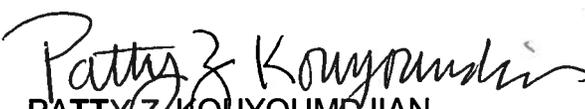


Lahontan Regional Water Quality Control Board

MEMORANDUM

TO: Water Board Members

FROM: 
PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: September 29, 2014

SUBJECT: EXEMPTION TO STREAM ENVIRONMENT ZONE (SEZ) DISCHARGE PROHIBITION CONTAINED IN THE WATER QUALITY CONTROL PLAN FOR THE BLACKWOOD CREEK BANK PROTECTION PROJECT, PLACER COUNTY

In ten days, I intend to sign the enclosed draft Order granting an exemption to the discharge prohibition specified in the *Water Quality Control Plan for the Lahontan Region* for the Blackwood Creek Bank Protection Project (Project) in Placer County. The exemption will allow eighty feet of bank stabilization involving placement of vegetated rock toe protection and large woody material. The proposed Project will require disturbance in the 100-year floodplain of Blackwood Creek.

The Project meets requirements for an exemption to the discharge prohibition as a project whose primary purpose is to reduce, control, or mitigate existing sources of erosion.

A public notice soliciting comments on the proposed Project will be posted on the Water Board's website for 10 days.

If you have any questions or comments regarding this matter, please contact Tobi Tyler at (530) 542-5435 or tobi.tyler@waterboards.ca.gov.

Enclosure: Draft Order for Clean Water Act section 401 Water Quality Certification and Basin Plan Prohibition Exemption

Lahontan Regional Water Quality Control Board

Janet Shattuck
3750 Clover Valley Road
Rocklin, CA 95677

BOARD ORDER R6T-2014-XXXX, FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND BASIN PLAN PROHIBITION EXEMPTION, BLACKWOOD CREEK BANK PROTECTION PROJECT, PLACER COUNTY, WDID 6A311409003

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 Janet Shattuck (Applicant) for the Blackwood Creek Bank Protection Project (Project) in Placer County. The Water Board also received information to support granting an exemption to a waste discharge prohibition in the Water Quality Control Plan for the Lahontan Region (Basin Plan). This Order for WQC hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A311409003. 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 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 or will be provided upon request.

PROJECT DESCRIPTION

Table of Project Information:

WDID Number	6A311409003
Applicant	Janet Shattuck 3750 Clover Valley Road Rocklin, CA 95677
Agent	Ed Wallace 80 S. Lake Avenue Pasadena, CA 91101
Project Name	Blackwood Creek Bank Protection Project

Table of Project Information continued:

Project Purpose and Description	The south bank of Blackwood Creek is eroding to within approximately five feet from an existing structure built in 1955, and there is currently a five-foot high vertical bank that is undercut in some places in this area. The Applicant would install eighty lineal feet of rock apron with anchored large woody material for bank stabilization. Approximately 23 lineal feet of the bank would be sloped back and a vegetated rock toe with two buried rock keys will be installed in the most severely eroded section of bank near the existing house. This area will receive upper bank revegetation. Existing riparian vegetation in other areas will be preserved by mowing/pruning and limiting equipment access to a 12-foot wide strip approximately six feet back from the top of bank, to be protected with wood chips. Success criteria for the revegetation component includes lack of significant bank erosion or instability in the area treated, survival of at least 70 percent of willow cuttings, and establishment of 90 percent cover in upper bank revegetation area.						
Project Type	Fill/Excavation- Bank and Channel Modification						
Project County	Placer						
Project Address or other Locating Information	3750 Belleview Avenue, Homewood, CA.						
Location Latitude/Longitude	Latitude: 39.10745, Longitude:120.1598						
Hydrologic Unit(s)	Lake Tahoe Hydrologic Unit, 634.00						
Overall Project Area	Approximately 0.26 acre						
Receiving Water(s) Name	Blackwood Creek, Lake Tahoe						
Water Body Type(s)	Creek						
Designated Beneficial Uses	MUN, AGR, GWR, NAV, REC-1, REC-2, COMM, COLD, WILD, BIOL, MIGR, SPWN						
Potential Water Quality Impacts	Discharge of earthen materials to waters of the state, including waters of the U.S. (WOUS)						
Area of Water(s) within the Overall Project Area	4,410 square feet, 0.1 acre						
Impacts of Fill to Waters of the state, including WOUS	Waterbody Type	Permanent			Temporary		
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
	<i>Lake</i>						
	<i>Riparian</i>						
	<i>Stream</i>	0.02	80	68 (including wood)			
<i>Wetland</i>							
Impacts of Dredging (Excavation) to Waters of the state, including WOUS	Waterbody Type	Permanent			Temporary		
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
	<i>Lake</i>						
	<i>Riparian</i>						
	<i>Stream</i>				0.03		46
<i>Wetland</i>							

Table of Project Information continued:

Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Nationwide Permit 13, pursuant to CWA section 404.
Non-Compensatory Mitigation	A temporary diversion will be made to isolate the work area from flowing water by excavating a small channel through the bare gravel bar on the opposite side of the low flow channel from the bank to be stabilized. Temporary sediment barriers will be installed to control sediment discharges from the site, and dewatering with settling and infiltration disposal will be used to control turbidity in the channel.
Compensatory Mitigation	Permanent impacts are minimized in the proposed plan by maintaining the stream margin in its current location and adding roughness inside the top of bank to stabilize the bank. The large woody material, vegetative component of the bank protection, and revegetation of cut slope provides mitigation for permanent impacts since the current bank structure poses severe erosion potential during increased creek flows.
Applicable Fees	\$2,369 (\$1,097 application filing fee \$1067 for Project impacts to Federal Jurisdictional waters + 9.5% surcharge.)
Fees Received	\$2,369

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 per title 14 CCR, chapter 6, section 15304, the basis for CEQA exemption is "Minor Alterations to Land." 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 specifies the following discharge prohibition in the Basin Plan in Section 5.2 - *Waste Discharge Prohibitions* subsection- *Discharge Prohibitions for the Lake Tahoe Hydrologic Unit (HU)*:

"The discharge or threatened 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 proposed Project is located within the 100-year floodplain of Blackwood Creek in the Lake Tahoe Hydrologic Unit. The Project entails the installation of eighty feet of bank stabilization on the south bank of Blackwood Creek at 3750 Belleview Avenue, Homewood, to prevent further erosion and undercutting of the vertical bank. The Water Board may grant an exemption to the above cited prohibition under certain conditions.

Prohibition Exception

Resolution No. R6T-2008-031 delegates authority to the Water Board Executive Officer to grant exceptions to the above-referenced discharge prohibition for projects that satisfy criteria specified in Resolution No. R6T-2008-031. The criteria that the Project must satisfy are:

1. *The Executive Officer has the authority to authorize the project under an existing general permit, general waiver or individual water quality certification order, excluding projects that require a Board action;*
2. *The project meets the exemption or exception criteria set forth in the Basin Plan; and*
3. *The project's primary purpose is to reduce, control, or mitigate existing sources of erosion or water pollution.*

The primary purpose of the Project is to reduce and mitigate existing sources of erosion by stabilizing the eroding creek bank.

The Basin Plan allows exceptions to the above-cited discharge prohibition for activities within the 100-year floodplain for erosion control and similar projects provided that:

(a) The project, program, or facility is necessary for environmental protection:

The proposed Project is necessary for environmental protection to stabilize the creek bank, which has eroded southward resulting in a five-foot vertical undercut bank. The proposed plan would cut the slope back and install a 1.5:1 sloped vegetated rock toe and vegetated upper bank in the most severely eroded area. Other areas, where existing bank root material is to be maintained, rock toe protection and large woody material will be installed. The proposed Project is necessary for environmental protection as it is designed to reduce erosion and prevent sediment from discharging directly to the lake.

(b) There is no reasonable alternative, including relocation, which avoids or reduces the extent of encroachment:

Alternatives to the placement of willow stakes, woody material and the minimum amount of rock necessary for stabilizing the banks would be traditional rip rap stabilization, which could cause destabilization elsewhere and would be less protective of beneficial uses. The proposed Project includes placement of large woody material and vegetated rock slope protection. The proposed Project is designed to deter further bank erosion while protecting an existing 59-year old house. Relocation or demolition of the existing house would be cost prohibitive and would not address the erosion along the southern bank of Blackwood Creek. The amount of disturbance below the 100-year floodplain is limited to that needed to address concerns regarding stabilization of the bank within the property boundaries of the residence. There is no reasonable alternative to reduce encroachment to the area below the 100-year floodplain of Blackwood Creek.

(c) Impacts are fully mitigated:

The impacts of cutting back the slope and placing vegetated rock slope protection are mitigated by inclusion of logs and other large woody material that will provide roughness and an area for future sediment deposition. The rock slope protection is also mitigated by the revegetation plan, the success criteria for which includes 70 percent success for willow cuttings and 90 percent for success for the upper bank revegetation. To control turbidity, creek water will be diverted around the work area with temporary diversion dams installed upstream and downstream of the Project area and sump pump, settling basin and water disposal area installed for dewatering. The Project will provide bank stabilization that will reduce sediment inputs to the creek over the long term. The proposed Project will not incur a loss of area of WOUS or 100-year floodplain. Instead, an increase in riparian and aquatic habitat quality are expected with the Project. The Project includes measures that will mitigate potential impacts.

EXEMPTION GRANTED

As demonstrated above, the Project meets the conditions and criteria for an exemption to the above-cited discharge prohibition. The Applicant has incorporated appropriate BMPs into the Project to ensure that erosion and surface runoff problems caused by the Project are minimized to levels of insignificance. The Project is hereby granted an exemption to the above-cited waste discharge prohibition.

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 United States Code [USC], 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 USACOE authorization to proceed under Nationwide Permit No. 13 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 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 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 USC 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. The mitigation site must be monitored annually for a period of two years or as necessary thereafter to achieve success criteria of at least 70 percent for willow the cuttings and 90 percent for the upper bank revegetation. Mitigation monitoring reports acceptable to the Executive Officer must be provided annually for two years by **December 31, 2015** and **December 31, 2016** and must include a minimum of three photo points. The reports must describe the results of monitoring performed during the previous year and progress towards achieving the performance standards and Project objectives in the application. The reports must also describe any problem(s) encountered during the year, and explain actions taken or proposed to address the problem(s), and a schedule for completion. The final report (December 31, 2016) must indicate a determination of whether success criteria proposed in the application were met.
2. Fueling, lubrication, maintenance, operation, and storage of vehicles and equipment must not result in a discharge or a threatened discharge to waters of the state. The Applicant must not use any vehicle or equipment which leaks any substance that may impact water quality. Staging, maintenance and storage areas for vehicles and equipment must be located outside of waters of the state.
3. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
4. The Applicant must ensure that Contractor employs necessary measures to prevent the introduction or spread of noxious/invasive weeds within the Project and staging area. These measures may include the treatment of on-site 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.
5. All surface waters must be diverted away or isolated from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity that may result in a discharge to the receiving water. The Applicant must implement the dewatering and diversion plans provided with the application. Diversion and

dewatering activities must not result in the degradation of water quality for beneficial uses, or exceedance of any water quality objective for the receiving waters.

6. 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 so as to be available at all reasonable times to site operating personnel and Water Board staff.
7. 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.
8. 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.
9. The Applicant must permit Water Board staff or its authorized representative upon presentation of credentials:
 - a) Entry onto Project premises for inspection purposes, including all areas on which earthen materials, discharged wastes, construction activity is located.
 - b) Access to copy any records required to be kept under the terms and conditions of this Order.
 - c) Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Order.
 - d) Sampling of any discharge or surface water covered by this Order.

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 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 Tobi Tyler, Water Resources Control Engineer, at (530) 542-5435 or Alan Miller, Chief, North Basin Regulatory Unit, at (530) 542-5430.

PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

cc: Ed Wallace, Northwest Hydraulic Consultants
Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9
(via email at R9-WTR8-Mailbox@epa.gov)
Bill Orme, State Water Resources Control Board, Division of Water Quality
(via email at Stateboard401@waterboards.ca.gov)
Kristine Hanson, U.S. Army Corps of Engineers, Reno Office
Patrick Moeszinger, California Department of Fish and Game, Rancho Cordova