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**Lahontan Regional Water Quality Control Board**

**TO:** Water Board Members



**FROM:** Patty Z. Kouyoumdjian  
Executive Officer

**LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD**

**DATE:** April 14, 2016

**SUBJECT: Exemption to Discharge Prohibitions, Truckee River Hydrologic Unit,  
for the Shelton Dock and Lake Wall Repair Project, Nevada County**

In ten days, I intend to sign the enclosed Order granting an exemption to the above-cited discharge prohibitions specified in the *Water Quality Control Plan for the Lahontan Region* (Basin Plan). The exemption will allow the project proponent to conduct excavation and fill activities within the 100-year floodplain of Donner Lake to implement repair and replacement of an existing private pier for recreation, and a retention wall for shoreline protection along Donner Lake. The project will not reduce or adversely affect the existing floodplain function, as demonstrated in the order.

The project meets requirements for an exemption to the discharge prohibitions. A public notice soliciting comments on the proposed Project will be posted on the Water Board's website for 10 days.

Please contact me at (530) 542-5412 ([patty.kouyoumdjian@waterboards.ca.gov](mailto:patty.kouyoumdjian@waterboards.ca.gov)), or Alan Miller, Senior Water Resources Control Engineer, at (530) 542-5430 ([alan.miller@waterboards.ca.gov](mailto:alan.miller@waterboards.ca.gov)), if you have any questions or comments regarding this matter.

Enclosure: Draft Water Quality Certification Order

cc (via email): Kelley and Matt Shelton  
Jon Traeger, Norwegian Wood Construction  
Krystal Bell, U.S. Army Corps of Engineers, Sacramento District  
Tanya Sheya, California Department of Fish and Game  
Alan Miller, Regional Water Quality Control Board, Lahontan

DYP/ma/T: Shelton Project Board Memo  
File Under: 6A291511004

AMY L. HORNE, PhD, CHAIR | PATTY Z. KOUYOUMDJIAN, EXECUTIVE OFFICER

**Lahontan Regional Water Quality Control Board**

Kelley and Matt Shelton  
860 El Chorro Way  
Sacramento, CA 95864

WDID 6A291511004

**Board Order No. R6T-2016-XXXX, Clean Water Act Section 401 Water Quality Certification for Shelton Dock and Lake Wall Repair Project, Nevada County**

The California Regional Water Quality Control Board, Lahontan Region (Water Board) has received a complete Clean Water Act (CWA) section 401 Water Quality Certification (Certification) application and applicable filing fee from Kelley and Matt Shelton (Applicant) for the Shelton Dock and Lake Wall Repair Project (Project) in Nevada County. The application received on December 15, 2015 was deemed complete on February 11, 2016. This Certification hereby assigns this Project the following reference number: Waste Discharge Identification (WDID) No. 6A291511004. Please use this reference number in all future communication 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 Certification, except that if the thirtieth day following the date of this Certification 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	6A291511004
Applicant	Kelley and Matt Shelton 860 El Chorro Way Sacramento, CA 95864
Agent	Jon Trager Norwegian Wood Construction P.O. Box 1643 Truckee, CA 96160

AMY L. HORNE, PhD, CHAIR | PATTY Z. KOUYOUMDJIAN, EXECUTIVE OFFICER

**Table of Project Information (continued):**

Project Name	Shelton Dock and Lake Wall Repair Project									
Project Purpose and Description	The Project will include removal and replacement of approximately fourteen (14) 30-inch diameter concrete pier footings, and the removal and replacement approximately 113 linear feet of a deteriorating retention wall all located within the 100-year floodplain of Donner Lake.									
Project Type	Pier and Retention Wall Repair and Bank Stabilization									
Project County	Nevada									
Project Address or other Locating Information	14594 South Shore Drive, Truckee									
Location Latitude/Longitude	Latitude: 39.317793, Longitude: 120.269606									
Hydrologic Unit(s)	Hydrologic Unit, 635.20									
Overall Project Area	3,250 square feet									
Receiving Water(s) Name	Donner Lake									
Water Body Type(s)	Lake									
Designated Beneficial Uses	MUN, AGR, GWR, REC-1, REC-2, COMM, COLD, WILD, RARE, MIGR, SPWN									
Potential Water Quality Impacts	Discharge of materials into the lake from removal and replacement of the pier footings and retention wall repair and backfill.									
Area of Water(s) Within the Overall Project Area	3,250 square feet									
Impacts of Fill and Excavation to Waters of the State, including Waters of the U.S. (WOUS)	<b>Water-body Type</b>	<b>Temporary</b>			<b>Permanent</b>					
					<b>Physical Loss of Area</b>			<b>Degradation of Ecological Condition</b>		
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
	<i>Lake</i>	0.002								
	<i>Riparian</i>		113							
<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 Nationwide Permit NWP 25 pursuant to CWA section 404.									
Non-Compensatory Mitigation	Best Management Practices (BMPs) will be employed on the site at all times, and throughout construction. Contractor will deploy turbidity curtains or other water quality protections required by this Order.									
Compensatory Mitigation	None Required; repair and replacement.									
Applicable Fees	\$200									
Fees Received	\$200									

**CEQA COMPLIANCE**

The Water Board has determined that this Project is exempt from the California Environmental Quality Act (CEQA; Public Resources Code sections 21000, et seq.). In accordance with section 15302, the basis for CEQA exemption is “Replacement or Reconstruction.” A Notice of Exemption will be filed with the State Clearinghouse concurrently with issuing this Certification.

**WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITIONS**

The *Water Quality Control Plan for the Lahontan Region* (Basin Plan) contains certain waste discharge prohibitions that apply to the Truckee River Hydrologic Unit (HU No. 636), including prohibitions 1 and 2, respectively, which state:

“1. The discharge, attributable to human activities, of any waste or deleterious materials to surface waters of the Truckee River HU or Little Truckee River HU is prohibited.”

And

“2. The discharge or threatened discharge, attributable to human activities, of waste to lands within the 100-year floodplain of the Truckee River, Little Truckee River, and their tributaries is prohibited.”

The Project includes installing 14 concrete pier footings within Donner Lake. Footing installation activities threaten to discharge waste earthen materials to Donner Lake, a tributary to the Truckee River. Such waste discharges and threatened discharges are subject to the two prohibitions cited, above.

**BASIN PLAN DISCHARGE PROHIBITION EXEMPTION CRITERIA AND FINDINGS**

The Water Board may grant an exemption to Prohibition 1, above, when the Water Board finds all of the following criteria are satisfied:

1. *The discharge of waste will not individually or collectively, directly or indirectly, adversely affect beneficial uses.*

The Project’s waste discharge will be minimal due to implementing and maintaining temporary and permanent BMPs that will effectively minimize, and likely prevent, waste earthen materials and construction wastes from entering the lake. The beneficial uses of the lake and downstream receiving waters will not be adversely impacted by the Project’s potential waste discharges, given their very limited extent and potential to occur.

2. *There is no reasonable alternative to the waste discharge.*

The Project is located at a private residence on the shoreline of Donner Lake, with no feasible Project alternatives. There is no reasonable alternative that would further reduce the Project's waste discharge potential and meet the Applicant's needs for repair and replacement of deteriorating structures.

3. *All applicable and practicable control and mitigation measures have been incorporated to minimize potential adverse impacts to water quality and beneficial uses.*

All applicable and practicable control and mitigation measures have been incorporated into the Project to minimize any discharges of wastes and adequately protect water quality and beneficial uses of surface waters during and following construction with the use of Best Management Practices (BMPs) for construction activities. Temporary BMPs will include straw wattles, silt fencing, and mulching of disturbed soil areas above the highwater rim of the lake. Below the highwater rim of the lake, additional measures to capture and collect debris from demolition and removal of existing pier footings will include tarps and removal with hand crews.

The Water Board may grant exemptions to Prohibition 2, above, for the repair, replacement, or relocation of existing structures, provided that the repair, replacement or relocation does not reduce or adversely affect the existing floodplain function. Prior to granting any such exemption, the Water Board shall require demonstration by the proposed discharger that all applicable and practicable control and mitigation measures have been incorporated into the Project such that potential adverse impacts to water quality and beneficial uses are the minimum necessary to complete the Project.

The Project is intended to repair and replace in-kind the existing structures located at the site. No loss of floodplain function will occur in implementation of this Project. As noted in exemption findings for Prohibition 1, above, applicable BMPs will ensure adverse impacts of construction on water quality are minimized.

#### **DELEGATION OF AUTHORITY FOR GRANTING AN EXEMPTION**

The Water Board has delegated authority to grant exemptions for Basin Plan waste discharge prohibitions to the Executive Officer pursuant to Resolution No. R6T-2015-0038 for specific discharges where the proposed Project meets the conditions in the Basin Plan.

#### **Prohibition Exemption Granted**

As demonstrated above, the Project meets the conditions and criteria for an exemption to the above-cited waste discharge prohibitions. A draft notice of exemption was posted

on the Water Board website and distributed through an interested person's mailing list allowing at least 10 days to submit comments. The Applicant 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 waters of the U.S., 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 Certification under section 401 for the Project. The Applicant has applied for USACE authorization to proceed under a Nationwide Permit NWP 25 pursuant to CWA section 404.

CCR, title 23, section 3831(e) grants the Water Board Executive Officer the authority to grant or deny Certification for projects in accordance with CWA section 401. The Project qualifies for such Certification.

### **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 *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 Water Code.

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5. The Project must be constructed and operated in accordance with the Project described in the Certification application that was submitted to the Water Board. Deviation from the Project description constitutes a violation of the conditions upon which this 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 sections 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 for structures that are situated at or below actual lake water levels. The control measures must be inspected and maintained as necessary to prevent discharge of suspended sediment outside the containment area. Any turbidity curtains or methods installed to protect water quality shall remain in place

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until turbidity within the containment area is at or less than turbidity levels outside the containment area.

2. Construction equipment must be clean and free from oil, grease, and loose metal material and must be removed from service if necessary to protect water quality.
3. Debris, cement, concrete (or wash water therefrom), oil or other petroleum products must not be allowed to enter into or be placed where they 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 adjacent to the work area where such material may be transported into waters of the state.
4. The Applicant must immediately 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 Certification, 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.
5. An emergency spill kit must be at the Project site at all times.
6. The Applicant must permit Water Board staff or its authorized representative upon presentation of credentials:
  - a. Entry onto Project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
  - b. Access to copy any record required to be kept under the terms and conditions of this Certification.
  - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Certification.
7. The Applicant must ensure that Contractor employs necessary measures to prevent the introduction or spread of noxious/invasive weeds within the Project and staging areas. These measures may include the treatment of onsite infestations, the cleaning of all equipment and gear that has been in an infested site, the use of weed-free erosion control materials (including straw), and the use of weed-free seeds and plant material for revegetation of disturbed areas.

**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 this 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 Water Quality Certification" which requires compliance with all conditions of this Certification.

Except insofar as may be modified by any preceding conditions, all 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 Certification, 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. Please contact me at (530) 542-5412 ([patty.kouyoumdjian@waterboards.ca.gov](mailto:patty.kouyoumdjian@waterboards.ca.gov)), Dale Payne, Environmental Scientist, at (530) 542-5464 ([dale.payne@waterboards.ca.gov](mailto:dale.payne@waterboards.ca.gov)), or

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Alan Miller, Senior Water Resources Control Engineer, at (530) 542-5430 ([alan.miller@waterboards.ca.gov](mailto:alan.miller@waterboards.ca.gov)) if you have any questions or comments regarding this permit. **Electronic document submittal is required. Please send your comments or documents to the Water Board's email address at [Lahontan@waterboards.ca.gov](mailto:Lahontan@waterboards.ca.gov) and include your WDID No. and Project/Facility Name in the Subject Line.**

PATTY Z. KOUYOUMDJIAN  
EXECUTIVE OFFICER

cc (via email):

Jon Trager, Norwegian Wood Construction  
Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9  
Bill Orme, State Water Resources Control Board, Division of Water Quality  
Krystal Bell, U.S. Army Corps of Engineers, Sacramento District  
Tanya Sheya, California Department of Fish and Game  
Alan Miller, Regional Water Quality Control Board, Lahontan  
Dale Payne, Regional Water Quality Control Board, Lahontan

DYP/ma/T: R6T-2016-XXXX\_Shelton Dock and Lake Wall 401\_WDID No. 6A291511004  
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