

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

**OFFICE OF COMPLIANCE AND INSPECTION**

In Re: Bristol County Water Authority

File No.: Dam State I.D. 480 and  
OCI-DAMS-13-50  
AAD No.: 14-006/DE

CONSENT AGREEMENT

**A. INTENT & PURPOSE**

This Agreement is entered by and between the Rhode Island Department of Environmental Management (“RIDEM”) and the Bristol County Water Authority (“Respondent”). This Agreement is entered in accordance with Section 42-17.1-2 *et seq.* of the Rhode Island General Laws (“R.I. Gen. Laws”) for the purpose of resolving the alleged violations set forth in a Notice of Violation (“NOV”) issued to Respondent by the RIDEM on 17 March 2014.

**B. STIPULATED FACTS**

- (1) WHEREAS, the property is a dam identified as the Warren Reservoir Upper Dam, State Identification Number 480, located approximately 3,900 feet east of the intersection of Market Street and Schoolhouse Road, and approximately 200 feet north of Schoolhouse Road, in the Town of Warren, Rhode Island (“Dam 480”).
- (2) WHEREAS, Respondent owns Dam 480.
- (3) WHEREAS, RIDEM classifies Dam 480 as Significant Hazard.
- (4) WHEREAS, Dam 480 is classified as Significant Hazard based upon the impact that would occur if the dam failed, which would result in the loss of the drinking water supply that is impounded by the dam, and damage to Schoolhouse Road.
- (5) WHEREAS, on 17 March 2014, RIDEM issued a NOV to Respondent alleging certain violations of the Rhode Island Code of Regulations titled *Rules and Regulations for Dam Safety (250-RICR-130-05-1)* (the “Dam Safety Regulations”).
- (6) WHEREAS, the NOV alleges that unsafe conditions exist at Dam 480 that require repair to the dam.
- (7) WHEREAS, Respondent requested an administrative hearing to contest the NOV.
- (8) WHEREAS, on 12 November 2015, PARE CORPORATION, on behalf of Respondent, applied to RIDEM’s Office of Compliance and Inspection (“OC&I”) to remove trees and vegetation on Dam 480 to comply with Section D (1) of the Order section of the NOV.

- (9) WHEREAS, on 3 December 2015, OC&I approved the work to remove the trees and vegetation on Dam 480.
- (10) WHEREAS, Respondent removed most of the trees and vegetation on Dam 480 in accordance with the approval.
- (11) WHEREAS, on 25 April 2018, OC&I received a report prepared by PARE CORPORATION, on behalf of Respondent, that assessed the impacts of the partial removal of Dam 480. The report included a conceptual design for the partial removal of the dam (the “Conceptual Design”).
- (12) WHEREAS, on or about 14 March 2019, Respondent sent a letter to the Rhode Island Department of Health stating that it will no longer use the water impounded by Dam 480 as a drinking water supply.
- (13) WHEREAS, RIDEM reviewed the report and determined that the partial removal of Dam 480 as shown in the Conceptual Design (the “Project”) was a better alternative to repairing the dam.
- (14) WHEREAS, the completion of the Project will allow RIDEM to reclassify the dam as Low Hazard and obviate the need to repair the dam.
- (15) WHEREAS, in accordance with Part 1.9(C) of the Dam Safety Regulations, upon the completion of the Project, Respondent can petition RIDEM to have the dam reclassified so that it no longer is considered a regulated dam.
- (16) WHEREAS, on or about 13 January 2020, PARE CORPORATION, on behalf of Respondent, provided a schedule for the completion of the Project. The schedule is attached hereto and incorporated herein as Attachment A.
- (17) WHEREAS, the Administrative Adjudication Division is a division of RIDEM.
- (18) WHEREAS, in lieu of proceeding to an administrative adjudicatory hearing on the NOV and to effect a timely and amicable resolution of the NOV, RIDEM and Respondent hereby agree that it is in the best interest of the parties and in the public interest to resolve the issues raised in the NOV.
- (19) WHEREAS, RIDEM finds that this Agreement is a reasonable and fair settlement and adequately protects the public interest in accordance with the Dam Safety Regulations.

### ***C. AGREEMENT***

- (1) JURISDICTION – The RIDEM has jurisdiction over the subject matter of this Agreement and has personal jurisdiction over Respondent.
- (2) FORCE and EFFECT – This Agreement shall have the full force and effect of a final compliance order issued after a full hearing on the merits pursuant to the Administrative Procedures Act, R.I. Gen. Laws Section 42-35-1 et seq. and R.I. Gen. Laws Section 42-

17.7-1 et seq. from which no timely appeal was taken, and which is enforceable in Superior Court in accordance with R.I. Gen. Laws Section 42-17.1-2(21)(vi).

- (3) APPLICATION – The provisions of this Agreement shall apply to and be binding upon RIDEM, Respondent and its servants, employees, successors, assigns and all persons, firms and corporations acting under, through and for Respondent in the performance of work relating to or impacting the requirements of this Agreement.
- (4) CONDITIONS –
  - (a) Respondent shall complete the Project in accordance with Attachment A, which requires, among other actions, submission of an application to OC&I **by 1 July 2020** and the completion of all work **by 1 January 2024**.
  - (b) Respondent agrees to provide reports to OC&I every 6 months on the status of the Project. The first report is due on or before **1 July 2020**.
  - (c) If Respondent has not obtained all required approvals or funding for the Project by 1 July 2023, Respondent agrees to repair the dam in accordance with subsections D (2) through D (4) of the NOV.

#### ***D. COMPLIANCE***

- (1) EFFECT OF COMPLIANCE – Compliance with and fulfillment of this Agreement shall be deemed to resolve all issues raised in the NOV.
- (2) FAILURE TO COMPLY – If Respondent fails to comply with any of the items specified in subsection C (4) of the Agreement, Respondent shall pay a stipulated penalty of \$500 per month for each month during which the noncompliance continues, except that the RIDEM may, for good cause shown, defer or reduce such penalty. The payment of a penalty in accordance with this section shall not preclude RIDEM from seeking any other appropriate remedy (e.g., injunctive relief in Superior Court).
- (3) COMPLIANCE WITH OTHER APPLICABLE LAWS – Compliance with the terms of this Agreement does not relieve Respondent of any obligation to comply with any other applicable laws or regulations administered by, through or for RIDEM or any other governmental entity.
- (4) ADDITIONAL ENFORCEMENT ACTIONS – Upon a determination by the Director that there is a threat to the public health or the environment, or upon discovery of any new information, RIDEM reserves the right to take additional enforcement actions as provided by statute or regulation, including, but not limited to, the issuance of “Immediate Compliance Orders” as authorized by R.I. Gen. Laws Section 42-17.1-2(21). This Agreement shall not restrict any right to hearing or other right available by statute or regulation that Respondent may have regarding any new enforcement action commenced by RIDEM after the execution of this Agreement.

- (5) FUTURE ACTIVITIES AND UNKNOWN CONDITIONS – This Agreement shall not operate to shield Respondent from liability arising from future activities, as of the date of execution of this Agreement.
- (6) SCOPE OF THE AGREEMENT – The scope of the Agreement is limited to violations alleged in the NOV.
- (7) NOTICE AND COMMUNICATION – Communications regarding this Agreement shall be directed to:

**David E. Chopy, Administrator**  
RIDEM Office of Compliance and Inspection  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-1360 ext. 7400  
[david.chopy@dem.ri.gov](mailto:david.chopy@dem.ri.gov)

**Christina Hoefsmit, Esquire**  
RIDEM Office of Legal Services  
235 Promenade Street  
Providence, RI 02908-5767  
(401) 222-6607 ext. 2023  
[christina.hoefsmit@dem.ri.gov](mailto:christina.hoefsmit@dem.ri.gov)

**Pamela Marchand, P.E.**  
Bristol County Water Authority  
450 Child Street  
Warren, RI 02885  
(401) 245-2022  
[pmarchand@bcwari.com](mailto:pmarchand@bcwari.com)

**Joseph A. Keough, Jr., Esquire**  
Keough & Sweeney, LTD  
41 Mendon Avenue  
Pawtucket, RI 02861  
(401) 724-3600  
[jkeoughjr@keoughsweeney.com](mailto:jkeoughjr@keoughsweeney.com)

All communications regarding compliance with this Agreement shall be forwarded to the above-referenced addressees by certified mail.

- (8) DEFERRAL – RIDEM acknowledges that the dates shown in Attachment A are contingent on obtaining all required Federal, State and local approvals and that revisions to the schedule may be necessary if approvals are not obtained within the timeline considered in developing the schedule. RIDEM may, for good cause shown, defer or modify any of the compliance dates prescribed herein. Good cause for deferral of any compliance date shall be forwarded to RIDEM in writing at least 15 days prior to the prescribed deadline.

(9) AMENDMENT – The Agreement may be amended by agreement of the parties in writing.

(10) EFFECTIVE DATE – This Agreement shall be deemed entered as of the date of execution by all parties.

**IN WITNESS WHEREOF, the undersigned consent to this Agreement in substance and in form.**

Bristol County Water Authority

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Dated: \_\_\_\_\_

STATE OF RHODE ISLAND  
COUNTY OF \_\_\_\_\_

In \_\_\_\_\_, in said County and State, on the \_\_\_ day of \_\_\_\_\_, 2020, before me personally appeared \_\_\_\_\_, in his/her capacity as the \_\_\_\_\_ of the **Bristol County Water Authority** to me known and known by me to be the party executing the foregoing instrument for and on behalf of **the Bristol County Water Authority** and he/she acknowledged said instrument by him/her executed to be his/her free act and deed, his/her free act and deed in his/her capacity as aforesaid, and the free act and deed of **the Bristol County Water Authority**.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

State of Rhode Island, Department of Environmental Management

By: \_\_\_\_\_  
David E. Chopy, Administrator  
Office of Compliance and Inspection

Dated: \_\_\_\_\_

STATE OF RHODE ISLAND  
COUNTY OF \_\_\_\_\_

In \_\_\_\_\_, in said County and State, on the \_\_\_\_ day of \_\_\_\_\_, 2020, before me personally appeared David Chopy, in his capacity as the Administrator, Office of Compliance and Inspection of the **RI Department of Environmental Management** to me known and known by me to be the party executing the foregoing instrument for and on behalf of the **RI Department of Environmental Management** and he acknowledged said instrument by him executed to be his free act and deed, his free act and deed in his capacity as aforesaid, and the free act and deed of the **RI Department of Environmental Management**.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_