

Lahontan Regional Water Quality Control Board

MEMORANDUM

TO: Water Board Members

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

DATE: June 1, 2012

SUBJECT: EXEMPTION TO DISCHARGE PROHIBITION CONTAINED IN THE
WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION –
COLDSTREAM FLOODPLAIN ENHANCEMENT PROJECT, NEVADA
COUNTY

In ten days, I intend to sign the enclosed letter granting an exemption to the discharge prohibition specified in the *Water Quality Control Plan for the Lahontan Region* for the Coldstream Floodplain Enhancement Project (Project) in Nevada County. The exemption will allow the restoration of an incised and actively eroding reach of Cold Creek through excavating banks back to create additional floodplain area, protecting the bottom of the bank and revegetating the newly created floodplain. The Project is necessary to decrease stream bank erosion and reduce sediment delivery from Cold Creek to the Truckee River. The Project will reduce, control, and mitigate existing sources of erosion and water pollution.

The Project site is located just south of the boundary between Placer and Nevada Counties east of Donner Memorial State Park. The Project meets requirements for an exemption to the discharge prohibition.

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.

Enclosure: Draft Water Quality Certification Order and 100-year Floodplain Exemption

TT/adw/T: Coldstream Restoration Memo 5-29-2012 TT
File Under: 6A291203001 / Coldstream Floodplain Enhancement Project

DON JARDINE, CHAIR | PATTY Z. KOUYOUMDJIAN, EXECUTIVE OFFICER

Lahontan Regional Water Quality Control Board

Marilyn Linkem
California Department of Parks and Recreation
Sierra District Resource Office
P.O. Box 266
Tahoma, CA 96142

**ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY
CERTIFICATION AND PROHIBITION EXEMPTION FOR COLDSTREAM LOWER
FLOODPLAIN ENHANCEMENT PROJECT, NEVADA COUNTY, WDID 6A291203001**

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 Coldstream Lower Floodplain Project (Project) in Nevada County. The Water Board also received information to support granting an exemption from a waste discharge prohibition in the Water Board's *Water Quality Control Plan for the Lahontan Region* (Basin Plan). This Order for WQC and waste discharge prohibition exemption hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A291203001. 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 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	6A291203001
Applicant	Mayilyn Linkem California Department of Parks and Recreation P.O. Box 266 Tahoma, CA 96142
Agent	Cyndie Walck, California Department of Parks and Recreation PO Box 16 Tahoe City, CA 96145

DON JARDINE, CHAIR | PATTY Z. KOUYOUMDJIAN, EXECUTIVE OFFICER

Table of Project Information continued:

Project Name	Coldstream Lower Floodplain Enhancement Project						
Project Purpose and Description	Restore natural geomorphic and ecological processes along an incised and actively eroding reach of Cold Creek and reduce the creek's sediment discharge to the Truckee River. The project objectives include decreasing erosive force and stream bank erosion, reducing sediment delivery from Cold Creek to the Truckee River, expanding floodplain area, and increasing riparian habitat. The project addresses roughly 1000 feet of Cold Creek. The Project involves excavating the steep banks back to create additional floodplain area, installing barbs to deflect flows from the toe of the excavated bank, creating toe protection with embedded logs surrounded by boulders, protecting existing riparian vegetation, treating two headcuts in tributary swales, and revegetating excavated areas. Cables will be installed to hold the log/rock structures together as needed and logs, dirt hummocks, and riparian vegetation (primarily willows) will be placed on the newly created floodplain to help trap suspended sediment during high flows by creating roughness.						
Project Type	Stream Restoration						
Project County	Nevada						
Project Address or other Locating Information	10090 Coldstream Road. Truckee, CA 96161						
Location Latitude/Longitude	Latitude: 39.31757 Longitude: 120.22792						
Hydrologic Unit(s)	Truckee River Hydrologic Unit, 635.20						
Overall Project Area	6.0 acres						
Receiving Water(s) Name	Cold Creek, a tributary to Donner Creek, which is tributary to the Truckee River						
Water Body Type(s)	Perennial Stream						
Designated Beneficial Uses	MUN, AGR, GWR, REC-1, REC-2, COMM, COLD, WILD, RARE, SPWN						
Potential Water Quality Impacts	There will be no permanent adverse impacts to water quality or aquatic habitat. This project will result in a net gain of riparian habitat and floodplain area, and will improve water quality. Short term impacts due to construction are minimized with best management practices (BMPs).						
Area of Water(s) within the Overall Project Area	0.42 acre of stream						
Project Impacts (Fill) to Waters of the State, including Waters of the U.S.	Waterbody Type	Permanent			Temporary		
		Acres / Sq. Ft.	Linear Feet	Cubic Yards	Acres / Sq. Ft.	Linear Feet	Cubic Yard
	<i>Lake</i>						
	<i>Riparian</i>				0.02 ac.	470 ft.	
	<i>Stream</i>	200 sq.ft.	50 ft.	65 cy	0.09 ac.	345 ft.	
	<i>Wetland</i>						
	Total				0.11	815 ft	

Table of Project Information continued:

Project Impacts (Dredge/ Excavation) to Waters of the State, including Waters of the U.S.	Waterbody Type	Permanent			Temporary		
		Acres	Linear Feet	Cubic Yards	Acres / Sq. Ft.	Linear Feet	Cubic Yard
	<i>Lake</i>						
	<i>Riparian</i>			11,867			
	<i>Stream</i>	8		1,733			
	<i>Wetland</i>						
	Total	8		13,600			
Federal Permit(s)	The applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Nationwide Permit, pursuant to Clean Water Act section 404.						
Non-Compensatory Mitigation	Water Diversion plan consists of a temporary gravity flow bypass diversion system around the Project area with coffer dams established upstream and downstream to isolate the work area. Localized groundwater will be dewatered from the work area by pumping to an upland site a minimum of 100 feet from the channel. Prior to channel dewatering, block nets will be installed at the upstream and downstream ends of the work area and all fish will be removed from the work area by a qualified biologist and temporarily relocated. Site-specific BMPs will be used throughout the construction period.						
Compensatory Mitigation	Permanent BMPs include increasing floodplain and re-vegetating with native plants. The Project would create approximately 0.53 acres of additional floodplain/riparian area.						
Applicable Fees	\$944.00						
Fees Received	\$944.00						

CEQA COMPLIANCE

California Department of Parks and Recreation (Applicant) adopted a Mitigated Negative Declaration (State Clearinghouse No. 2011112044) on February 23, 2012, and filed a Notice of Determination on February 27, 2012 for the Coldstream Lower Floodplain Enhancement Project, pursuant to the California Environmental Quality Act, (CEQA Public Resources Code 21000, et seq.).

The Water Board, acting as a CEQA Responsible Agency in compliance with California Code of Regulations, title 14, section 15096, has considered California Department of Parks and Recreation's Mitigated Negative Declaration (MND) for the Project and mitigation measures incorporated into the MND to reduce potentially significant water quality impacts to less than significant with mitigation. As a result of the analysis, the Water Board finds, with the conditions required herein, the mitigation measures in the MND are adequate to reduce potentially significant water quality impacts to less than significant. This Order includes mitigation monitoring requirements for impacts to waters of the U.S.

WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITION

The Water Board has adopted a *Water Quality Control Plan for the Lahontan Region* (Basin Plan), which specifies the following discharge prohibition:

"4(c) the discharge or threatened discharge, attributable to human activities, of solid or liquid waste materials including soil, silt, clay, sand, and other organic or earthen materials to lands within the 100-year floodplain of the Truckee river or any tributary to the Truckee River is prohibited."

The proposed Project would violate the prohibition as it involves alterations within the 100-year floodplain of Cold Creek, a tributary to the Truckee River. The Water Board may grant an exception to the above-cited prohibition under certain conditions.

PROHIBITION EXEMPTION

The Water Board encourages restoration projects that are intended to reduce or mitigate existing sources of erosion or water pollution, or to restore the functional value to previously disturbed floodplain areas. The Basin Plan allows exemptions to the above-cited discharge prohibition for projects that meet the following exemption criteria:

- a) The Project purpose is included in one or more of the five categories listed in Section 4.1 of the Lahontan Basin Plan: "(1) *projects solely intended to reduce or mitigate existing sources of erosion or water pollution, or to restore the functional value to previously disturbed floodplain areas;* (2) *bridge abutment, approaches, or other essential transportation facilities identified in an approved county general plan;* (3) *projects necessary to protect public health or safety or to provide essential public services;* (4) *projects necessary for public recreation;* and (5) *projects that will provide outdoor public recreation within portions of the 100-year floodplain that have been substantially altered by grading and/or filling activities which occurred prior to June 26, 1975.*"

The purpose of the Project is solely to restore the natural geomorphic function to previously-disturbed areas of the lower reach of Cold Creek. The highly incised and actively eroding channel would be restored by excavating additional floodplain area, creating toe protection, protecting existing riparian vegetation, treating two headcuts in tributary swales, and revegetating excavated areas. Floodplain area will be increased from 0.61 acres to up to 1.14 acres.

The Coldstream Lower Floodplain Enhancement Project was developed as a water quality improvement project to restore functional value to a previously disturbed floodplain area. Because the Project purpose is intended to reduce or mitigate existing sources of erosion or water pollution and to restore the functional value of previously disturbed floodplain areas, the Project satisfies the above criterion. The

Project is also designed to achieve load reductions of sediment in support of the Truckee River TMDL.

- b) *There is no reasonable alternative to locating the project or portions of the project within the 100-year floodplain.*

The project is located entirely within the 100-year floodplain. Disturbing the existing vegetation and floodplain is necessary to establish a more functional floodplain, reduce pollutant sources by eliminating flooding in disturbed areas, and improve ecologic value by creating a functioning riparian corridor and enhancing aquatic habitat. Four alternatives, including no project, were considered and the proposed Project was selected as the option to provide the greatest water quality and habitat benefits with the least amount of disturbance to Cold Creek. Streambank stabilization using riprap would likely enhance sediment transport capacity through the Project reach, resulting in increased sediment transport, which may result in channel instability downstream. Channel reconstruction would involve creating an entirely new channel, which would pose risks from short-term instability and in-channel erosion, and would be prohibitively expensive. If no action were taken, there would continue to be both long and short term impacts due to chronic and significant episodic erosion. There is no alternative to locating the Project within the 100-year floodplain.

- c) *The project, by its very nature, must be located within the 100-year floodplain.*

The Project to improve stream, floodplain and riparian function, but its very nature, must be located within the 100-year floodplain.

- d) *The project incorporates measures that will ensure any erosion and surface runoff problems caused by the project are mitigated to levels of insignificance.*

Construction-related activities within the creek channel and floodplain include the following and other measures to avoid impacts to water quality. Construction will occur under low flow conditions between the months of August to October. Dewatering will consist of a temporary gravity flow bypass diversion system. A temporary sealed sandbag dam (or equivalent as approved by the engineer) will be installed upstream of the work area to capture and divert surface and subsurface stream flow as needed. Clean ground water will be discharged into a diversion pipe from wells in the creek area in order to lower ground water on project site, while sediment-laden water will be discharged to a disposal site, chosen by the project engineer, located a minimum distance of 100 feet from the channel. A non-woven geotextile filtering system, such as a 15 foot by 15 foot "dirtbag" or equivalent, will be in place at the pipe outlet at all times. Long-term site stabilization will be achieved through a comprehensive revegetation effort.

- e) *The project will not individually or cumulatively with other projects, directly or indirectly, degrade water quality or impair beneficial uses of water.*

The Project will directly improve water quality in Cold Creek. The restored floodplain is expected to have improved capacity to trap and store sediment and nutrients because the Cold Creek floodplain will have improved functions and values (e.g., larger functional floodplain, increased riparian corridor) with respect to the current degraded conditions. The Project will not degrade water quality or impair beneficial uses.

- f) *The project will not reduce the flood flow attenuation capacity, the surface flow treatment capacity, or the ground water flow treatment capacity from existing conditions. All 100-year floodplain areas and volumes lost as a result of the project must be completely mitigated by restoration of previously-disturbed floodplain within or as close as practical to the project site. The restored, new, or enlarged floodplain shall be of sufficient area and volume to more than compensate for the flood flow attenuation capacity, surface flow treatment capacity, and ground water flow treatment capacity which are lost as a result of the project. This finding will not be required for: (1) essential public health or safety projects, (2) projects to provide essential public services for which the Regional Board finds such mitigation measures to be infeasible because the financial resources of the entity proposing the project are severely limited, or (3) projects for which the Regional Board finds (based on evidence presented by the proposed discharger) that the project will not reduce the flood flow attenuation capacity, the surface flow treatment capacity, or the ground water flow treatment capacity from existing conditions.*

The Applicant performed hydraulic studies to compare post-project to pre-project conditions and found that the creation of 1.6 acre of additional 100-year floodplain area by benching will result in more stability by decreasing erosive force and increasing erosional resistance through re-vegetation. The benching involves excavating 13,000 cubic yards from the high, eroding streambanks of the existing channel. In addition to creating new floodplain, the benching will reduce fine sediment supply by reducing over-steepened slopes and increasing vegetation cover. The Project will not reduce capacities for flood attenuation and treatment.

DELEGATION OF AUTHORITY FOR GRANTING AN EXEMPTION

The Water Board has delegated authority to the Water Board Executive Officer in Resolution No. R6T-2008-0031 to grant exemptions to the 100-year floodplain discharge prohibition in the Truckee River Hydrologic Unit for specific discharges where the proposed Project meets the conditions required for a waiver of waste discharge requirements or for approval under general waste discharge requirements or a general National Pollutant Discharge Elimination System permit (NPDES). The Project will be regulated under the terms and conditions of the Statewide General Waste Discharge Requirements and NPDES General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit).

The other criteria that the Project must satisfy for delegation authority to be granted to the Water Board Executive Officer are as follows:

1. *The project is within the following size limitations:*

*less than 1000 square feet of new impervious overage, or
less than 2000 square feet of new ground disturbance, or
less than 100 cubic yards of fill or excavation; **or***

2. *The project's primary purpose is to reduce, control, or mitigate existing sources of erosion or water pollution; **and***

3. *The project meets the exemption criteria set forth in the Basin Plan.*

The Project's primary purpose is to reduce, control, and mitigate existing sources of erosion and water pollution, and meets the exemption criteria set forth in the Basin Plan.

PROHIBITION EXEMPTION GRANTED

As demonstrated above, the project meets the conditions and criteria for an exemption to the 100-year floodplain waste discharge prohibition. The applicant has incorporated appropriate BMPs into the Project to ensure that any erosion and surface runoff problems caused by the Project are minimized to the levels of insignificance. A draft notice of exemption was posted on the Water Board website and distributed through an interested persons mailing list allowing at least ten (10) days to submit comments. The Project is hereby granted an exemption to the above-cited waste discharge prohibition.

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 United States, 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 California Department of Parks and Recreation (Applicant) submitted a complete application and the fees required for WQC under Section 401 for the Coldstream Lower Floodplain Enhancement Project. The Applicant has applied for U.S. Army Corps of Engineers (ACOE) authorization to proceed under Nationwide Permit No. 27 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 Coldstream Lower Floodplain Enhancement 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.
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 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 Water Quality 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 Lahontan 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. The Applicant must provide a report to the Lahontan Water Board documenting Project implementation no later than **November 1, 2012**. The report must include an "as-built" plan and must describe any problems encountered or variances from the approved design. The report must also include photographs showing the sites before and after construction. Annual reports, due on **the first of November in 2013, 2014, and 2015**, must summarize monitoring findings and evaluate the success in restoring water quality, floodplain function, and biological resources relative to the restoration plan, and indicate whether performance criteria have been met. The monitoring period may be modified in writing by the Executive Officer.
2. The Applicant must stabilize from erosion all areas of temporary and permanent impacts to water of the State and all other areas of temporary upland disturbance due to placement of dredge and/or fill material that could result in a discharge or a threatened discharge to water to the State in accordance with control measures in the application.

3. The Applicant must temporarily stabilize the site from erosion (winterize) prior to October 15 in a manner which will remain effective until May 1 of the following year, until revegetation success criteria are met.
4. The Applicant must prevent the introduction or spread of noxious/invasive weeds within the project and staging area. Control measures may include removing existing invasive vegetation, cleaning all equipment and gear prior to use on the site with water heated to 120 degrees Fahrenheit or more, using weed-free erosion control materials (including straw), and using weed-free seeds and plant material for revegetation of disturbed areas.
5. Water Board staff must be notified 48 hours prior to commencement of ground disturbance.
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 or in which records are kept.
 - b) Access to copy any record 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 the Order.
 - d) Sampling of any discharge or surface water covered by this Order.
7. No debris, cement, concrete (or wash water therefrom), oil or petroleum products must be allowed to 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 materials must be removed from the Project work area, and from any areas adjacent to the work area where such material may be transported into water of the State.
8. A copy of this Order must be maintained at the Project site so as to be available at all reasonable times to site operating personnel and Water Board staff.
9. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
10. An emergency spill kit must be at the Project site at all times.
11. A qualified professional with experience in hydrology and wetland restoration must monitor the construction of the Project. Any additional work or variation from the described work, which may result in additional or increased impact to water of the State (including quantity or quality of water of habitat) or reduce the amount of wetland or floodplain created, is not authorized unless approved in writing by the Executive Officer prior to implementation.

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

PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

cc:

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