

## Lahontan Regional Water Quality Control Board

February 27, 2013

Scott G. Douglass, ET AL  
50 California Street, Suite 3240  
San Francisco, CA 94111

### **ORDER NO. R6T-2013-0015, CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION FOR THE DOUGLASS PIER MODIFICATION PROJECT, EL DORADO COUNTY, WDID 6A091110003**

The California Regional Water Quality Control Board, Lahontan Region (Water Board) has received from the agent for Scott G. Douglass (Applicant) a complete Clean Water Act Section 401 Water Quality Certification (WQC) application and application filing fee for the Douglass Pier Modification Project (Project) in El Dorado County. This Order for WQC hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. **6A091110003**. 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, 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](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

### **PROJECT DESCRIPTION**

#### **Table of Project Information:**

WDID Number	6A091110003
Applicant	Scott G. Douglass, ET AL 50 California Street, Suite 3240 San Francisco, CA 94111
Agent	Kevin Agan P.O. Box 9180 Incline Village, NV 89450-9180
Project Name	Douglass Pier Modification Project



**Table of Project Information continued:**

Project Purpose and Description	The Project Applicant proposes to remove the existing pier/catwalk structure and construct a new pier and catwalk, comprising new steel support pilings that will be driven into the lake using a pile-driver on an amphibious vehicle. A fish habitat plan is also proposed whereby a portion of the lake-bottom will be enhanced for fish habitat improvement by dispersing rock piles (rock groins) at the site.						
Project Type	Pier Modification						
Project County	El Dorado						
Project Address or other Locating Information	8425 Meeks Bay Avenue, Rubicon Bay						
Location Latitude/Longitude	Latitude: 39.0286 Longitude: -120.1185						
Hydrologic Unit(s)	Lake Tahoe Hydrologic Unit, 634.00						
Project Area	930 square feet						
Receiving Water(s) Name	Lake Tahoe						
Water Body Type(s)	Lake						
Designated Beneficial Uses	MUN, AGR, GWR, NAV., REC-1, REC-2, COMM, COLD, WILD, BIOL, MIGR, SPWN						
Potential Water Quality Impacts	Discharge of materials into the lake from construction of pier and turbidity from driving piling into the lakebed.						
Area of Water(s) of the U.S. (WOUS) within the Project area	0.02 acre						
Project Impacts (Fill) to Waters of the State, including Waters of the U.S.	<b>Waterbody Type</b>	<b>Permanent</b>			<b>Temporary</b>		
		Acres / Sq. Ft.	Linear Feet	Cubic Yards	Acres / Sq. Ft.	Linear Feet	Cubic Yards
	<i>Lake</i>	7 sf			7 sf		
	<i>Riparian</i>						
	<i>Stream</i>						
	<i>Wetland</i>						
Federal Permit(s)	The Applicant applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Nationwide Permit 3, pursuant to Clean Water Act section 404.						
Non-Compensatory Mitigation	A floating fine mesh, tarps and/or small boats will be placed underneath and above water pier structure supports to prevent any equipment, tools, or other materials from discharging into the lake. Caissons will be used for pile removal and driving if needed to minimize potential sediment and turbidity impacts. Construction access will be via amphibious vehicle and all materials and waste will be transported to/from the site and disposed of in a dumpster on site or to a sanitary landfill site.						
Compensatory Mitigation	None required.						
Applicable Fees	\$944 (application fee)						
Fees Received	\$944						



**CEQA COMPLIANCE**

The Water Board has determined that this Project is exempt from the California Environmental Quality Act (Public Resources Code Section 21000 et seq.). In accordance with Section 15302, the basis for CEQA exemption is "replacement or reconstruction of existing structures..." A Notice of Exemption will be filed with the State Clearinghouse concurrently with issuing this Order.

**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 waters of the United States, 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 3 pursuant to CWA section 404.

California Code of Regulations (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.

**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 California 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 California 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 Clean Water Act, 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 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 Clean Water Act.
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 section 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. The control measures must be inspected and maintained as necessary to prevent discharge of suspended sediment outside the containment area.
2. A Project-specific spill prevention and response plan will be developed and implemented by the contractor prior to start of work. The plan must be present on the work site.
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, documenting these contacts; (2) contacting Underground Service Alert, documenting this contact; or, (3) some other equivalent affirmative action to determine 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. 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.
5. No debris, cement, concrete (or wash water therefrom), oil or petroleum products must 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 materials foreign to the lake water from implementation of this Project, including the discharge of welding metals during the welding process.
8. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
9. Prior to initiating work, a site-specific spill prevention and response plan must be developed and implemented. An emergency spill kit must be at the Project site at all times.
10. New development must not result in impervious surface or other land disturbance in excess of the allowable amounts as determined by the Tahoe Regional Planning Agency.

### **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 Clean Water Act 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.

### **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 Clean Water Act 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 Resources Control 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 Tobi Tyler, Water Resources Control Engineer, at (530) 542-5435 or Alan Miller, P.E., Chief, North Basin Regulatory Unit, at (530) 542-5430.



PATTY Z. KOUYOUMDJIAN  
EXECUTIVE OFFICER

**cc:** Kevin Agan  
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