

Lahontan Regional Water Quality Control Board

MEMORANDUM

TO: Water Board Members

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

DATE: JUL 23 2012

SUBJECT: EXEMPTION TO DISCHARGE PROHIBITION CONTAINED IN THE
WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION –
FEIBUSCH SHORELINE STABILIZATION PROJECT, TAHOE CITY,
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 Feibusch Shoreline Stabilization Project (Project) in Placer County. The exemption will allow the Project proponent to stabilize portions of the shoreline of Lake Tahoe. The Project involves permanent and temporary impacts to the 100-year floodplain of Lake Tahoe.

The Project is located south of Tahoe City at 1310 West Lake Boulevard. The Project meets requirements for an exemption to the discharge prohibition as necessary for environmental protection.

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 Discharge Prohibition Exemption

TT/adwT: Feibusch Shore Stabilization Memo 7_9_12 TT.doc
[File: 6A311112002 / Feibusch Shore Stabilization Project/ Placer County]

Lahontan Regional Water Quality Control Board

Robert and Christine Feibusch
PO Box 6
Ross, CA 94975

**ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY
CERTIFICATION AND PROHIBITION EXEMPTION FOR FEIBUSCH SHORELINE
STABILIZATION PROJECT AT 1310 WEST LAKE BLVD., PLACER COUNTY, WDID
6A311112002**

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 Feibusch Shoreline Stabilization Project (Project) in Placer 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. 6A311112002. 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	6A311112002
Applicants	Robert and Christine Feibusch PO Box 6 Ross, CA 94975
Agent	Jan Brisco P.O. Box 1888 Tahoe City, CA 96145

Table of Project Information continued:

Project Name	Feibusch Shoreline Stabilization Project						
Project Purpose and Description	175 linear feet of shoreline rock revetment and 42 linear feet of low gravity retaining wall (above ordinary high water) are proposed to stabilize the eroding bank along a portion of Lake Tahoe shoreline. Stabilization measures will include rock boulder placement at the toe to mid-point of banks, fabric and back-fill for root voids at the top of banks, and revegetation throughout the slope including a temporary drip irrigation system. A quasi-dynamic revetment of smaller rocks lakeward of the stabilized bank is also proposed. The majority (80%) of the placement will be above the high water rim of Lake Tahoe. Existing vegetation will be protected as feasible.						
Project Type	Shoreline Stabilization						
Project Address or other Locating Information	1310 West Lake Blvd, Placer County						
Location Latitude/Longitude	Latitude: 39.1475; Longitude: 120.1477						
Hydrologic Unit(s)	Lake Tahoe Hydrologic Unit, 634.00						
Overall Project Area	1,636 square feet (0.038 acre)						
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 fine sediment from construction and from rock placement if rocks are not adequately washed. Riprap banks could lead to destabilization elsewhere without adequate vegetation planting intermixed with the rock slope protection and dynamic revetment to dissipate wave energy.						
Area of Water(s) within the Overall Project Area	848 square feet (0.019 acre)						
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>	848 sf	175 ft	30 cy			
	<i>Riparian Stream</i>						
	<i>Wetland</i>						
	Total	848 sf	175 ft	30 cy			
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 Clean Water Act section 404.						
Non-Compensatory Mitigation	A temporary turbidity curtain will be placed to prevent the discharge of fine particulate materials to Lake Tahoe. Slope stabilization mats will be installed with a coir geocell and coir erosion control blanket. Boulders placement will be done on the slope by hand or individually by machine from top of bank and no existing boulders below high water will be disturbed. Silt fences and vegetation protection fencing, will be used throughout the construction period.						

Table of Project Information continued:

Compensatory Mitigation	Live willow stakes will be planted through the voids and gaps in the rock rip rap. Two other shrub species will be planted above the toe rocks along the bank along with four species of ground cover. All disturbed planting areas will be mulched with three inches of clean pine duff following planting. A quasi-dynamic revetment apron proposed will mitigate further erosion by absorbing energy through the slight shifting of revetment rock and loss of energy to turbulence as the waves run up the irregular surface.
Applicable Fees	\$2596.00 (\$944.00 application fee plus \$1652 for 175 linear feet of impacts to Federal Jurisdictional waters at \$9.44 per foot).
Fees Received	\$2596.00

CEQA COMPLIANCE

The Water Board has determined that this Project is exempt from the California Environmental Quality Act (Public Resources Code Section 21000 et seq.). In accordance with 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

To protect beneficial uses and achieve water quality objectives for the waters of Lake Tahoe and its tributaries, the Basin Plan specifies the following discharge prohibition:

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.

As proposed, the Project threatens to discharge waste earthen materials associated with construction. The proposed Project includes placement of granite boulders along the shoreline to stabilize the hill slope between the lake and the residence, below the high water rim of Lake Tahoe.

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; and*

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 Feibusch Shoreline Stabilization Project is to reduce and mitigate existing sources of erosion by stabilizing the shorezone.

The Basin Plan allows exceptions to the above-cited discharge prohibition for activities below the highwater rim of Lake Tahoe 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 a hill slope adjacent to the lake and prevent the discharge of sediment to Lake Tahoe. The proposed rock placement below the high water rim of Lake Tahoe consists of approximately 848 square feet of rock slope protection along 175 linear feet of shoreline. 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 and the minimum amount of rock necessary for stabilizing the near-vertical dirt banks would be traditional rip rap stabilization, which could cause soil destabilization elsewhere and would be less protective of beneficial uses. The proposed Project includes an anchored geocell blanket on which vegetation will be planted at the top of bank, a granite boulder revetment at the toe of the bank, dynamic revetment lakeward of the bank, and existing vegetation protection. The amount of disturbance below the highwater rim is limited to that needed to address concerns regarding stabilization of the residence/shoreline. There is no reasonable alternative to reduce encroachment to the area below the highwater rim.

(c) Impacts are fully mitigated:

The impacts of placing rock rip rap are mitigated by the use of a dynamic revetment apron in front of (lakeward) of the stabilized slope to absorb energy through the slight shifting of revetment rock and loss of energy to turbulence as the waves run up the irregular surface. The revegetation plan includes placement of live 16 willow stakes, 9 alder stakes and 341 potted native plants. Double layer filter fabric fencing will be used above lake level during installation and a turbidity curtain will be used in the water to prevent the discharge of fine particulate materials to Lake Tahoe during construction. Placement of rock will be from top of bank with a rubber-tired backhoe. All other work

will be done by hand labor. Working from the upland area will significantly reduce disturbance in the shore zone. Any equipment used will be clean and non-leaking. The Project includes measures that will fully 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 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 Applicant submitted a complete application and the applicable fees required for WQC under Section 401 for the Feibusch Shoreline Stabilization Project. The Applicant has applied for U.S. Army Corps of Engineers (ACOE) authorization to proceed under Nationwide Permit No. 13 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 Feibusch Shoreline Stabilization 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. Rock proposed for placement must be washed and/or free of all adhered soil particles prior to placement. Wash water from rock washing must be disposed of either to the sanitary sewer or directed to non-wetland, upland areas a minimum of 100 feet from Lake Tahoe.
2. 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. The turbidity curtains must be inspected on a daily basis and maintained as necessary to prevent discharge of suspended sediment outside the containment area.
3. A survey for Tahoe Yellow Cress on site must be performed by a qualified biologist prior to Project commencement. Any Tahoe Yellow Cress present on site must be protected at all times during construction of the Project.
4. Prior to initiating construction of the Project, the Applicant must affirmatively document whether there are any subsurface utilities in the area of construction and submit such documentation to the Lahontan Water Board. This can be accomplished by: (1) contacting all utilities (both public and private) that provide service in the area, documenting these contacts and submitting such documentation to the Lahontan Water Board; (2) contacting Underground Service Alert, documenting this contact and submitting such documentation to the Lahontan Water Board; or, (3) some other equivalent affirmative action to determine whether or not there are any subsurface utilities in the area of construction and submitting the results of such action to the Lahontan Water Board. The area of construction is defined as any area within the project boundaries where there will be excavation, construction of borings or driving of piles. If subsurface utilities are located in the construction area, the Applicant must provide a utility avoidance plan that will be followed during construction.
5. A copy of this WQC Order, a copy of the complete WQC application submitted to the Water Board, and the utility avoidance plan (additional condition above) must be available at the Project site during construction of the Project.

6. The Applicant, Applicant's Agent, or contractor performing the Project must notify Water Board staff within 48 hours prior to commencement of the Project.
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 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.
9. The Applicant must prevent the introduction or spread of non-native species of plants and animals to either land or water 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.
10. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
11. An emergency spill kit must be at the Project site at all times.

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.

PATRICIA KOUYOUMDJIAN
EXECUTIVE OFFICER

cc: Jan Brisco
Earl Hagedorn
Lief Larson / Tahoe Regional Planning Agency
Garry Kelley / California Department of Fish and Game, Rancho Cordova
Mary Hays / California State Lands Commission
Dave Smith / Wetlands Regulatory Office (WTR-8), US EPA, Region 9
Lynette Blanchard / U.S. Army Corps of Engineers, Reno Office
Bill Orme / State Water Resources Control Board, Division of Water Quality