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

March 6, 2007
REGISTERED MAIL

Mr. Bernard and Ms. Laura McMahon
3725 Puget Sound Boulevard
Edmonds, Washington 98802

RE: Water Quality Certification Order 4144 for Corps Public Notice No. 200600826, for the construction of a 400 square foot pier, with 6 steel 4 inch diameter piles each anchored in concrete footings; install a boatlift and a mooring buoy; install complex woody debris structures as mitigation.

Dear Mr. and Mrs. McMahon:

On September 28th, 2006, Bernard and Laura McMahon, through Chelan County Department of Community Development and their authorized agent Todd Jackson, 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 at 16120 South Lakeshore Road, Chelan County, Washington, Section 33, Township 29N, Range 21 East of the Willamette Meridian, Water Resource Inventory Area (WRIA) Chelan #47.

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 November 1st, 2006.

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' November 1st, 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:jt070305
Enclosure

cc:
Bob Steele – WDFW
Terri Scott - Chelan County Planning
Terry Moloney - Chelan County PUD

e-cc: Debbie Knaub - U.S. Army Corps of Engineers
Penny Keys – Ecology HQ
Loree' Randall – Ecology HQ
John Merz – Central Regional Water Quality Unit Supervisor
Gary Graff – Central Regional Shoreline Permit Coordinator

IN THE MATTER OF GRANTING A WATER QUALITY CERTIFICATION TO Bernard and Laura McMahon in accordance with 33 U.S.C. 1341 (FWPCA § 401), RCW 90.48.120, RCW 90.48.260 and Chapter 173-201A WAC	))))))))	**ORDER # 4144** **Corps Reference No. 200600826** Construction of approximately 400 square foot pier, with 6 steel 4 inch diameter piles each anchored in concrete footings; install a boatlift and a mooring buoy; install complex woody debris structures as mitigation. Project location is in Lake Chelan at 16120 South Lakeshore Road, Chelan County, Washington

TO: Mr. Bernard and Ms. Laura McMahon
3725 Puget Sound Boulevard
Edmonds, Washington 98802

On September 28th, 2006, Bernard and Laura McMahon, through Chelan County Department of Community Development and their authorized agent Todd Jackson, 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 November 1st, 2006.

The proposed project entails the construction of approximately 400 square foot pier, with 6 steel 4 inch diameter piles each anchored in concrete footings; install a boatlift and a mooring buoy; install complex woody debris structures as mitigation. The project location is on Lake Chelan at 16120 South Lakeshore Road, Chelan County, Washington, Section 33, Township 29N, 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 Bernard and Laura McMahon, 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, SEA Program, 15 West Yakima Avenue, Suite 200, Yakima, Washington 98902. Any submittals shall reference Order No. 4144, and Corps No. **200600826**.
3. Work authorized by this Order is limited to the work described in the JARPA received by Ecology on December 21st, 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 the revised project requires a new water quality certification and public notice or if a modification to this Order is required
5. This Order shall be rescinded if the U.S. Army Corps of Engineers does not issue a Section 404 permit.
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. The Applicant shall ensure that all appropriate project engineers and contractors at the project site have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology before construction begins at the project.
11. 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.
12. 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. No Further Impairment of Existing Water Quality:

Certification of this proposal does not authorize the Applicants to exceed applicable state water quality standards (173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-200 shall apply to this project, unless otherwise authorized by Ecology.

1. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-200 (1)(e)(i). Furthermore, nothing in this certification shall absolve the Applicants from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.
2. 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 exceedances of these standards.

C. Timing:

1. This Order is valid until all compliance requirements in this document have been met.
2. In-water work shall be subject to the timing limitations imposed by the most current Hydraulic Project Approval (HPA) issued by the Washington Department of Fish and Wildlife's (WDFW) for this project.

D. Notification Conditions:

1. The Applicant shall provide written notification (FAX, e-mail or mail) to Ecology's Central Regional Office Federal Permit Coordinator in writing at least three (3) days prior to the start of construction at the project site.
2. The Applicant shall provide written notification to Ecology's Central Regional Office Federal Permit Coordinator in writing within fourteen (14) days after completion of construction.

NOTE: These notifications shall include the Applicant's name, project name, Order No. 4144, Corps Reference No. **200600826**, project location, contact and contact's phone number.

E. Water Quality Monitoring and Reporting Conditions:

1. During and immediately after project construction, the Applicant or their contractor shall visually monitor for turbidity discharges at the point of compliance established in WAC 173-201A-200(1)(e)(i). If water quality exceedances are observed outside of the point of compliance, work shall cease immediately and the Applicant or the contractor shall assess the cause of the water quality problem and take appropriate measures to correct the problem and/or prevent further water quality turbidity exceedances. The Applicant or their contractor shall notify Ecology's Central Regional Office Federal Permit Coordinator at (509) 454-4260 of the exceedances.
2. If the results of the monitoring show that the water quality standards or project performance standards are not being met additional monitoring and mitigation may be required.
3. Any changes to the monitoring requirements must be approved in writing by Ecology.

F. Construction:

1. 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 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.
2. 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.

3. 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.
4. 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 are to be placed may be relocated.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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."
10. 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.
11. Clean Fill Criteria: The Applicant shall ensure that fill placed for the proposed project does not contain toxic materials in toxic amounts.

G. Mitigation Requirements:

1 The applicant shall place large woody debris structures consisting of seven whole fruit trees, root wad included, providing approximately 400 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.

1. The mitigation shall be clearly marked with a U.S. Coast Guard approved navigation buoy. The mitigation marking buoy shall not be used for moorage.
3. 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.
4. All mitigation shall remain in perpetuity as long as the conditioned structures are in place.

H. Emergency/Contingency Measures:

1. 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 Federal Permit Coordinator 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.
2. 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.
3. 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 100 feet of creeks, rivers, lakes, or wetlands.

I. 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 March 6th, 2007 at Yakima, Washington.

Jeff Lewis

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