

**Lahontan Regional Water Quality Control Board**

August 21, 2013

Brian McCullough  
1897 Mar West  
Tiburon, CA 94920

**R6T-2013-0074, ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND 100-YEAR FLOODPLAIN WASTE DISCHARGE PROHIBITION EXEMPTION FOR THE MCCULLOUGH PIER REPLACEMENT PROJECT, NEVADA COUNTY, WDID 6A291305002**

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 Gavin Ball, on behalf of Brian McCullough (Applicant), for the McCullough Pier Replacement Project (Project) in Nevada County. The Water Board also received information to support granting an exemption from a waste discharge prohibition in the Water Board's *Water Quality Control Plan for the Lahontan Region* (Basin Plan). This Order for WQC and waste discharge prohibition exemption hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A291305002. 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](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

**PROJECT DESCRIPTION**

**Table of Project Information:**

WDID Number	6A291305002
Applicant	Brian McCullough 1897 Mar West Tiburon, CA 94920
Agent	Gavin Ball P.O. Box 313 Truckee, CA 96160
Project Name	McCullough Pier Replacement Project

PETER C. PUMPHREY, CHAIR | PATTY Z. KOUYOUMDJIAN, EXECUTIVE OFFICER

**Table of Project Information Continued:**

Project Purpose and Description	The proposed Project would repair and replace a deteriorating, 839 square foot, T-shaped private pier on the south side of Donner Lake. The proposed pier would utilize the identical footprint of the pier to be removed, with the exception of an 88 square foot reduction in the pier deck footprint on the east side. The old pier will be deconstructed and new pier built during the time of year when lake levels are below the elevation of the deepest pilings. Due to the amount of rock in the area of the pier making driving piles infeasible, the new pier pilings will be constructed using poured-in-place footing and stem walls.						
Project County	Nevada						
Project Type	Pier replacement project						
Project Address or other Locating Information	14976 South Shore Drive, Truckee, CA. Assessor's Parcel No.: 17-270-11						
Location Latitude/Longitude	Latitude: 39.317 Longitude: -120.277						
Hydrologic Unit(s)	Truckee River Hydrologic Area, 635.20 in the Truckee River Hydrologic Unit, 635.00						
Project Area	840 square feet						
Receiving Water(s) Name	Donner Lake, tributary to Donner Creek and Truckee River.						
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 construction-related materials to lake from the construction of pier. Due to low water levels during construction, this should be minimal.						
Area of Water(s) of the U.S. (WOUS) within the Project area	840 square feet; 50 linear feet						
Impacts of Fill within Waters of the State, including WOUS.	<b>Waterbody Type</b>	<b>Permanent</b>			<b>Temporary</b>		
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
	<i>Lake</i>	0.017	50				
	<i>Riparian</i>						
	<i>Stream</i>						
	<i>Wetland</i>						
Federal Permit(s)	The Applicant has received U.S. Army Corps of Engineers (USACOE) authorization to proceed under 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. All work will be done using hand labor only and will occur during low-water levels of the lake in the fall or spring. All materials below the high water line will either be concrete or steel. No pressure treated wood will be used in the construction of the pier. No concrete will be mixed on site; concrete will be transported to each individual footing and stem wall location by concrete delivery hose from a ready-mix truck.						

**Table of Project Information Continued:**

Compensatory Mitigation	None required as the Project replaces an existing structure.
Applicable Fees	\$944 (low impact discharge)
Fees Received	\$944

**CEQA COMPLIANCE**

Water Board staff have determined that this Project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.). In accordance with Section 15302(c), the basis for CEQA exemption is, "Replacement and Reconstruction." A Notice of Exemption will be filed with the State Clearinghouse concurrently with issuing this Order.

**WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITION**

The Water Board has adopted a Basin Plan, which specifies the following discharge prohibition:

"4.(c) The discharge or threatened discharge, attributable to human activities, of solid or liquid waste materials including soil, silt, clay, sand, and other organic or earthen materials to lands within the 100-year floodplain of the Truckee River or any tributary to the Truckee River is prohibited."

**PROHIBITION EXEMPTION**

The Water Board delegated authority to the Executive Officer to grant exemptions to the 100-year floodplain discharge prohibition in the Truckee River Hydrologic Unit for specific discharges when certain criteria are satisfied.

The Project must satisfy the following criteria:

1. *The Project is within the following size limitations:*  
*less than 1000 square feet of new impervious coverage, or less than 2000 square feet of new ground disturbance, or less than 100 cubic yards of fill or excavation; **or***
2. *The Project's primary purpose is to reduce, control, or mitigate existing sources of erosion or water pollution; **and***
3. *The Project meets the exemption criteria set forth in the Basin Plan.*

The Project is less than the above size limitations. The Basin Plan allows exemptions to the above-cited discharge prohibition for projects that meet the exemption criteria in the Basin Plan, as follows:

1. *The Project involves the repair and replacement of existing structures, and does not involve the loss of additional floodplain area or volume.*

The Project replaces an existing residential pier on Donner Lake in Truckee with a slightly smaller pier. The Project involves the removal of approximately 2 cubic yards of cribbing material in addition to the replacement of floodplain volume during the pier rebuild. Therefore, the Project does not result in loss of additional floodplain area or volume.

2. *The proposed discharger must demonstrate that all applicable BMPs and mitigation measures have been incorporated into the Project to minimize any potential soil erosion and/or surface runoff problems.*

All work will occur in the fall or spring when lake level is low and construction will be above water level. All deconstruction and construction work will be done using hand labor only with no machinery or heavy equipment utilized within the lakebed. All materials below the high water line will either be concrete or steel. No pressure treated wood will be used in the construction of the pier. No concrete will be mixed on site; concrete will be transported to each individual footing and stem wall location by concrete delivery hose from a ready-mix truck. These BMPs will minimize potential pollutant discharge and runoff problems.

### **PROHIBITION EXEMPTION GRANTED**

The Water Board has notified the Project proponent and interested agencies and persons of its intent to adopt this prohibition exemption through a public notice (internet publication). The Water Board has considered all comments and determined that the Project satisfies the exemption criteria listed above. The Water Board has delegated authority to the Executive Officer to grant exemptions to the prohibition against discharge to lands in the 100-year floodplain for projects whose primary purpose is for repair or replacement. As described in the previous section above, the Project also meets all of the exemption criteria listed in the Basin Plan. I hereby grant an exemption to the above-stated Basin Plan prohibition 4.c. for the Project.

### **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 a USACOE authorization to proceed under a Nationwide Permit Nos. 18 and 33 pursuant to CWA section 404.

CCR title 23, section 3831(e) grants the 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 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 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/or 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 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 (California Fish and Wildlife 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. Deconstruction and construction must occur only when lake levels are below the work site area.
2. A copy of the final set of construction plans with updates noted in the July 11, 2013 email must be provided to the Water Board no later than **October 15, 2013**.
3. No debris, cement, concrete (or wash water therefrom), oil or petroleum products must 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 any areas where such material may erode into waters of the state.
4. Any construction equipment used during the Project must be monitored for leaks, and removed from service if necessary to protect water quality.
5. An emergency spill kit must be at the Project site at all times.
6. The Applicant must maintain a copy of this Order at the Project site so as to be available at all times to site operating personnel and agencies.

7. The Applicant must minimize and prevent water quality degradation to state waters during and following construction, and must ensure that all pollutant source controls and soil erosion prevention or stabilization procedures are in place and effective prior to rainfall events and/or prior to winter shutdown, that will remain effective through storm events or winter shutdown period.
8. The Applicant must ensure that the Contractor employs necessary measures to prevent the introduction or spread of noxious/invasive species within the Project and staging areas. These measures may include the treatment of on-site infestations, the cleaning of all equipment and gear that has been in an infested site, and the use of weed/invasive species-free erosion control materials (including straw).
9. 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 one week of occurrence. The written notification must identify the adverse condition, describe the actions taken or necessary to remedy the condition, and specify a timetable, subject to any modifications by Water Board staff, for the remedial actions.

### **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.

**SECTION 401 WQC 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 WQC" 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.



LAURI KEMPER, P.E.  
ACTING EXECUTIVE OFFICER

Enclosure: 1) Project Description Map

cc: Gavin Ball, Planning Consultant  
Jason Ramos, California State Lands Commission  
Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9  
(via email at [R9-WTR8-Mailbox@epa.gov](mailto:R9-WTR8-Mailbox@epa.gov))  
Leah Fisher, U.S. Army Corps of Engineers, Sacramento Office  
Bill Orme, State Water Resources Control Board, Division of Water Quality  
(via email at [Stateboard401@waterboards.ca.gov](mailto:Stateboard401@waterboards.ca.gov))



