



**IN THE MATTER OF GRANTING** )  
**A WATER QUALITY** )  
**CERTIFICATION TO:** )  
Daniel and Linda Breard )  
in accordance with 33 U.S.C. 1341 )  
FWPCA § 401, RCW 90.48.260, )  
and Chapter 173-201A WAC )

**ORDER #05SEACR-1962**  
U.S. Army Corps of Engineers Reference  
No. 200401340 - Install a pier, place 12  
pilings, footings, and footing armor within  
Lake Chelan, Chelan County, Washington

TO: Daniel and Linda Breard  
19482 Southeast 57<sup>th</sup> Place  
Issaquah, WA 98027

On November 17, 2004, a public notice for a proposed water quality certification from the State of Washington was distributed for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401). The proposed project entails the construction of a 320 square foot pier, and placement of twelve pilings. The lakebed would be excavated, approximately one cubic yard per piling (approximately twelve cubic yards). Native material will be placed at the base of each piling. The placement of dredged or fill material associated with the project includes: 5 cubic yards of native lakebed material. The site is located in Lake Chelan, Chelan County Washington. The project is located within Section 21, Township 28 N., Range 21 E., W.M. at 3111 Chelan Blvd, Manson, WA, 98831.

**AUTHORITIES:**

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, and RCW 90.48.260, Ecology has investigated this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 303, 306, and 307);
2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; and
3. Conformance with the provision of using all known, available, and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

**CONDITIONS OF ORDER NO. 05SEACR-1962 AND WATER QUALITY CERTIFICATION:**

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

**A. No Impairment of Water Quality:**

- A1. Lake Chelan (WRIA #47, Segment 292NWR) is a Lake Class water of the state. Certification of this proposal does not authorize the applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification shall absolve the applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.
- A2. Lake Chelan has been identified on the current 303(d) list as exceeding state water quality standards for 4,4'-DDE, PCB-1254, and PCB-1260. This proposed project shall not result in further exceedances of this standard.

**B. Water Quality Standards:**

- B1. Certification of this project does not authorize the applicant to exceed the turbidity standard for Lake Class waters beyond the mixing zone described below at condition B2. Turbidity in Lake Class waters shall not exceed 5 NTU over background conditions as stated in WAC 173-201A-030-5-vi.
- B2. Mixing Zone: Consistent with WAC 173-201A-100(7) and -110(3) a mixing zone is established within which the turbidity standard is waived. The mixing zone is established to allow only temporary exceedances of the turbidity criteria during and immediately after project construction. The temporary turbidity mixing zone shall be as follows:
  - B2a For projects working within or along lakes, ponds, wetlands, estuaries, marine waters, or other non-flowing waters, the point of compliance shall be at a radius of 150 feet from the activity causing the turbidity exceedance.

**C. Project Mitigation**

- C1. To mitigate short-term project disturbances and long-term impacts to local fish and shellfish and their habitats, Daniel and Linda Breard shall mitigate these impacts by safely and securely installing three combination rock and log fish habitat mitigation structures according to Washington Department of Fish and Wildlife (WDFW) specifications within Lake Chelan. The specifications of the mitigation structure will be contained in the Hydraulic Project Approval (HPA) issued by WDFW.
- C2. The in-water fish habitat mitigation structures shall be adequately weighted, securely cabled together, and safely installed so as not to pose a threat to navigation, and shall be professionally designed and installed so as to withstand heavy wave action and lake level fluctuations.
- C3. Final location and orientation of the fish habitat structure will be determined by WDFW's Area Habitat Biologist, Bob Steele, or Ecology's Shoreline Specialist, Gary Graff.
- C4. The fish habitat structure shall be placed within six (6) months of project completion. If an extension in time is necessary to place the fish habitat structure, a request shall be submitted in writing to: Gary Graff, Department of Ecology, 15 W Yakima Avenue, Suite 200, Yakima, WA 98902.
- C5. Documentation of the mitigation shall be provided within thirty (30) days of completion of the mitigation structures. Mitigation documentation shall be sent to : Gary Graff, Department of Ecology, 15 W Yakima Avenue, Suite 200, Yakima, WA 98902.

**D. Construction:**

**D1. Construction Stormwater and Erosion Control:**

- D1a. Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment, and erosion control best management practices suitable to prevent exceedances of state water quality standards (*e.g.*, hay bales, detention areas, silt fences, etc.), shall be in place before starting clearing, filling, and grading work at the impact sites.
- D1b. Prior to clearing and grading in wetlands, the adjacent wetlands shall be protected from construction impacts. Construction fencing or flagging (using brightly colored tape at no less than twenty-five foot (25') intervals) of the existing wetlands and stream channels to be protected shall be completed prior to clearing. All project staff shall be trained to recognize construction fencing or flagging that identifies wetland boundaries. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be filled.

- D2. During clearing and filling at the various project sites, Daniel and Linda Breard shall take all necessary measures to minimize the alteration or disturbance of existing wetland and upland vegetation.
- D3. No existing shoreline or lake material (i.e., logs, rocks, gravel, cobbles, woody debris or other lakebed material) shall be relocated or used as bulkhead armor, as fill, or for any other purposes, **except** that lakebed material located exactly where the new pilings and footings are to be placed may be relocated.
- D4. Uncured concrete and concrete by-products shall be completely sealed off from the ordinary high water mark (OHWM) and wetted perimeter of Lake Chelan, totally contained through the use of sealed forms or other leak proof containment systems, and not allowed to contaminate or enter the OHWM or wetted perimeter of Lake Chelan.
- D5. 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.
- 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. Any wooden pier components, piling, pier support, and other materials composed of pressure treated wood shall be professionally and commercially produced and chemically fixed in accordance with all current best management practices as contained in the Western Wood Preservers Institute's latest edition of "Best Management Practices for the Use of Treated Wood in Aquatic Environments."
- D8. No wood, metal, or concrete preservatives, paints, sealers, glues, epoxies, chemicals, or other substances harmful or toxic to fish or shellfish shall be applied to the pier system once it has been placed within or over the OHWM of Lake Chelan.
- D9. Daniel and Linda Breard shall provide written notice to Ecology's Gary Graff at least 14 days prior to the start of placing fill in wetlands or other waters of the state, and within 14 days after completion of construction at each project site and mitigation site.
- D10. Clean Fill Criteria: Daniel and Linda Breard shall ensure that fill placed for the proposed project does not contain toxic materials in toxic amounts.

**E. Emergency/Contingency Measures:**

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

- Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
- Visual monitoring of turbidity standards is required. Daniel and Linda Breard will stop work if a visible turbidity plume is observed beyond the allowed mixing zone of 150 feet beyond the activity causing the turbidity exceedance. Turbidity exceedances shall be immediately reported to Ecology's Gary Graff at (509) 454-4260
- Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (509) 575-2490, and within 24 hours to Ecology's Gary Graff at (509) 454-4260.
- Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.
- Compliance with this condition does not relieve Daniel and Linda Breard from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

E2. Fuel hoses oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters. No refueling of equipment shall occur over, or within 50 feet of creeks lakes, or wetlands.

**F. General Conditions:**

F1. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

All conditions in the following permits, approvals, and documents are incorporated herein and are specific conditions of this Order:

- Shoreline Exemption Permit No. SE 04-025, issued by Chelan County.

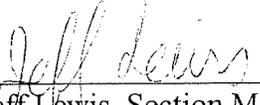
F2. Daniel and Linda Breard will be out of compliance with this certification if the project is constructed and/or operated in a manner not consistent with the project description contained in the Public Notice for certification, or as otherwise approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.

- F3. Daniel and Linda Breard will be out of compliance with this certification and must reapply with an updated application if five years elapse between the date of the issuance of this certification and the beginning of construction and/or discharge for which the federal license or permit is being sought.
- F4. Daniel and Linda Breard will be out of compliance with this certification and must reapply with an updated application if the information contained in the Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the public notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval prior to implementation of such action.
- F5. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors.
- F6. To avoid violations or non-compliance with this Order, Daniel and Linda Breard shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects of this Order.
- F7. Daniel and Linda Breard shall provide to Ecology a signed statement from each project manager and construction superintendent working at the project and mitigation sites that they have read and understand the conditions of the above-referenced permits, plans, and approvals. These statements shall be provided to Ecology no less than seven (7) days before construction begins at each project or mitigation site.
- F8. Daniel and Linda Breard shall provide access to the project site and all mitigation sites upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.
- F9. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.
- F10. Liability: Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

**Appeal Process:**

Any person aggrieved by this Order may obtain review thereof by appeal, within thirty (30) days of receipt of this Order, to the Washington Pollution Control Hearings Board, P.O. Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Enforcement Section, P.O. Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated February 8, 2005 at Yakima, Washington.

  
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Jeff Lewis, Section Manager  
Shorelands and Environmental Assistance Program  
Department of Ecology  
State of Washington