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## Lahontan Regional Water Quality Control Board

June 13, 2014

John Stumpf  
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San Francisco, CA 94109

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1835 Wendy Way  
Reno, NV 89509

**BOARD ORDER NO. R6T-2014-0043 FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION FOR THE STUMPF STOUT REVETMENT AND PIER EXTENSION PROJECT AT 1830 AND 1870 NORTH LAKE BLVD., PLACER COUNTY, WDID 6A311402001**

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 for the Stumpf Stout Revetment and Pier Extension Project (Project) in Placer County. This Order for WQC hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A311402001. Please use this reference number in all future communications regarding this Project. The Water Board also received information in your submittal to support granting an exemption to waste discharge prohibitions stated in the Water Board's Water Quality Control Plan for the Lahontan Region (Basin Plan) that apply to activities below the highwater rim of Lake Tahoe or within the 100-year floodplain of any tributary to Lake Tahoe.

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	6A311402001
Applicants	John Stumpf 1090 Chestnut Street #12 San Francisco, CA 94109  Rich Stout 1835 Wendy Way Reno, NV 89509
Agent	Ogilvy Consulting/Ed Lupyak P.O. Box 1636 Kings Beach, CA 96143
Project Name	Stumpf Stout Revetment and Pier Extension Project
Project Purpose and Description	The proposed Project includes the removal of twenty (20) 4 inch x 6 inch wood pilings and one (1) 10 ¾ inch steel piling, to be replaced with five (5) 10 ¾ inch steel pilings which will accommodate pier extension of seventy-five (75) feet. The existing boatlift will be replaced at the southwestern end of the extended pier. All work involving disturbance within the lake bed of Lake Tahoe will be accomplished during the non-spawning season, or in coordination with the California Department of Fish and Wildlife and TRPA, and will incorporate appropriate Best Management Practices (BMPs) including cassions or turbidity curtains. The Project also includes construction of retaining walls across both parcels at the shoreline of Lake Tahoe. Appropriate BMPs will be incorporated with this Project component in order to reduce any erosion or sediment to Lake Tahoe to the greatest extent practicable.
Project Type	Shoreline Revetment and Pier Modification
Project County	Placer
Project Address or other Locating Information	1830 and 1870 North Lake Blvd., Tahoe City, CA
Location Latitude/Longitude	Latitude: 39° 18'02.32" Longitude: 120° 12'79.69"
Hydrologic Unit(s)	Lake Tahoe Hydrologic Unit, 634.00
Project Area	927 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 shoreline revetment installation; extension of the pier (e.g., from welding, deck and piling repair) and turbidity from hammering of pilings into the lakebed and removal of existing piers.
Area of Water(s) of the U.S. (WOUS) within the Project area	927 Square Feet

**Table of Project Information Continued:**

Project Impacts (Fill) to Waters of the state, including WOUS.	The Project involves removal of fill over an area of 3.30 square feet and new fill covering an area of 3.15 square feet. No net loss of waters will occur as a result of the Project.
Federal Permit(s)	The Applicants have applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Letter of Permission, pursuant to CWA section 404.
Non-Compensatory Mitigation	BMPs will be employed on the site at all times, and throughout construction. Contractor will deploy turbidity curtains or other water quality protections as required by this Order for work involving the bed of Lake Tahoe. Revetment and retaining wall construction will implement coir logs and filter fabric placed at the toe of the slope for soil erosion control.
Compensatory Mitigation	Impacts to fish habitat will be mitigated at 1.5:1 in accordance with TRPA requirements, if applicable.
Applicable Fees	\$1,097 (application fee) + \$104 (ambient surcharge fee 9.5%)
Fees Received	\$1,201

**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 15301(e)(1), the basis for CEQA exemption is “Existing facilities.” A Notice of Exemption will be filed with the State Clearinghouse concurrently with issuing this Order.

**WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITION**

To protect beneficial uses and achieve water quality objectives for the waters of Lake Tahoe and its tributaries, the Basin Plan specifies the following discharge prohibition:

*The discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand, and other organic and earthen materials to lands below the highwater rim of Lake Tahoe or within the 100-year floodplain of any tributary to Lake Tahoe is prohibited.*

The Project involves activities within the 100-year floodplain of Lake Tahoe including construction and installation of a revetment wall at the edge of Lake Tahoe to serve as erosion and sediment control across two parcels, which would violate the above-cited prohibition.

**100-YEAR FLOODPLAIN DISCHARGE PROHIBITION EXEMPTION**

The Basin Plan allows exemptions to the above-cited discharge prohibition for activities within the 100-year floodplain if all the following findings can be made:

1. *The project, program, or facility is necessary for environmental protection.*

The Project is necessary to provide erosion and sediment control at the edge of Lake Tahoe. The Project is necessary for environmental protection.

2. *There is no reasonable alternative, which avoids or reduces the extent of encroachment in the 100-year floodplain.*

The Project is proposed to provide erosion and sediment control at two private parcels, which are currently eroding soil and sediment at the edge of Lake Tahoe. There are no reasonable alternatives that will avoid or reduce the extent of encroachment in the 100-year floodplain, because the project by its very nature is at the edge of Lake Tahoe along the property lines at these two parcels.

3. *Impacts are fully mitigated.*

The Applicants have proposed BMPs that will be in place during the Project implementation, including installing temporary sediment control and stabilization BMPs during construction; the retaining walls will serve as permanent BMPs for soil and sediment control. Impacts are fully mitigated.

### **EXEMPTION GRANTED**

As demonstrated above, the Project meets the conditions and criteria for an exemption to the above-cited discharge prohibitions. The Applicants have incorporated appropriate mitigation into the Project to ensure that disturbance from new development caused by the Project is accounted for and mitigation for impacts is provided. The Project is hereby granted an exemption to the above-cited waste discharge prohibition.

The Executive Officer has been delegated authority with Resolution R6T-2008-0031 to grant exemptions to the Basin Plan prohibition cited above that meet the criteria as specified in the Resolution. The Resolution criteria are satisfied:

1. The Project will be regulated under a 401 certification Order.
2. The Project meets the exemption criteria for projects located below the highwater rim of Lake Tahoe, as discussed in the Findings above.
3. The primary purpose of the revetment/retaining wall component of the Project is to reduce, control, or mitigate existing sources of erosion or water pollution.
4. The Project includes repair and replacement of an existing pier.

Except in emergency situations, the Executive Officer shall notify the Board and interested members of the public of the intent to issue an exemption at least ten (10) days before the exemption is issued. A notice of exemption will also be posted on the Water Board website and distributed through an interested persons mailing list allowing at least ten (10) days to submit comments.

## **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 Applicants submitted a complete application and the fees required for WQC under section 401 for the Project. The Applicants have applied for USACOE authorization to proceed under a Nationwide Permit 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.

### **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 certification 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 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 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 Applicants must obtain authorization for the take prior to construction or operation of the Project. The Applicants are 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. 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. If subsurface utilities are located in the construction area, the Applicants must also provide a utility avoidance plan that will be followed during construction.

3. 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.
4. 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.
5. The Applicants 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.
6. The Applicants 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.
7. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
8. An emergency spill kit must be at the Project site at all times.
9. 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.
10. Any rock materials placed in Lake Tahoe must be washed and free of debris or adhered soil particles.

### **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.

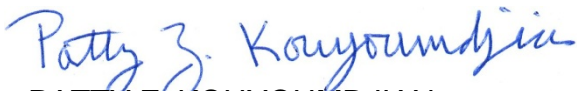
2. In response to a suspected violation of any condition of this certification, the State Water Board or the Water Board may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring report the State Water Board or Water 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 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 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 Dale Payne, Environmental Scientist, at (530) 542-5464, or Alan Miller, P.E., Chief, North Basin Regulatory Unit, at (530) 542-5430.



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EXECUTIVE OFFICER

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