CALIFORNIA
Water Boards

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ENVIRONMENTAL PROTECTION

Lahontan Regional Water Quality Control Board

MEMORANDUM

TO: Water Board Members

FROM: PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: September 18, 2015

SUBJECT: **EXEMPTION TO WASTE DISCHARGE PROHIBITIONS WITHIN TRUCKEE RIVER HYDROLOGIC UNIT FOR THE VERKLER PIER EXPANSION PROJECT, NEVADA COUNTY**

In ten days, I intend to sign the enclosed Order granting an exemption to the above-cited discharge prohibitions specified in the *Water Quality Control Plan for the Lahontan Region* (Basin Plan). The exemption will allow the project proponent to demolish an existing pier and replace it with an expanded pier in Donner Lake in Truckee.

The project meets requirements for an exemption to the discharge prohibition. A public notice soliciting comments on the proposed Project will be posted on the Water Board's website for 10 days.

Please contact William Chen at william.chen@waterboards.ca.gov (530) 542-5480 or me at patty.kouyoumdjian@waterboards.ca.gov (530) 542-5412 if you have any questions or comments regarding this matter.

Enclosure: Draft Water Quality Certification Order

cc: Jay Verkler
Gavin Ball, Planning Consultant
Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9
Kaitlyn Pascus, USACE, Sacramento Office
Bill Orme, SWRCB, Division of Water Quality
Ninette Lee, California State Lands Commission
Patrick Moezinger, California Department of Fish and Wildlife

WC/ma/T: Verkler Pier Replacemement Board Notice
File Under: ECM/6A291506002

Jay Verkler
P.O. Box 7544
Menlo Park, CA 94026
cabin@bulk.summit8.net

BOARD ORDER NO. R6T-2015-XXXX, CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION FOR VERKLER PIER EXPANSION PROJECT, NEVADA COUNTY, WDID 6A291506002

The California Regional Water Quality Control Board, Lahontan Region (Water Board) has received a complete Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) application and application filing fee from Jay Verkler (Applicant) for the Verkler Pier Expansion Project (Project) in Nevada County. This Order for WQC hereby assigns this Project the following reference number: Waste Discharge Identification (WDID) No. 6A291506002. Please use this reference number in all future correspondence regarding this Project.

Any person aggrieved by this action of the Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations (CCR), title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

PROJECT DESCRIPTION

Table of Project Information:

WDID Number	6A291506002
Applicant	Jay Verkler P.O. Box 7544 Menlo Park, CA 94026
Agent	Gavin Ball P.O. Box 313 Truckee, CA 96160
Project Name	Verkler Pier Expansion Project

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Table of Project Information Continued:

Project Purpose and Description	The proposed Project involves demolishing an existing pier and replacing it with an expanded pier. Twenty wooden pilings varying in diameter will be removed and fifteen 10¾-inch diameter steel pilings will be installed. A rubber-wheeled amphibious vehicle will be used for removal and installation of pilings, accessing the Project site from the lake. All debris and staging will be contained on the amphibious vehicle. Best Management Practices (BMPs) described in the application will be implemented to surround the area of work. All work will be accomplished during the fish non-spawning season, or in coordination with the California Department of Fish and Wildlife.
Project Type	Pier Modification and Expansion
Project County	Nevada
Project Address or other Locating Information	14530 South Shore Dr. Truckee, CA 96160
Location Latitude/Longitude	Latitude: 39 19' 04.14'', Longitude: 120 16' 06.95''
Hydrologic Unit(s)	Hydrologic Unit, 635.20
Overall Project Area	5,200 Square Feet
Receiving Water(s) Name	Donner Lake
Water Body Type(s)	Lake
Designated Beneficial Uses	MUN, AGR, FRSH, NAV, REC-1, REC-2, COMM, COLD, WILD, RARE, SPWN
Potential Water Quality Impacts	Discharge of materials and wastes into the lake from pier demolition and construction activities and turbidity during pile removal and driving activities.
Area of water(s) within the overall Project Area	5,200 Square Feet
Impacts of fill to waters of the state, including waters of the U.S. (WOUS)	

Waterbody Type	Permanent			Temporary		
	Acres	Linear Feet	Cubic Feet	Acres	Linear Feet	Cubic Feet
Lake	0.003		75.6	0.12		47.96
Riparian						
Stream						
Wetland						

Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACE) authorization to proceed under a Nationwide Permit Nos. 18 and 33, pursuant to CWA section 404.
Non-Compensatory Mitigation	Best Management Practices (BMPs) will be employed on the site at all times, and throughout construction. Contractor will deploy turbidity curtains or other water quality protections as described in the Application and required by this Order.
Compensatory Mitigation	None required.
Applicable Fees	$200 (Low Threat Discharge)
Fees Received	$200

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CEQA COMPLIANCE

The Water Board has determined that this Project is exempt from the California Environmental Quality Act (CEQA; Public Resources Code Section 21000 et seq.). In accordance with section 15304, the basis for CEQA exemption is "Minor Alterations to Land." A Notice of Exemption will be filed with the State Clearinghouse concurrently with issuing this Order.

100-YEAR FLOODPLAIN WASTE DISCHARGE PROHIBITION

The *Water Quality Control Plan for the Lahontan Region* (Basin Plan) contains certain waste discharge prohibitions that apply to the Truckee River Hydrologic Unit (HU No. 635), which state:

1. *The discharge, attributable to human activities, of any waste or deleterious material to surface waters of the Truckee River HU or Little Truckee River HU is prohibited*.

2. *The discharge or threatened discharge, attributable to human activities, of waste to lands within the 100-year floodplain of the Truckee River, Little Truckee River, and their tributaries is prohibited*.

The Project has the potential to discharge waste to Donner Lake waters, depending upon lake levels during construction activities. The Project will affect lands below the Donner Lake's ordinary high water elevation and within Donner Lake's 100-year floodplain. The Project is therefore subject to the above-referenced Basin Plan waste discharge prohibitions.

BASIN PLAN DISCHARGE PROHIBITION EXEMPTION CRITERIA AND FINDINGS

The Water Board may grant an exemption to Prohibitions 1 and 2 above, when the Water Board finds all of the following criteria (Basin Plan Table 4.1-1, Low Threat Discharges That Are Conditionally Exempt From Waste Discharge Prohibitions) are satisfied:

a. For proposed discharges to surface water, the applicant must provide information supporting why discharge to land is not practicable.

b. The discharge must not adversely affect the beneficial uses of the receiving water.

c. The discharge must comply with all applicable water quality objectives.

d. Best practicable treatment or control of the discharge must be implemented to ensure that pollution or nuisance will not occur.

e. Piles must be driven. Where the lakebed contains clayey or silty substrate, caissons, turbidity curtains, or other best management practices must be used to limit generated turbidity to smallest area practicable.

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The Project will be initiated during Donner Lake's low-water period (after October 1), likely allowing the Project to be constructed above the lake's waterline. Doing so will prevent any discharges of wastes to Donner Lake's waters. In the event that lake waters are still present within the Project area during construction, turbidity curtains or other perimeter control measures will be used to contain any turbid waters created during pile removal and pile driving activity to the smallest area practicable. Additionally, implementing and maintaining all applicable and practical control and mitigation measures, such as driving piles using a rubber-tired amphibious vehicle, using turbidity curtains and/or other perimeter controls to contain disturbed lakebed sediments and turbid waters, and restabilizing the lakebed area disturbed by the Project, will maintain compliance with water quality objectives, and avoid adverse impacts to the lake's beneficial uses.

The proposed Project meets all criteria for granting exemptions as noted above.

DELEGATION OF AUTHORITY FOR GRANTING AN EXEMPTION

The Water Board has delegated authority to grant exemptions for Basin Plan waste discharge prohibitions to the Executive Officer pursuant to Resolution No. R6T-2015-0038 for specific discharges where the proposed Project meets the conditions in the Basin Plan.

PROHIBITION EXEMPTION GRANTED

As demonstrated, above, the Project meets the conditions and criteria for an exemption to the above-cited waste discharge prohibitions. A draft notice of exemption was posted on the Water Board website and distributed through an interested person's mailing list allowing at least ten (10) days to submit comments. The Project is hereby granted an exemption to the above-cited waste discharge prohibitions.

SECTION 401 WATER QUALITY CERTIFICATION

Authority

Section 401 of the CWA (33 U.S.C., paragraph 1341) requires that any applicant for a CWA section 404 permit, who plans to conduct any activity that may result in discharge of dredged or fill materials to WOUS, must provide to the permitting agency a certification that the discharge will be in compliance with applicable water quality standards of the state in which the discharge will originate. No section 404 permit may be granted (or valid) until such certification is obtained. The Applicant submitted a complete application and the fees required for WQC under section 401 for the Project. The Applicant has applied for USACOE authorization to proceed under Nationwide Permit Nos. 18 and 33 pursuant to CWA section 404.

CCR, title 23, section 3831(e) grants the Water Board Executive Officer the authority to grant or deny WQC for projects in accordance with CWA section 401. The Project qualifies for such WQC.

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Standard Conditions

Pursuant to CCR, title 23, section 3860, the following standard conditions are requirements of this certification:

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and CCR, title 23, section 3867.

2. This certification action is not intended and must not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license unless the pertinent certification application was filed pursuant to CCR title 23, section 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

3. The validity of any non-denial certification action must be conditioned upon total payment of the full fee required under CCR title 23, section 3833, unless otherwise stated in writing by the certifying agency.

4. Neither Project construction activities nor operation of the Project may cause a violation of the Water Quality Control Plan for the Lahontan Region (Basin Plan), may cause a condition or threatened condition of pollution or nuisance, or cause any other violation of the Water Code.

5. The Project must be constructed and operated in accordance with the Project described in the application for WQC that was submitted to the Water Board. Deviation from the Project description constitutes a violation of the conditions upon which the certification was granted. Any significant changes to this Project that would have a significant or material effect on the findings, conclusions, or conditions of this certification, including Project operation, must be submitted to the Executive Officer for prior review and written approval.

6. This WQC is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any conditions contained in any other permit or approval issued by the state of California or any subdivision thereof may result in the revocation of this certification and civil or criminal liability.

7. The Water Board may add to or modify the conditions of this certification as appropriate to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the CWA, or as appropriate to coordinate the operations of this Project with other projects where coordination of operations is reasonably necessary to achieve water quality standards or protect the beneficial uses of water. Notwithstanding any more specific conditions in this certification, the

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Project must be constructed and operated in a manner consistent with all water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the CWA.

8. This certification does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under the California Endangered Species Act (Fish and Game Code sections 2050 et seq.) or the federal Endangered Species Act (16 U.S.C. sections 1531 et seq.). If a "take" will result from any act authorized under this certification, the Applicant must obtain authorization for the take prior to construction or operation of the Project. The Applicant is responsible for meeting all applicable requirements of the Endangered Species Act for the Project authorized under this certification.

Additional Conditions

Pursuant to CCR title 23, section 3859(a), the following additional conditions are requirements of this certification:

1. To minimize or avoid impacts to water quality, caissons, sleeves, or turbidity curtains must be used during Project implementation to prevent re-suspension and discharge of lakebed sediments for structures that are situated at or below actual lake water levels. The control measures must be inspected and maintained as necessary to prevent discharge of suspended sediment outside the containment area.

2. If the Project area is completely located above actual lake water levels, perimeter controls measures (e.g., erosion control fencing) must be implemented, inspected, and maintained to prevent the discharge of disturbed lakebed and other sediments and wastes to lake waters.

3. Prior to initiating construction of the Project, the Applicant must provide documentation of whether there are any subsurface utilities in the area of construction. This can be accomplished by: (1) contacting all utilities (both public and private) that provide service in the area and documenting these contacts; (2) contacting Underground Service Alert, and documenting this contact; or (3) some other equivalent affirmative action to determine and document whether or not there are any subsurface utilities in the area of construction. The area of construction is defined as any area within the Project boundaries where there will be excavation, construction of borings, or driving of piles or other structures into the subsurface. If subsurface utilities are located in the construction area, the Applicant must also provide a utility avoidance plan that will be followed during construction.

4. A copy of this WQC Order, a copy of the complete WQC application submitted to the Water Board, and the utility avoidance plan (if required by additional condition above) must be available at the Project site during construction of the Project.

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5. Debris, cement, concrete (or wash water therefrom), oil or petroleum products must not be allowed to enter into or be placed where it may be washed from the Project site by rainfall or runoff into waters of the state. When operations are completed, any excess material must be removed from the Project work area, and from any areas adjacent to the work area where such material may be transported into waters of the state.

6. The Applicant must immediately (within two hours) notify Water Board staff by telephone whenever an adverse condition occurs as a result of this discharge. Such a condition includes, but is not limited to, a violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. A written notification of the adverse condition must be provided to the Water Board within two weeks of occurrence. The written notification must identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to any modifications by Water Board staff, for the remedial actions.

7. The Applicant must prevent discharge of any waste materials foreign to the lake water from implementation of this Project.

8. An emergency spill kit must be at the Project site at all times.

Enforcement

1. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation must be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of CWA section 401(d), the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.

2. In response to a suspected violation of any condition of this certification, the State Water Board or the Water Board may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring report the State Water Board or Water Board deems appropriate, provided that the burden, including costs, of the reports must be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

3. In response to any violation of the conditions of this certification, the Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

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Section 401 Water Quality Certification Requirements Granted

I hereby issue an Order certifying that any discharge from the referenced Project will comply with the applicable provisions of CWA sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards), and with other applicable requirements of state law. This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this WQC.

Except insofar as may be modified by any preceding conditions, all WQC certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the Applicant's Project description and the terms specified in this WQC order, and (b) compliance with all applicable requirements of the Basin Plan.

We look forward to working with you in your efforts to protect water quality. If you have questions, please contact William Chen, Scientific Aid, at (530) 542-5480, or Alan Miller, P.E., Chief, North Basin Regulatory Unit, at (530) 542-5430. **Electronic document submittal is required. Please send your comments or documents to the Water Board's email address at Lahontan@waterboards.ca.gov and include your WDID No. and Facility Name in the Subject Line.**

PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

cc: Gavin Ball, Planning Consultant
Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9
Kaitlyn Pascus, USACE, Sacramento Office
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DYP/WC/ma/T: R6T-2015-XXXX_Verkler Pier Replacement Project_401_6A291506002
File Under : ECM/6A291506002