12, 1999 have been reviewed and, in accordance with the provisions of WAC 246-290 are hereby **APPROVED**. The approval issued herein is only valid as it relates to current standards outlined in WAC 246-290, revised April 9, 1999. Future revisions in the rules may be more stringent and require facility modifications or corrective action.

**Provided that:**

The approved treatment process is rated for a maximum of 220 gpm and includes the following unit processes: DAF (PFM) with Superfloc N1986 polymer feed, Smith & Loveless Fibrotex AX100 filters, Rosedale bag filters, Ozonation with UV ozone gas destruction, and chlorination. **The facility will be granted an initial 2.0 Giardia lamblia removal credit and 0.0 log virus removal credit once construction is certified. The disinfection system must provide 1.0 log Giardia lamblia inactivation and 4.0 log virus inactivation.**

The disinfection contact time analysis is acceptable for the ozone contactor. Assuming plug flow characteristics **ozone contact time available will be 5.3 minutes at 220 gpm and 10.6 minutes at 110 gpm.** The facility is designed to meet SWTR disinfection inactivation requirements with ozonation. The facility will operate the chlorination system to maintain required distribution disinfection residuals throughout the entire distribution system.



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The required two week pilot testing protocol as outlined in the department's November 20, 1997 letter remains unchanged. Maximum Trihalomethane Formation Potential (7 day) (MTHMFP), Total Organic Carbon (TOC), Particle Counts, Color and Haloacetic Acid (HAA5) water quality tests must be collected as described along with operational parameters outlined in the September 13, 1999 Revised Technical Memorandum by Bob Bergstrom. Particle counts must show a two-log reduction in Giardia sized particles across the first three unit processes. MTHMFP results must be below 100 micrograms per liter. During this two week period, ozone levels and decay rates along the ozone contact chamber must be determined. Final facility approval is conditioned upon the two week testing as well as a full year of operation. The facility must meet all SWTR and drinking water standards. **All pilot testing data must be evaluated and summarized. The pilot test summary and water quality test results must be submitted with the required construction report.**

A complete operations and management manual (O&M) for the water system and for the treatment facility is required. The O&M manual must be submitted along with the construction report.

Treatment plant capacity has been evaluated by the department using actual water treatment plant and Rosario Resort water use numbers. Based on this evaluation, the proposed 220 gpm facility is capable of supplying a maximum of 453 Equivalent Residential Units (ERUs). Water use records indicate that the Resort currently accounts for approximately 72 ERUs, or 0.4 ERU per room (Total of 179 rooms). Department records indicate that the system currently serves approximately 243 residential connections in addition to the resort complexes (total of 315 ERUs). Residential connections are generally considered equal to one ERU. Guest houses were not included in the system design. Guest houses are considered to equal a separate ERU.

As required in WAC 246-290-040(2) within sixty days following the completion of and prior to the use of the above project or portions thereof, the enclosed construction report must be completed by a professional engineer and returned to this department.

In addition, complete and submit the enclosed Pressure, Leakage, and Bacteriological Test Report form for applicable portions of this project. This form is necessary to ensure that all distribution facilities have been tested in accordance with the approved specifications and WAC 246-290-120. Notify this office at least 24 hours in advance of any routine construction inspections, pressure tests or bacteriological water quality testing of new construction.

Regulations establishing a schedule of fees for review of planning, engineering, and construction documents have been adopted (WAC 246-290-990). An invoice for \$1,770.00 is enclosed.

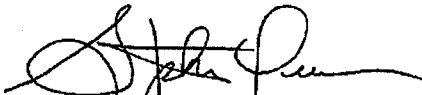
Rosario Water System  
November 16, 1999  
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Please remit your complete payment in the form of a check or money order within thirty days of the date of this letter to: DOH, Revenue Section, P.O. Box 1099, Olympia, WA 98507-1099.

WAC 246-290-120(4) provides that if construction of the project has not been started within two years of the date of this letter, this approval will become null and void unless you take action at that time to arrange for an extension of the approval in the manner prescribed.

If you have any questions please give me a call in Seattle at (206) 464-7963.

Sincerely,



Stephen Deem, PE  
Regional Engineer  
NW Drinking Water Operations

Enclosures

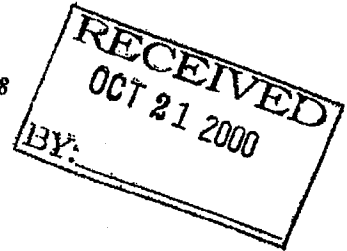
cc: Vicki Heater, San Juan County Health Department  
Bob Bergstrom, PE, HCWL



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH

20435 72<sup>ND</sup> Ave S, Suite 200, K17-12 • Kent, Washington 98032-2358

OCTOBER 18, 2000



MS CHRIS VIERTHALER  
ROSARIO UTILITES LLC  
ONE ROSARIO WAY  
EASTSOUND WA 98245

Subject: Rosario Water System (ID# 74270J)  
San Juan County  
Water treatment Facility: (220GPM) DAF, Rapid Sand Filtration, Ozone  
Submittal #00-0613, #00-0711

Dear Chris:

The May 2000 project report with October 11 revisions, and plans and specifications received in this office June 23, and October 11, 2000 and the additional information received October 17, 2000 (Final Testing Protocol Technical Memorandum) have been reviewed and, in accordance with the provisions of WAC 246-290 are hereby **APPROVED**. The approval issued herein is only valid as it relates to current standards outlined in WAC 246-290, revised April 9, 1999. Future revisions in the rules may be more stringent and require facility modifications or corrective action.

The treatment process includes coagulation with aluminum chlorohydrate, flocculation, dissolved air flotation, rapid (gravity) sand filtration, ozonation, UV ozone gas destruction and chlorination for secondary disinfection.

**Provided that:**

1. Individual rate of flow meters are installed on each of the three gravity filter units.
2. Two coagulant feed pumps are installed.
3. The Zeotech Chem Sorb 1430 filter media must be tested in accordance with the WSDOH Soak Test procedures. Water quality test results along with certification by the design engineer that the test procedures were followed must be submitted with the construction certification required.
4. Department approval of the proposed 4.9 gpm/sq.ft. maximum filter rate is dependent upon successful demonstration by the utility that giardia sized particles are reduced across the filters under proposed operating conditions. Particle counts must consistently indicate a minimum of at least two log (99 %) reduction across the filter. Compliance with finished water turbidity criteria found in WAC 246-290 must be continually obtained. Results must be submitted with the required construction certification.
5. The utility must successfully complete its two week testing protocol as set forth in the October 17th, 2000 Final Testing Protocol technical memorandum. All water quality results must be below action levels and maximum contaminant levels.
6. The filter by-pass must be removed. Final plant layout drawings showing the selected flocculation system and coagulant feed pump locations must be included with the required construction certification. Removal of the filter by-pass must be explicitly certified by the design engineer.
7. A complete water treatment plant operations manual must be completed and submitted with the required construction certification.

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8. Air gaps must be maintained between the water make up lines and the chlorine and coagulant feed tanks.

The disinfection system has been sized to provide 1 log Giardia inactivation using Ozone as the primary disinfectant. Contact time is provided by 200 feet of 12 inch piping. T (Time) at 110 gpm is equal to 10.7 minutes. T at 220 gpm is equal to 5.3 minu

As required in WAC 246-290-040(2) within sixty days following the completion of and prior to the use of the above project or portions thereof, the enclosed construction report must be completed by a professional engineer and returned to this department.

In addition, complete and submit the enclosed Pressure, Leakage, and Bacteriological Test Report form for applicable portions of this project. This form is necessary to ensure that all distribution facilities have been tested in accordance with the approved specifications and WAC 246-290-120. Notify this office at least 24 hours in advance of any routine construction inspections, pressure tests or bacteriological water quality testing of new construction.

Regulations establishing a schedule of fees for review of planning, engineering and construction documents have been adopted (WAC 246-290-990). An itemized invoice for \$951.00 is enclosed. Please remit your complete payment in the form of a check or money order within thirty days of the date of this letter to: DOH, Revenue Section, P.O. Box 1099, Olympia, WA 98507-1099.

WAC 246-290-120(4) provides that if construction of the project has not been started within two years of the date of this letter, this approval will become null and void unless you take action at that time to arrange for an extension of the approval in the manner prescribed.

Nothing in this approval shall be construed as satisfying other applicable federal, state, or local statutes, ordinances and regulations.

Sincerely,



Stephen Deem, PE  
Regional Engineer  
NW Drinking Water Operations

Enclosures

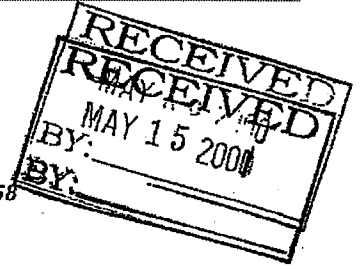
cc: San Juan County Health Department  
Bob Bergstrom PE, HCWL  
Dave Featherstonehaugh, Hydroxyl





STATE OF WASHINGTON  
DEPARTMENT OF HEALTH

20435 72nd Ave. S., Suite 200, K17-12 • Kent, Washington 98032-2358



May 11, 2001

MS CHRIS VIERTHALER  
ROSARIO UTILITIES LLC  
ONE ROSARIO WAY  
EASTSOUND WA 98245

Subject: Rosario Water System (ID#74270J)  
San Juan County  
Water Treatment Facility (220 GPM): DAF, Rapid Sand Filtration, Ozone and  
Chlorine Disinfection.  
Submittal #00-0613, #00-0711

Dear Chris:

This letter acknowledges receipt of the construction report for the subject water system, which was signed by, Robert Bergstrom, P.E. The report indicates that the project has been completed according to plans and specifications that were approved by this office. All of the provisions of the approval have been met and this project may be placed into service.

Filtration Credit

The filtration system has been granted a 2.0 log (99 percent) credit for removal of *Giardia lamblia* cysts and a 1.0 log (90 percent) credit for virus removal. This means that the disinfection system must be operated to provide 1 log (90 percent) inactivation for *Giardia* and 3 log (99.9 percent) inactivation for viruses each day that the treatment system is operated.

Contact Time

The disinfection system has been sized to provide 4 log virus inactivation using Ozone as the primary disinfectant. (Ozone virus inactivation requirements for ozone are greater than *Giardia* inactivation requirements). Contact time is provided by 200 feet of 12 inch piping. T (Time) at 110 gpm is equal to 10.7 minutes. T at 220 gpm is equal to 5.3 minutes.

Monthly Reports

You must monitor the free chlorine residual and Surface Water Treatment Rule parameters including ozone residuals every day that the plant is in operation and submit a report every month to this office. Monthly reports are due before the tenth of the following month, and should be submitted to our office to the attention of Shasta Guinn.

System Design Approval

Based upon the water use information and existing system capacity information submitted as part of the design package, and upon the April 2001 water treatment facility pilot report information the system is capable of serving a total of 456 equivalent residential units (ERU's). Existing Resort demands are estimated to equal 86 ERUs. The system currently serves a total of approximately 243 residential services (residential connection equals 1.0 ERUs) in both its direct service and in its two wholesale service areas. Therefore, the system is authorized to provide service to an additional 127 residential connections in its combined service area. Additional connections may only be made to existing distribution mains in the approved service area of each respective water system served by the Rosario Treatment Facility. Guesthouses were not included in the system design. Guesthouses are considered to equal a separate 1.0 ERU.

Rosario Water System  
May 11, 2001  
Page 2

Congratulations on completing this project! If you have any questions about this letter, please contact me at (253) 395-6767.

Sincerely,



Steve Deem, P.E.  
Regional Engineer  
NW Drinking Water Operations

Enclosure

cc: Mark Thompkins San Juan County Health Department  
Bob Bergstrom, PE, HCWL  
Dave Featherstonehaugh, P.Eng., Hydroxyl Systems, Inc.  
Shasta G., DOH  
Ingrid S., DOH

# Eastsound Sewer & Water District

P.O. Box 640  
Eastsound, WA 98245-0640  
(360) 376-2720  
FAX (360) 376-2737

UW 070944  
Attachment I  
Page 19 of 34

September 11, 2007

To Whom It May Concern:

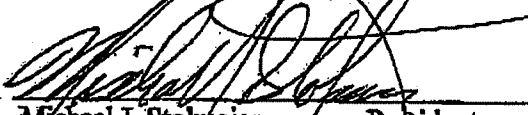
This is to acknowledge receipt of several signed petitions for the annexation of the Rosario area into the District. These petitions have been submitted to the District in accordance with RCW 57.24.010 and will, subject to concurrence by the District, certification of signatures by the San Juan County Auditor and approval of the San Juan County Council, be submitted to the voters of the annexation area for approval.


Before the District can take action on the petition, compliance with the State Environmental Policy Act (SEPA) is necessary even though the annexation process is administrative in nature. This process is an important step, however, because it allows affected governmental agencies and other parties to provide input and comments regarding the environmental impacts that may result from the annexation.

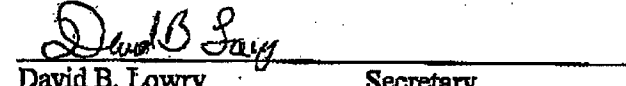
Because the proposed action is administrative, the District believes it is appropriate to pursue a finding that the annexation will be environmentally non-significant and we will propose to issue a determination of non-significance (DNS) as part of the SEPA process. The District will prepare and circulate an environmental checklist and a draft DNS as required by law and a final determination on the DNS will have to await comments.

During the comment period, District staff and consultants will also analyze the logistical, operational and financial impacts to the District of the proposed annexation. The District's Board of Commissioners will then consider adopting a concurrence resolution following the SEPA process and the District's internal analysis.

Board of Commissioner  
Eastsound Sewer and Water District

  
\_\_\_\_\_  
Michael J. Stolmeier                      President

  
\_\_\_\_\_  
Edwin L. Sutton                              Vice-President

  
\_\_\_\_\_  
David B. Lowry                              Secretary

**COPY**

**APPENDIX A**  
**BRIEF OUTLINE OF NEGOTIATION HISTORY**

- Eastsound Water User's Association ("ESWUA") commissioned its own study done by CDM to look at water capacity, usage and options for meeting future demand. That study was completed in April of 2004 and suggested the most economic choice might be to purchase water rights from Oly Rose.
- Following completion of that study, ESWUA approached Oly Rose with the idea of purchasing water rights. Oly Rose expressed interest in the idea. Both parties agreed that the capacity of the water rights needed to be verified.
- The next step was a joint study of the capacity of water rights where Oly Rose and ESWUA retained RH2 Engineering to do the study. This study was completed in February of 2005, and concluded that there was an ample water supply to sell some water rights to ESWUA.
- Since, at that time, neither ESWUA nor Oly Rose knew the value of the water rights, both parties agreed to engage RH2 to conduct a valuation of the water rights. RH2's study was based in large part on data and findings in the earlier ESWUA study by CDM. In other words, the study used ESWUA's own data. Using this data, the draft study came up with the avoided cost of \$20,000 per acre foot.
- ESWUA then walked away from the study. A short time later, ESWUA produced a low offer and made a veiled threat about commencing condemnation proceedings. At this point, we have reached the spring of 2005.
- There were then several meetings that were held with both ESWUA and the Eastsound Sewer District up through March of 2006. By that time, it did not appear that either ESWUA nor Eastsound District would be able to purchase the water rights.
- Oly Rose and Orcas Water Holdings even offered to reduce the price from the \$10,000 per acre foot to a lower number if ESWUA could demonstrate that they could develop an alternative water source for less than that price. ESWUA said they would conduct those studies. Obviously, neither Oly Rose nor Orcas Water Holdings have heard back from ESWUA since that time.



STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
1511 Third Ave., Suite 719 • Seattle, Washington 98101-1632

In Re: )  
 )  
Rosario Water System ) Docket No. 99-013  
SAN JUAN COUNTY )  
 ) ORDER  
ID# 74270J )  
 )

To: Rosario Utilities, L.L.C., Owner  
Chris Vierthaler, Operator and/or Managing Agent  
One Rosario Way  
Eastsound, Washington 98245

CT Corporation System, Registered Agent  
520 Pike Street  
Seattle, Washington 98101

This document constitutes a notice of correction for purposes of chapter 43.05 RCW. Pertinent references to the Washington Administrative Code (WAC) are indexed in the Appendix to this document.

I. FINDINGS

1.1 Identity of System. Rosario Utilities, L.L.C., a Washington limited liability company, owns and operates the Rosario Water System in San Juan County, Washington. The registered office of the corporation is located at 520 Pike Street, Seattle, Washington 98101. CT Corporation System is its registered agent at that address. Chris Vierthaler is its managing agent and/or system operator. The system is classified as a Group A community water system as defined in WAC 246-290-020. Rosario water system provides water to two additional water



systems: Orcas Highlands Association, identification number ID# 133014, and Vusario Water System, ID# 04743Q both of Eastsound, Washington. According to Department of Health (Department) records, Rosario has one hundred forty nine (149) residential connections and eight (8) non-residential connections (serving the Rosario Resort complex), Orcas Highlands has eighty-six (86) residential connections and Vusario has eight (8) residential connections. The water system provides service to a total of two hundred forty three (243) residential connections and eight non-residential connections (Rosario Resort complex).

1.2 Covered by regulations. Rosario Water System is a "public water system" as defined under RCW 70.119A.020(4). Rosario Utilities, L.L.C., Chris Vierthaler, and CT Corporation are "purveyors" as defined under WAC 246-290-010. The operation of this public water system is governed by chapter 246-290 WAC, the regulations of the State Board of Health regarding Group A public water systems.

1.3 Source classification and type of filtration. The Rosario Water System's Cascade Lake source of supply is classified as surface water. The system uses direct filtration. Its source turbidity is generally less than 2.5 nephelometric turbidity units (NTU).

1.4 Violation of duty to provide effective filtration. The purveyor has a duty to provide effective filtration in accordance with WAC 246-290-630, 246-290-654, and 246-290-660. The purveyor must ensure 3.0 log removal and inactivation of *Giardia lamblia* (Giardia) cysts and 4.0 log removal and/or inactivation of viruses. WAC 246-290-630; 246-290-662. Pursuant to WAC 246-290-660(2), the Department shall notify the purveyor of removal credit granted for the system's filtration process.

The Department may grant removal credit to a system using direct filtration and demonstrating effective treatment. WAC 246-290-660(2). Pursuant to WAC 246-290-654(3), the purveyor must demonstrate treatment effectiveness for Giardia cyst removal by either (a) using the particle counting method to demonstrate 2.0 log reduction of Giardia cyst-sized or (b) using the turbidity reduction method, when source turbidity is less than 2.5 NTU, to demonstrate an 80% reduction in source turbidity based on an average of the daily turbidity reductions measured in a calendar month, or a filtered water turbidity less than or equal to 0.1 NTU.

During the Department's September 11, 1996 treatment plant evaluation, filtration efficiency was evaluated using a particle counter and by turbidity measurements. Log reduction of Giardia sized particles across the filter was less than half of one log. Turbidity reduction was less than 50 percent. See attached field report in Appendix Q. Based on the Department's September 11, 1996 treatment plant evaluation the Department revised the system's Giardia cyst and virus removal credit from 2.0 log Giardia cyst, 1.0 log virus to 0.0 log Giardia cyst, 0.0 log virus. The system was notified by certified letter dated October 17, 1996 that the water treatment plant filter credit had been revised to zero.

A purveyor granted no removal credit is required to submit an action plan to the Department within ninety days of notification regarding removal credit. WAC 246-290-660(2)(f)(ii). By letter dated October 30, 1996, the purveyor submitted an action plan. Water treatment plant report forms submitted by the purveyor indicate that the system has failed to obtain the required 80% minimum average source turbidity reduction in June 1998, July 1998, August 1998, September 1998,

October 1998, November 1998, and December 1998. The purveyor has failed to provide effective filtration treatment.

1.5 Violation of duty to provide continuous effective disinfection. The purveyor has a duty to provide continuous effective disinfection in accordance with WAC 246-290-662. Because the system's Giardia cyst removal credit has been reduced to zero, the level of disinfection that the purveyor is required to provide is 3.0 log inactivation of Giardia cysts and 4.0 log inactivation of viruses. Determination of the level of inactivation requires the use of a calculated value that indicates disinfectant concentration and contact time (CT). Pursuant to WAC 246-290-636, the Department approved the system's method for determining CT, which utilizes the volume of water in the system's storage tank, on November 28, 1998. Compliance with the required level of inactivation requires a total inactivation ratio equal to or greater than 1.0. WAC 246-290-662(4). Failure to provide the required level of inactivation on more than one day in any calendar month is considered a treatment technique violation under WAC 246-290-662(4)(b). The purveyor failed to provide the required level of inactivation on more than one day during the months of January and February 1998 and January 1999.

1.6 Violation of treatment technique. A treatment technique violation occurs when a purveyor providing filtration fails to provide filtration treatment in accordance with WAC 246-290-660 or fails to provide disinfection treatment in accordance with WAC 246-290-662. WAC 246-290-632(2)(a). As described in Paragraph 1.4 above, the purveyor failed to provide the required filtration treatment and, as described in Paragraph 1.5 above, the purveyor failed to provide the required disinfection treatment. When a treatment technique violation occurs, the purveyor is required to report to the Department in accordance



with WAC 246-290-634. Reports provided by the purveyor to the Department for the months of January and February 1998, and January 1999 were incorrect and did not accurately reflect the existence of a treatment technique violation.

1.7 Inadequate treatment capacity and overconnection.

During a Department inspection of the water system on July 25, 1995, the treatment plant was unable to meet system demands. The lower steel storage tank was empty, and the other two tanks were about half full. The system was experiencing low pressures and sporadic water outages at higher elevations in the distribution system. By letter dated August 2, 1995 the Department informed the purveyor that the system must take steps to prevent a recurrence of low pressures and water outages. In addition, the Department reviewed the system's draft water system plan (WSP) which addressed system deficiencies such as insufficient treatment capacity. By letter dated August 4, 1995 the Department stated that the purveyor should immediately begin the recommended projects identified in the WSP including the treatment plant capacity upgrade. To date the Department has received no indication that the treatment plant capacity has been upgraded to address low pressures and water outages.

In or around 1982, the Department approved the water system, including service to Orcas Highlands Association and Vusario Water System, to serve a maximum of 237 residential connections and the Rosario Resort complex. By letter dated October 2, 1996, the Department established that at that time the Rosario water system had a cumulative total of two hundred forty one (241) residential connections and that the approved capacity of the source treatment plant was overextended by four (4) residential connections. The letter further informed the purveyor that the Department had informed the San Juan County Health Department

that due to the need for additional source treatment capacity, the system was considered inadequate. According to current Departmental records, the system is serving approximately 243 residential services and the Rosario Resort. The Department has not approved the system to increase their approved number of connections.

1.8 Failure to construct water treatment facility to address lack of *Giardia* and virus removal credit and inadequate treatment capacity. Under WAC 246-290-660(2)(f), the purveyor granted no removal credit has a duty to identify and implement a plan to comply with filtration requirements. The purveyor also has a duty to address treatment plant capacity. WAC 246-290-440. According to Departmental records the following sequence of events occurred:

A. On December 4, 1996 the Department reviewed the system's August 1996 water treatment project report submittal #96-110 which outlined the purveyor's proposal for increasing treatment capacity. The purveyor indicated slow sand filtration as the selected treatment.

B. On April 28, 1997 the purveyor in a letter to the Department indicated its exploration of another option for water treatment than slow sand filtration.

C. On June 3, 1997 the purveyor proposed in a letter to the Department use of oxygenation/ozone system as alternative to slow sand filtration.

D. On July 22, 1997, the purveyor submitted a Water Treatment Plant Engineering Report, submittal #97-0712, consistent with its June 3, 1997 letter. This report proposed construction of a new water treatment facility that would increase the capacity of the system and that would

meet or exceed minimum filtration and disinfection requirements. By letter dated August 15, 1997, the Department provided the purveyor with comments on the submittal.

E. On November 20, 1997, following receipt of the purveyor's response to its comments and pursuant to WAC 246-290-110, the Department approved the engineering report for the proposed treatment facility in a letter to the purveyor (submittal #97-0712). The purveyor indicated that submission of required construction documents and construction of the proposed treatment facility was scheduled for early 1998.

F. On March 4, 1999 the Department received a draft schedule for water treatment facility development with a February 1, 1999 start date for predesign activities.

To date the Department has not received construction documents for the above referenced projects.

1.9 Violation of duty to reliably provide water at adequate pressure. The purveyor has a duty to provide an adequate quantity of water in a reliable manner at all times in accordance with WAC 246-290-420. The purveyor must maintain water pressure at the customer's service meter, or property line if a meter is not used, at the approved design pressure under maximum demand conditions. The purveyor has been unable to maintain adequate pressure throughout the system and water outages occurred as indicated in a departmental letter to the system August 2, 1995.

1.10 Violation of duty to monitor radionuclides. The purveyor has the duty to monitor radionuclides once every forty-eight (48) months as required under WAC 246-290-300(9) and to

report to the Department as required under WAC 246-290-480(2).  
To date, no sample results have been reported.

1.11 Water system plan. The purveyor has a duty as required under WAC 246-290-100 to submit a water system plan to the Department for review and approval every six (6) years or as otherwise directed by the Department. The Department on March 4, 1996 approved the current plan. The WSP evaluated the existing system and included a schedule for meeting existing and projected future demands. This schedule committed the system to a capital improvement program including a new treatment plant and upgrade in 1995 and 1999 using existing use patterns. The purveyor has failed to meet the schedule as approved in the water system plan. The cost schedule for the capital improvement plan from the WSP is included as Appendix R.

## II. ORDER

In view of the foregoing, under authority of WAC 246-290-050, you are ORDERED to take the following actions to comply with chapter 246-290 WAC.

2.1 Notify consumers. Provide notice as required under WAC 246-290-330 to all individual and wholesale customers of Rosario Water System that a treatment technique violation occurred as listed in paragraphs 1.4 and 1.5. In addition, provide notice as required under WAC 246-290-330 that you have been issued this Departmental Order for failure to comply with chapter 246-290 WAC. Notification must be posted in conspicuous locations for the restaurant customers and within each individual hotel room and shall remain posted until the violations are corrected. Notification must be mailed or hand delivered to all residential

consumers. Repeat mail or hand delivery to all residential customers is required every three months until the violation is corrected. The two notices shall be substantially similar to the "Notice to Water System Users" (Appendix S). The purveyor must provide specific health effects language in the notice when the violation involves a treatment technique requirement as per WAC 246-290-330. Copies of the written notices regarding the treatment technique violations shall be provided to the Department to verify compliance under WAC 246-290-330 within thirty (30) days of receipt of this order. Copies of the written notice regarding issuance of this Departmental Order shall be provided to the Department to verify compliance under WAC 246-290-330 within ninety (90) days of receipt of this order.

2.2 Maintain required level of inactivation. Maintain a minimum of 3.0 log inactivation of Giardia and 4.0 log inactivation of viruses as required under WAC 246-290-662. To determine level of inactivation, the purveyor shall monitor distribution reservoir levels each day and use actual levels in determining disinfection contact time in accordance with the disinfectant CT determination approved by the Department.

2.3 Report results of monitoring. Reservoir level measurements for each day must be recorded and submitted monthly with required water treatment report forms. Completed report forms must be submitted to this Department within ten days after the end of each month in accordance with WAC 246-290-666.

2.4 Maintain design pressures. Maintain minimum distribution water pressure of at least thirty (30) pounds per square inch at all times as required under WAC 246-290-420.

2.5 Employ professional engineer. As required under WAC 246-290-040, the project report and construction documents must be prepared under the direction, and bear the seal and signature of a professional engineer licensed in the state of Washington under chapter 18.43 RCW. The engineer is required to have specific expertise regarding design, operation and maintenance of public water systems. Within twenty (20) days of receipt of this order, provide documentation to this Department that a qualified engineer has been retained to prepare the required documents.

2.6 Submit updated project report. Submit to the Department within seventy (70) days a project report pursuant to WAC 246-290-110 that addresses the following issues:

- A. Confirm that the proposed treatment process is consistent with the November 20, 1997 approved project report. The report must identify any modifications to the proposed water treatment facility that differ from the previously approved report;
- B. Address the issue of potential bacterial regrowth in the distribution system resulting from using ozonation in the treatment process;
- 1101  
100 C. Address whether a biologically active filtration process is warranted to reduce bacterial regrowth;
- D. Evaluate the proposed water treatment process in relation to the recently enacted federal regulations, the Interim Enhanced Surface Water Treatment Rule (IESWTR) and the Stage 1 Disinfectants / Disinfection Byproducts Rule (DBP 1);
- E. Include an updated capacity evaluation of the water system using the proposed new treatment plant capacity. The evaluation should be based on the previous three years water use data.

2.7 Intent to install treatment plant. Notify the Department in writing within thirty (30) days of receipt of this order of intent to install filtration treatment plant.

2.8 Submit construction documents. Submit construction documents to the Department for written approval prior to the installation of any new water system or water system extension or improvement as required under WAC 246-290-120. Within seventy (70) days of receipt of this order, and prior to construction, submit to the Department construction documents for proposed treatment facilities and all other needed improvements as described in the November 20, 1997 report and any additional elements referenced in the project report required under paragraph 2.7.

2.9 Install facilities. All water treatment facilities and improvements outlined in the approved project reports and relevant construction documents shall be in place and operating properly within two hundred twenty (220) days of receipt of this order. A construction report form shall be submitted to the Department as required under WAC 246-290-040.

2.10 Monitor for radionuclides. Collect one (1) source sample for presence of radionuclides within 30 days of receipt of this order in accordance with WAC 246-290-300.

### III. PLACE TO SUBMIT DOCUMENTS AND REQUESTS

3.1 Reports. All documents or reports required by this order to be submitted to the Department shall include the Docket No. on page 1 and be sent to:

Ingrid M. Salmon  
Regional Compliance Manager  
NW Drinking Water Operations  
1511 Third Ave., Suite 719  
Seattle, Washington 98101-1632

3.2 Questions. Questions about compliance with this order should be sent in writing to Ingrid Salmon at the above address.

3.3 Requests. A request to extend a time period to achieve compliance for good cause, or to otherwise modify the order, may be filed with the Department by sending a written request to Ingrid Salmon at the above address within the time period specified for compliance. Any such request will be reviewed and a written response provided to you within fifteen (15) days of the Department's receipt of your request.

#### IV. SUPPLEMENTAL AND MODIFICATION

4.1 Allowed. The Department may supplement or modify this order if changes are warranted to ensure compliance with chapter 246-290 WAC or to allow for your practical ability to correct the violations.

4.2 By consent. Stephen Deem is authorized to modify this order with your consent.

4.3 Without your consent. The Section Supervisor of the Northwest Office of the Division of Drinking Water, Department of Health, may modify this order with or without your consent.



V. TECHNICAL ASSISTANCE SERVICES

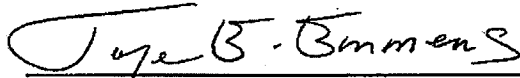
Technical assistance services available from the Department may be obtained by calling Stephen Deem at (206) 464-7963 or writing to him at the address listed in 3.1 above.

VI. NOTICE OF PENALTY FOR VIOLATION OF ORDER

If you fail to comply with any provision of this order, the Department may impose upon you civil penalties calculated on a per day basis of up to five thousand dollars (\$5,000.00) per violation per day, or in the case of a violation determined to be a public health emergency, a penalty of not more than ten thousand dollars (\$10,000.00) per violation per day under authority of chapter 70.119A RCW. Each violation shall be a separate and distinct offense when determining the penalty.

Furthermore, failure to comply with this order may result in referral to the United States Environmental Protection Agency (EPA) for federal enforcement action.

SO ORDERED this 8<sup>th</sup> day of April, 1999 at Seattle,  
Washington.



Joye E. Emmens, Section Supervisor  
Northwest Drinking Water Operations  
Washington State Department of Health

VII. APPENDIX

WAC 246-290-040.....A  
WAC 246-290-050.....B  
WAC 246-290-100.....C  
WAC 246-290-110.....D  
WAC 246-290-120.....E  
WAC 246-290-300.....F  
WAC 246-290-330.....G  
WAC 246-290-420.....H  
WAC 246-290-480.....I  
WAC 246-290-630.....J  
WAC 246-290-632.....K  
WAC 246-290-636.....L  
WAC 246-290-654.....M  
WAC 246-290-660.....N  
WAC 246-290-662.....O  
WAC 246-290-664.....P  
  
Field Report for Rosario Water System, September 11, 1996.....Q  
  
Rosario Water System Plan Capital Improvement Cost, Figures IV-1,  
IV-2, IV-3.....R  
  
Notice to Water System Users.....S