STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
15 West Yakima Avenue, Suite 200 • Yakima, Washington 98902-3452 • (509) 575-2490

June 29, 2006
REGISTERED MAIL

Mr. Dominique Ruybal
16531 13th Avenue West, Suite A-107
Lynnwood, WA 98037

RE: Water Quality Certification Order 3407 for Corps Public Notice No. 200600179, for the construction a 384 square foot pier with 10 steel pilings anchored in concrete footings; place 9 cubic yards of riprap around pilings; install a boatlift; and install woody debris as mitigation in Lake Chelan.

Dear Mr. Ruybal:

On February 13th, 2006, Dominique Ruybal, through authorized agent Larry Lehman, Grette and Associates, submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. The project location is on Lake Chelan between 3334 and 3300 South Lakeshore Road, Chelan County, Washington, Section 12, Township 27N, Range 21 East of the Willamette Meridian, Water Resource Inventory Area (WRIA) Chelan #47. The proposed project entails the construction a 384 square foot pier with 10 steel pilings anchored in concrete footings; place 9 cubic yards of riprap around pilings; install a boatlift; and install woody debris as mitigation in Lake Chelan. U.S. Army Corps of Engineers issued a public notice on May 16th, 2006 for the proposed project.

On behalf of the State of Washington, Ecology certifies that the work described in the JARPA and the 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.

This letter also serves as the State response to the Corps of Engineers' January 13th, 2006 Public Notice.

If you have any questions, please contact Gary Graff at (509) 454-4260. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Jeff Lewis
Central Regional Office
Shorelands and Environmental Assistance Program

JL:GG:jt060619
Enclosure

cc: Debbie Knaub - U.S. Army Corps of Engineers
Bob Steele – WDFW
Terri Scott - Chelan County Planning
Terry Moloney - Chelan County PUD

e-cc: Penny Keys – Ecology HQ
Loree' Randall – Ecology HQ
Gary Graff – Central Regional Shoreline Permit Coordinator
John Merz – Central Regional Water Quality Unit Supervisor

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Dominique Ruybal in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	)))))))))	**ORDER # 3407** **Corps Reference No. 200600179** Construct a 384 square foot pier with 10 steel pilings anchored in concrete footings; place 9 cubic yards of riprap around pilings; install a boatlift; and install woody debris as mitigation between 3334 and 3300 South Lakeshore Road, Chelan County, Washington.

TO: Mr. Dominique Ruybal
16531 13th Avenue West, Suite A-107
Lynnwood, WA 98037

On February 13th, 2006, Dominique Ruybal, through authorized agent Larry Lehman, Grette and Associates, submitted a Joint Aquatic Resource Permit Application (JARPA) to the Department of Ecology (Ecology) requesting a Section 401 Water Quality Certification. A public notice for a proposed water quality certification from Ecology was distributed by the U.S. Army Corps of Engineers for the above-referenced project pursuant to the provisions Chapter 173-225 WAC on May 16th, 2006.

The proposed project entails the construction a 384 square foot pier with 10 steel pilings anchored in concrete footings; place 9 cubic yards of riprap around pilings; install a boatlift; and install woody debris as mitigation in Lake Chelan. The project location is on Lake Chelan between 3334 and 3300 South Lakeshore Road, Chelan County, Washington, Section 12, Township 27N, Range 21 East of the Willamette Meridian, Water Resource Inventory Area (WRIA) Chelan #47.

AUTHORITIES:

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, RCW 90.48.120, and RCW 90.48.260, Ecology has 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. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 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:

1. For purposes of this Order, the term "Applicant" shall mean Dominique Ruybal, and its agents, assignees and contractors.

2. For purposes of this Order, all submittals required by its conditions shall be sent to Ecology's Central Regional Office, Attn: Federal Permit Coordinator, 15 West Yakima Avenue Suite #200, Yakima, WA 98902. Any submittals shall be identified with Order No. 3407 displayed.

3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on February 1st, 2006. 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.

4. Within 30 days of receipt of an updated JARPA Ecology will determine if a modification to this Order is required.

5. This Order shall be withdrawn if the Corps of Engineers does not issue a 404 permit. It shall also be withdrawn if the project is revised in such a manner or purpose that Ecology determines the revised project requires a new authorization and public notice. The Applicant will then be required to reapply for a 401 Water Quality Certification by submitting a new JARPA to Ecology.

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

7. 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.

8. 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.

9. 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.

10. 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.

11. 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. Water Quality Standards:

No Impairment of Water Quality:

B1. 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 exceedences 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.

Lake Chelan has been identified on the current 303(d) list as exceeding state water quality standards for PCB 1254, PCB 1260, 4,4' DDE,. This proposed project shall not result in further exceedences of these standards.

B2. Conditions listed below are issued under the authority of Chapter 90.48 RCW and Chapter 173-201A WAC. Except as specifically authorized by this Order, all applicable provisions of Chapter 173-201A WAC shall be met.

B3. 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 B4. Turbidity in Lake Class waters shall not exceed 5 NTU over background conditions as stated in WAC 173-201A-030-5-vi.

B4. Mixing Zone: Consistent with WAC 173-201A-080(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 exceedences of the turbidity criteria during and immediately after project construction. The temporary turbidity mixing zone shall be as follows:

WAC 173-201A-080(7)(e) In lakes, and in reservoirs having a mean detention time greater than fifteen days, mixing zones, singularly or in combination with other mixing zones, shall comply with the most restrictive combination of the following:

(i) Not exceed ten percent of the water body volume;
(ii) Not exceed ten percent of the water body surface area (maximum radial extent of the plume regardless of whether it reaches the surface); and
(iii) Not extend beyond fifteen percent of the width of the water body.

C. Water Quality Sampling and Monitoring:

C1. A water quality monitoring plan shall be developed and implemented that establishes performance standards for measuring compliance with the turbidity standard at the point of compliance for the project. Samples shall be taken a minimum of three times per day during any in-water activity, once each day before work begins to collect baseline data and twice during the day while construction activities are taking place.

C2. The baseline data sampling will require two collection points, one point upstream of the construction area, and a second collection point at a distance not to exceed 300 feet downstream from the worksite. During any construction/dredging activity, additional samples shall be taken at three different collection points, one upstream, and the following two in a distance not to exceed 300 feet downstream

from the worksite. Of these two collection points, one will be in the near shore environment, and another at an adequate distance waterward of the shoreline, not to exceed twenty-five percent of the width of the water body.

C3. The water quality monitoring plan shall be sent to and received by Ecology's Gary Graff for review and approval at minimum two weeks before construction is scheduled to begin.

C4. Results of daily sampling shall be tabulated and forwarded to Department of Ecology at project completion, to Gary Graff, at e-mail gagr461@ecy.wa.gov, or fax at (509) 575-2809.

C5. If sampling indicates that turbidity standards have been exceeded, the following actions will be taken:

(i) Work shall be halted.
(ii) Ecology's federal permit coordinator Gary Graff shall be immediately notified at (509) 454-4260.
(iii) Sampling shall be increased to a minimum of once per hour, until water quality standards are restored, to determine the duration of time of the violation.
(vi) A detailed written incident report shall be submitted 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.

C6. Work activities occurring landward of the wetted perimeter, or "in the dry", do not require sampling and monitoring contained in Section C of this order.

D. Construction:

D1. 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, and best management practices suitable to prevent exceedences 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.

D2. 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.

D3. During clearing and filling at the various project sites, the Applicant shall take all necessary measures to minimize the alteration or disturbance of existing wetland and upland vegetation.

D4. 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 boat ramp is to be placed may be relocated.

D5. Dredge spoils will be deposited upland, according to the plans provided to Ecology prior to the start of construction activity. Dredge spoils are not be allowed to enter OHWM or the wetted perimeter of Lake Chelan.

D6. 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.

D7. 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.

D8. 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.

D9. 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."

D10. 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.

D11. <u>Clean Fill Criteria</u>: The Applicant shall ensure that fill placed for the proposed project does not contain toxic materials in toxic amounts.

E. Mitigation Requirements:

E1 The applicant shall place large woody debris structures consisting of seven whole fruit trees, providing 448 square feet of area at a lake level above the 1079' elevation to mitigate for the long term in water impacts associated with the installation of the pier structure.

E2. Documentation of the completed project and mitigation shall be submitted to the Department of Ecology in the form of:

(i) Photographs documenting all stages of construction and mitigation.
(ii) A brief narrative describing the location and placement and anchoring methods of the mitigation.
(iii) A map with mitigation area indicated, and the lake elevation where the mitigation was anchored, shall be submitted no longer that one month (30 days) after project completion.

E3. All mitigation shall remain in perpetuity as long as the conditioned structures are in place.

F. Notification Requirements

F1. Start of construction: The Applicant 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.

F2. Completion of project: The Applicant shall provide written notice to Ecology's Gary Graff within 14 days after completion of construction at each project site and mitigation site.

G. Emergency/Contingency Measures:

G1. In the event the Applicant is unable to comply with any of the permit terms and conditions due to any cause, the Applicant shall:
(i) Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
(ii) 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.

(iii) Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

G2. 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.

G3. 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, rivers, lakes, or wetlands.

H. Appeal Process:

You have the right to appeal this Order to the Pollution Control Hearings Board. Pursuant to chapter 43.21B RCW, your appeal must be filed with the Pollution Control Hearings Board, and served on the Department of Ecology within thirty (30) days of the date of your receipt of this document.

To appeal this Order, your notice of appeal must contain a copy of the Ecology Order you are appealing.

Your appeal must be filed with:
The Pollution Control Hearings Board
4224 - 6th Avenue SE, Rowe Six, Bldg. 2
P.O. Box 40903
Lacey, Washington 98504-0903

Your appeal must also be served on:
The Department of Ecology
Appeals Coordinator
P.O. Box 47608
Olympia, Washington 98504-7608.

In addition, please send a copy of your appeal to:
Federal Permit Appeals Coordinator
Department of Ecology
P.O. Box 47600
Olympia, Washington 98504-7600

For additional information: Environmental Hearings Office Website: http://www.eho.wa.gov

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 June 29, 2006 at Yakima, Washington.

Jeff Lewis

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