

Lahontan Regional Water Quality Control Board

September 28, 2015

Helio A. Fialho
275 Pleasant Lane
Arroyo Grande, CA 93420

BOARD ORDER NO. R6T-2015-0060, CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION FOR THE FIALHO PIER AND SHORELINE PROJECT AT 1620 NORTH LAKE BLVD., PLACER COUNTY, WDID 6A311505002

The California Regional Water Quality Control Board, Lahontan Region (Water Board) has received a complete Clean Water Act Section 401 Water Quality Certification (WQC) application and application filing fee for the Fialho Pier and Shoreline Project (Project) in Placer County. This Order for WQC hereby assigns this Project the following reference number: Waste Discharge Identification (WDID) No. 6A311505002. Please use this reference number in all future communications 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 or will be provided upon request.

PROJECT DESCRIPTION

Table of Project Information:

WDID Number	6A311505002
Applicant	Helio A. Fialho 275 Pleasant Lane Arroyo Grande, CA 93420
Agent	Kevin M. Agan P.O. Box 9180 Incline Village, NV 89450
Project Name	Fialho Pier and Shoreline Project

Table of Project Information continued:

Project Purpose and Description	The proposed Project involves repairing and stabilizing a 180-linear-foot section of shoreline and eroding slope with a rock gabion structure to be installed below the land surface at the ordinary high water line of Lake Tahoe. An access stairway will also be modified and pier decking and underlying girders will be replaced. The pier's original footprint will be maintained and there will be no disturbance below current lake levels. Filter fabric fences or other perimeter control measures will be used to prevent the discharge of earthen materials and other pollutants to the waters of Lake Tahoe.						
Project Type	Pier Modification and Shoreline Protection						
Project County	Placer						
Project Address or other Locating Information	1620 North Lake Blvd. Tahoe City, CA						
Location Latitude /Longitude	Latitude: 39° 10'33.12" Longitude: 120° 7'55.61"						
Hydrologic Unit(s)	Tahoe Hydrologic Area, 634.00						
Project Area	7,257 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 removal and replacement of the pilings.						
Area of Water(s) of the U.S. (WOUS) within the project area	7,257 square feet						
Project Impacts (Fill) to Waters of the State, including WOUS.	Water body Type	Permanent			Temporary		
		Acres	Linear Feet	Cubic Yards	Acres.	Linear Feet	Cubic Yards
	<i>Lake</i>					180	100
	<i>Riparian</i>						
	<i>Stream</i>						
<i>Wetland</i>							
Federal Permit(s)	The applicant has applied for U.S. Army Corps of Engineers (USACE) authorization to proceed under a Nationwide Permit No. 3 pursuant to Clean Water Act section 404.						
Non-Compensatory Mitigation	Best Management Practices (BMPs) will be employed on the site at all times, and throughout construction. Contractor will deploy filter fabric fences or other perimeter control measures, in addition to beach protection measures described in the Application for WQC.						
Compensatory Mitigation	None required.						
Applicable Fees	\$200						
Fees Received	\$200						

CEQA COMPLIANCE

The Water Board has determined that this Project is exempt from the California Environmental Quality Act (Public Resources Code sections 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.

BASIN PLAN DISCHARGE PROHIBITIONS

The Water Quality Control Plan for the Lahontan Region (Basin Plan) specifies the following waste discharge prohibitions applicable to surface waters, lands below the highwater rim of Lake Tahoe, and Stream Environment Zones (SEZs) in the Lake Tahoe basin:

1. *The discharge attributable to human activities of any waste or deleterious material to surface waters of the Lake Tahoe Hydrologic Unit is prohibited.*
2. *The discharge attributable to human activities of any waste or deleterious material to land below the highwater rim of Lake Tahoe or within the 100-year floodplain of any tributary to Lake Tahoe is prohibited.*
3. *The discharge attributable to human activities of any waste or deleterious material to SEZs in the Lake Tahoe Hydrologic Unit is prohibited.*

BASIN PLAN DISCHARGE PROHIBITION EXEMPTION CRITERIA AND FINDINGS

The Water Board finds that no discharge below the actual water line is proposed. Therefore no discharge to surface waters is authorized and no exemption is granted, as an exemption to Prohibition 1 is not required to complete the Project.

The Water Board may grant exemptions to Prohibitions 2 and 3, under the following circumstances:

- (1) For erosion control projects, habitat restoration projects, wetland rehabilitation projects, SEZ restoration projects, and similar projects, programs, and facilities, if all of the following findings can be made:
 - (a) There is no reasonable alternative, including relocation, that avoids or reduces the extent of encroachment below the highwater rim of Lake Tahoe, within the 100-year floodplain, or within the SEZ; and
 - (b) Impacts are fully mitigated.

The Project is needed for erosion control and there is no reasonable alternative to stabilizing the existing areas of erosion that would avoid or further reduce the extent of

encroachment below the highwater rim of Lake Tahoe and within the SEZ. The Project will not result in the loss of additional lake habitat, SEZ or floodplain function. All ground disturbance associated with constructing the gabion structure will occur above current lake levels. Mitigation measures incorporated in the Project include temporary and permanent Best Management Practices intended to prevent discharging pollutants associated with slope stabilization, stairway realignment, and pier maintenance activities to the above-referenced waste discharge prohibition areas. Project impacts are temporary in nature (potential shoreline and beach disturbance) and will be fully mitigated by restabilizing disturbed areas, as necessary.

EXEMPTIONS GRANTED

Resolution No. R6T-2015-0038 delegates to the Executive Officer the authority to grant an exemption to Basin Plan waste discharge prohibitions. A draft notice of exemption was posted on the Water Board's website and distributed through an interested person's mailing list, allowing at least ten (10) days to submit comments. As demonstrated above, the Project meets the conditions and criteria for an exemption and 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. Helio Fialho (Applicant) submitted a complete application and the fees required for WQC under section 401 for the Project. The Applicant has applied for USACE authorization to proceed under Nationwide Permit No. 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.

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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 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 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 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. A copy of this WQC Order and a copy of the complete WQC application submitted to the Water Board must be available at the Project site during construction of the Project.
2. No debris, wood wastes, cement, concrete (or wash water therefrom), oil or petroleum products may 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.
3. 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.
4. 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.
5. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
6. An emergency spill kit must be at the Project site at all times.
7. Water Board staff must be notified at least 48 hours prior to excavation and disturbance below the ordinary high water line of Lake Tahoe.

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

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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.

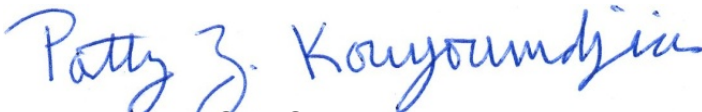
2. In response to a suspected violation of any condition of this certification, the State Water Board or the Water Board may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring report the State Water Board or Water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



PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

cc: See next page

cc (via email):

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Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9
Aaron C. Park, U.S. Army Corps of Engineers, Reno Office
Bill Orme, State Water Resources Control Board, Division of Water Quality
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