

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION

RESOLUTION R6T-2019-0010

**APPROVAL OF AMENDMENTS TO
THE WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION
REMOVING A PROHIBITION ON NEW PIER CONSTRUCTION IN SENSITIVE
AREAS AT LAKE TAHOE**

WHEREAS, the California Regional Water Quality Control Board, Lahontan Region, (Lahontan Water Board) finds that:

1. The amendments to the *Water Quality Control Plan for the Lahontan Region* (Basin Plan) were developed in accordance with Water Code section 13240.
2. The Porter-Cologne Act declares, “the quality of all the waters of the state shall be protected for the use and enjoyment by the people of the state.” (Water Code section 13000.)
3. Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Water Boards’ basin planning process as a “certified regulatory program” that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) requirements for preparing environmental documents. (Cal. Code Regs. tit. 14, §15251, subd. (g); Cal. Code Regs. tit. 23, §3777.)
4. The Substitute Environmental Documentation for this project consists of the final Staff Report and the environmental checklist dated March 2019, comments and responses to comments, the draft Basin Plan amendment language, and this Resolution.
5. The amendments modify the Basin Plan to remove a prohibition that currently prevents the construction of new piers in sensitive areas along the California side of the Lake Tahoe. Removing the prohibition would allow lakefront property owners in El Dorado and Placer Counties to construct new piers in areas determined to be within significant spawning habitat. Areas immediately offshore of stream inlets in Lake Tahoe remain protected by other Basin Plan prohibitions.
6. The Water Board action: (1) provides area-wide consistency regarding pier development, (2) results in de minimis potential affects to spawning habitat and offshore stream inlet areas, and (3) acknowledges existing regulatory oversight provides adequate protection.
7. The Substitute Environmental Documentation concludes that the adoption of the Basin Plan amendments will not result in any significant environmental impacts. As a

result, no analysis is presented regarding reasonable alternatives to the project and mitigation measures to avoid or reduce any significant or potentially significant adverse environmental impacts. (Cal. Code Regs. tit. 23, §3777, subd. (e).)

8. A CEQA scoping meeting was conducted on September 12, 2018 in South Lake Tahoe. A notice of the CEQA scoping meeting was provided on the Water Board's website and was sent to interested parties, including partner agencies, environmental groups, and other individuals interested in Basin Plan amendments.
9. A draft Staff Report and the proposed Basin Plan amendments were prepared and distributed to interested individuals and public agencies on November 27, 2018 for review and comment in accordance with state environmental regulations (California Code of Regulations, title 23, section 3775 et seq.).
10. The Lahontan Water Board heard and considered public comments presented at the public hearing held on March 13, 2019 in South Lake Tahoe.
11. The record, including the Staff Report and environmental checklist, indicates that these amendments are consistent with the provisions of the State Water Board's Resolution 68-16, "Statement of Policy with Respect to Maintaining High Quality Waters in California" and federal antidegradation policy prescribed in 40 CFR section 131.12.
12. The Lahontan Water Board finds that the Substitute Environmental Documentation satisfies the requirements for the implementation of CEQA for exempt regulatory programs, as set forth in California Code of Regulations, title 23, section 3775 et seq.
13. The amendments meet the necessity standard of the Administrative Procedures Act, Government Code section 11353, subdivision (b).

THEREFORE BE IT RESOLVED THAT:

1. The Lahontan Water Board hereby adopts and approves the Substitute Environmental Documentation that was prepared, where applicable, in accordance with the provisions applicable to the certified exempt regulatory programs, California Code of Regulations, title 23, sections 3777 through 3779.
2. Pursuant to Water Code section 13240, et seq., the Lahontan Water Board, after considering the entire administrative record, including all oral testimony and written comments, adopts the amendments to the *Water Quality Control Plan for the Lahontan Region* as set forth in Enclosure 1.
3. The Executive Officer is directed to forward copies of the Basin Plan amendments and the administrative record to the State Water Board in accordance with the requirements of Water Code section 13245.

Tahoe Pier Basin Plan Amendments

Resolution R6T-2019-0010

4. The Lahontan Water Board requests that the State Water Board approve the Basin Plan amendments in accordance with the requirements of Water Code sections 13245 and 13246 and forward them to the California Office of Administrative Law (OAL) for approval.
5. Following approval of the Basin Plan amendments by the State Water Board and OAL, the Executive Officer shall file a Notice of Decision with the Natural Resources Agency. The record of the final Substitute Environmental Documentation shall be retained at the Lahontan Water Board's office at 2501 Lake Tahoe Boulevard, South Lake Tahoe, California, in the custody of the Lahontan Water Board's administrative staff.
6. If during its approval process, Lahontan Water Board staff, State Water Board or OAL determines that minor, non-substantive changes to the amendment language or supporting staff report and environmental checklist are needed for clarity or consistency, the Executive Officer may make such changes, and shall inform the Lahontan Water Board of any such changes.

I, Patty Z. Kouyoumdjian, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Lahontan Region, on March 13, 2019.



PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

Enclosure 1: Basin Plan Amendments

Proposed Basin Plan Amendment

Basin Plan Sections Affected by Proposed Amendments

The proposed amendment would involve changes to Chapters 4 and 5 of the Basin Plan. Specifically, the following Basin Plan sections will be modified:

Additions are underlined and deletions are in strikethrough font.

Chapter 4, Section 4.1, page 4.1-11

TABLE 4.1-1. LOW THREAT DISCHARGES THAT ARE CONDITIONALLY EXEMPT FROM WASTE DISCHARGE PROHIBITIONS

The exempt waste discharges must meet general conditions in Basin Plan section on Limited Threat Discharges, enumerated below, in addition to meeting the applicable specific conditions for discharge categories.

General Conditions for Exemption:

1. For proposed discharges to surface water, the applicant must provide information supporting why discharge to land is not practicable.
2. The discharge must not adversely affect the beneficial uses of the receiving water.
3. The discharge must comply with all applicable water quality objectives.
4. Best practicable treatment or control of the discharge must be implemented to ensure that pollution or nuisance will not occur.

Specific Conditions for Exemption:

Discharge Category	Conditions for Exemption
Atmospheric condensate from refrigeration and air conditioning systems	Must not contain chemicals or materials that would adversely affect water quality.
Groundwater from foundation drains, crawl-space pumps, and footing drains	Must not contain chemicals or materials that would adversely affect water quality.
Water main, storage tank, fire hydrant flushing	Water discharged must consist of potable water. Must use best management practices to reduce soil erosion from discharged water to a level of insignificance.
Incidental runoff from landscape irrigation	Must not contain fertilizers or pesticides. For recycled water used for irrigation, must discharge to land.
Non-contact cooling water	Must not contain biocides, anti-scalants or other additives.
Aquifer or pump testing water	Must not be in an area of known groundwater contamination. If discharged to surface water, the quality of the discharge must be substantially similar to the quality of the receiving water.

Construction dewatering	Must not be in an area of known soil or groundwater contamination where that contamination could adversely affect the discharge and/or the receiving water.
Utility vault and conduit flushing and draining	Must not contain chemicals or materials that would adversely affect water quality.
Hydrostatic testing, maintenance, repair and disinfection of potable water supply pipelines	Water discharged must consist of potable water. Must use best management practices to reduce soil erosion from discharged water to an insignificant level.
Hydrostatic testing of newly constructed pipelines, tanks, reservoirs, etc., used for purposes other than potable water supply (e.g., gas, oil, reclaimed water, etc.)	Potable water must be used in the hydrostatic test. Must not contain chemicals or materials that would adversely affect water quality. Must use best management practices to reduce soil erosion from discharged water to an insignificant level.
Disposal of treated groundwater	Treatment must remove contaminants of concern to non-detectable levels.
Pier pilings (driven), except for piers in Lake Tahoe in significant fish spawning habitat or in areas immediately offshore of stream inlets	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.
Buoys and aids to navigation	Must not contain chemicals or materials that would adversely affect water quality.
Scientific instrumentation for water quality or resources study	Must meet the general conditions for exemption.

Chapter 4, Section 4.11, Page 4.11-6

23. ~~Piers. Discharges attributable to the construction of new piers in certain habitat types in Lake Tahoe are prohibited (see Chapter 5). Although there are no specific pier-related prohibitions applicable to other lakes in the Region, the general discharge prohibitions discussed elsewhere in this Chapter apply to pier construction.~~ The Regional Board has historically regulated piers serving single family homes to a lesser extent than public piers, breakwaters, jetties, marinas, and other large in-lake construction projects. Pier construction projects...

Chapter 5, Section 5.2, Page 5.2-1

4. ~~The discharge or threatened discharge attributable to new pier construction of wastes to significant spawning habitats or to areas immediately offshore of stream inlets in Lake Tahoe is prohibited.~~

The Regional Board may grant exemptions to Prohibitions 2, and 3 ~~and~~ 4, above, for projects relocating existing structures below the highwater rim of Lake Tahoe, within the 100-year floodplain, within an SEZ, ~~in spawning habitat or offshore of stream inlets to Lake Tahoe~~ where the area of the structure is relocated on the same parcel or within a defined project area and where

the following finding can be made (a “project area” may include multiple adjacent or non-adjacent parcels):

The relocation must result in net or equal water quality benefit. Net or equal benefit is defined as an improvement in or maintenance of function of the associated area below the highwater rim of Lake Tahoe, 100-year floodplain, or SEZ, ~~spawning habitat, or stream inlet~~. Net or equal benefit may include, but is not limited to, one or more of the following:

Chapter 5, Section 5.14, Page 5.14-4

Piers

~~In recognition of the potential adverse impacts of continued proliferation of piers and other mooring structures in Lake Tahoe, the U.S. Fish and Wildlife Service (USFWS), the California Department of Fish and Wildlife (DFW), and the Nevada Department of Wildlife have adopted policies recommending strongly against the approval of new facilities within sensitive fish habitat (USFWS 1979 & 1980, DFW 1978). See Figure 5.8-1.~~

~~Piers and jetties should not be allowed to block currents. They must be constructed so as to allow current to pass through. Pier construction must be prohibited in significant spawning habitat. Pier construction should also be prohibited in waters in or immediately offshore of biologically important stream inlets. Pier construction must be discouraged in prime fish habitat areas. Further study of the effects of piers should be continued. The controls called for here may be modified, or additional controls required, based on the findings of that study.~~

~~Section 5.2 contains the following prohibition against new pier construction in significant spawning habitat or offshore of biologically important stream inlets:~~

~~*“The discharge or threatened discharge, attributable to new pier construction, of wastes to significant spawning habitats or to areas immediately offshore of stream inlets in Lake Tahoe is prohibited.”*~~

~~The prohibition against discharges immediately offshore of stream inlets shall apply up to a thirty-foot contour. Discharges to the inlets themselves are subject to the prohibition against discharges to Stream Environment Zones.~~

~~The determination whether an area is significant spawning habitat shall be made on a case-by-case basis by permitting agencies, in consultation with the USFWS and state fish and wildlife agencies. Maps which have been produced by these agencies may be used as a guide. Because of the scale on which the maps have been produced, however, and the possibility that additional information may become available, the maps will not necessarily be determinative. [TRPA has adopted fish habitat maps for Lake Tahoe which differ somewhat from those prepared by the fish and wildlife agencies, and has designated additional important stream inlets by ordinance.]~~

~~The term “pier,” as used in the prohibition above, includes any fixed or floating platform extending from the shoreline over or upon the water. The term includes docks and boathouses. The prohibition does not apply to maintenance, repair, or replacement of piers at the same site.~~

~~Under Section 401 of the federal Clean Water Act, the U.S. Army Corps of Engineers cannot issue any permit if the state water quality agency denies certification that the permitted discharge is in compliance with the applicable state water quality standards (see the separate section of this Chapter on 401 and 404 permits). The prohibitions in this plan are part of California's water quality standards for Lake Tahoe, effectively precluding the Corps of Engineers from issuing permits for pier construction in violation of the prohibitions.~~

~~This plan does not prohibit the use of mooring buoys, which are now used as alternatives to piers in many cases, although the USFWS (1979) has recommended against their approval in sensitive fish habitat because of the adverse effects of powerboat use.~~

~~Permitting agencies should also discourage construction of new piers in prime fish and aquatic habitat, emphasizing alternatives such as use of existing facilities. These permitting agencies include the Corps of Engineers, state lands agencies, the Tahoe Regional Planning Agency, and the Lahontan Regional Board. Where permits for pier construction are issued, they should require construction practices to contain any sediment disturbed by placing structures in Lake Tahoe. When piers or other structures are placed in Lake Tahoe, they should be surrounded by vertical barriers to contain any disturbed sediment. The permits should also prohibit any construction that will alter the flow of currents in Lake Tahoe. If necessary, the Lahontan Regional Board shall issue permits to require compliance with practices to prevent water quality problems from construction of piers and other shorezone structures. In addition to the special considerations above, such permits should reflect the regionwide criteria for piers and shorezone construction in Chapter 4 of this Basin Plan.~~

~~In reviewing pier projects, the California State Lands Commission generally requires that construction be done from small boats, and that construction wastes be collected on these vessels or on tarps and disposed of properly. The State Lands Commission also implements a special plan for protection of the endangered shorezone plant, Tahoe yellow cress. Pier construction, and other underwater/shorezone construction activities, are subject to all applicable water quality standards contained in this Basin Plan.~~