



# California Regional Water Quality Control Board Lahontan Region



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Edmund G. Brown Jr.  
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## ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION, 100-YEAR FLOODPLAIN WASTE DISCHARGE PROHIBITION EXEMPTION, AND NOTICE OF APPLICABILITY FOR COVERAGE UNDER THE SMALL CONSTRUCTION PERMIT FOR THE INDEPENDENCE LAKE SPILLWAY FISH BARRIER PROJECT, SIERRA COUNTY, BOARD ORDER NO. R6T-2003-0004-173, WDID 6A461106001

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, a Notice of Intent (NOI) to comply with the *General Waste Discharge Requirements for Small Construction Projects, Including Utility, Public Works, and Minor Streambed/Lakebed Alteration Projects in the Lahontan Region Excluding the Lake Tahoe Hydrologic Unit*, Board Order No. R6T-2003-0004 (Small Construction Permit), and application filing fees for the Independence Lake Spillway Fish Barrier Project (Project) in Sierra 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 Notice of Applicability (NOA) for coverage under the Small Construction Permit Order for WQC, and waste discharge prohibition exemption hereby assigns this Project the following reference numbers: Board Order No. R6T-2003-0004-173 and Waste Discharge Identification (WDID) No. 6A461106001. Please use these reference numbers 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](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

*California Environmental Protection Agency*

**PROJECT DESCRIPTION****Table of Project Information:**

WDID Number	6A461106001
Applicant	Kathryn Landreth The Nature Conservancy One E. 1 <sup>st</sup> Street, Suite 1007 Reno, NV 89501 Attn: Chris Fichtel
Project Name	Independence Lake Spillway Fish Barrier Project
Project Purpose and Description	The purpose of the project is to construct a fish barrier downstream of the flashboard weir outlet at Independence Lake to prevent colonization of non-native fish species in Independence Lake. The fish barrier is necessary to ensure the survival of native Lahontan cutthroat trout (LCT) in Independence Lake. The proposed fish barrier will be located approximately 500 feet downstream of an existing flashboard weir outlet for the reservoir in the reservoir's spillway channel, which is at or near Independence Lake's natural outlet stream. There is a separate excavated channel associated with the dam to the northwest that joins with the spillway channel downstream of the Project site. The proposed fish barrier will consist of a concrete weir (four linear feet of channel impacted), a grouted rock apron (17 linear feet of channel impacted), and rock slope protection upstream and downstream of the weir (33 linear feet of channel impacted). Approximately 60 cubic yards of concrete will be used to construct the weir. Foundations will be a minimum of three feet below the lowest adjacent finish grade for frost and scour protection and confinement. Areas proposed for fill placement and/or grading will be cleared and grubbed of vegetation. The grouted rip rap will be approximately three feet deep. Disturbed areas on the channel banks and staging areas will be revegetated with a mixture of native shrubs, forbs, and grasses. Steep spillway channel banks within the Project site, which are currently eroding, will be re-graded to slopes of 3:1 or flatter and covered with slope protection fabric to increase stability.
Location (Closest City & County)	Sierra County
Location Latitude/Longitude	Latitude: 39.4536, Longitude: 120.2867
Hydrologic Unit(s)	Little Truckee River Hydrologic Unit, 636.00
Project Area	0.78 acres
Receiving Water(s) Name	Independence Creek, tributary to the Little Truckee River
Water Body Type(s)	Intermittent stream
Area and linear feet of Water(s) of the U.S. (WOUS) within the project area	0.4 acre 140 feet

**Table of Project Information continued:**

Area of Permanent Fill/Excavation in WOUS	1,400 square feet to stream (0.03 acre) 1,720 square feet to adjacent wetlands (0.04 acre) Total: 3,120 square feet (0.07 acre)
Linear feet of Permanent Fill/Excavation in WOUS	54 feet (stream)
Volume of Excavated Material from WOUS	1,347 cubic yards
Volume of Fill Material to WOUS	1,370 cubic yards
Area of Temporary Fill/Excavation in WOUS	9,500 square feet to stream (0.22 acre) 2,760 square feet to adjacent wetlands (0.063 acre) Total: 12,800 square feet (0.30 acre)
Linear feet of Temporary Fill/Excavation in WOUS	340 feet (stream)
Federal Permit(s)	The applicant has applied for U.S. Army Corps of Engineers (USACE) authorization to proceed under Nationwide Permit No. 27, pursuant to Clean Water Act Section 404.
Non-Compensatory Mitigation	Construction will take place in late summer or fall when there is little or no flow in the spillway channel. Water diversion is not expected to be necessary, but a plan will be in place for contingency purposes in case the Truckee Meadows Water Authority needs to release water from behind the dam. Dewatering for excavation will be done by pumping water through a filter and discharging it to an adjacent meadow. Site-specific Best Management Practices (BMPs) will be used throughout the construction period to control erosion. These BMPs include mulching bare soil, silt fences, and straw wattles. Permanent BMPs include re-establishing floodplain connectivity, minimizing vegetation disturbance, and re-vegetating with native plants.
Compensatory Mitigation	Mitigation proposed is located near the inlet of Independence Lake and will restore an eroded cut bank and remove a non-functioning fish weir that failed in a flood event, subsequently causing severe downstream bank erosion.
Applicable Fees	\$640.00 (\$640.00 application fee for restoration)
Fees Received	\$640.00
Fees Due	\$0.00

**CEQA COMPLIANCE**

The California Department of Fish and Game (CDFG) adopted a Mitigated Negative Declaration (State Clearinghouse No. 2011062036) and filed a Notice of Determination on July 21, 2011 for the Independence Lake Spillway Fish Barrier 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 the CDFG'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 State, including 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 Little Truckee River or any tributary to the Little Truckee River is prohibited."

The proposed Project would violate the prohibition as it involves alterations within the 100-year floodplain of Independence Creek, a tributary to the Little 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 soil erosion, water pollution, or impairment of beneficial uses. For waste earthen materials discharged as a result of restoration projects, exemptions to the above-referenced prohibition, and all other prohibitions contained in the Basin Plan, may be granted by the Water Board whenever it finds that a specific project meets all of the following criteria:

- a. *The project will eliminate, reduce or mitigate existing sources of soil erosion, water pollution, and/or impairment of beneficial uses of water.*

The Project was created to significantly reduce the risk of impairment of beneficial uses of water, namely beneficial uses of waters that support habitat necessary for the survival and successful maintenance of plant or animal species established under the state and/or federal law as rare, threatened or endangered (Rare, Threatened, or Endangered Species). By improving the protections provided to the last remaining wild population of Lahontan cutthroat trout (LCT) in California, this

Project would aid in reducing the risk of impairment of this beneficial use. Independence Lake's existing flashboard weir outlet does not provide sufficient protection against migration of brook, rainbow and brown trout into Independence Lake. The flashboard weir outlet carries flow when the lake stage exceeds an elevation of 6,949 feet on the USGS gage. Flow through the spillway channel is uncontrolled and is dictated by the lake stage and the release rate through the controlled dam outlet. During high flows, when the spillway channel conveys water, brook, rainbow and brown trout could potentially pass over the flashboard weir and into the lake. Brook trout are highly competitive, brown trout are voracious predators of LCT and rainbow trout hybridize with LCT. Brown, brook and rainbow trout species exist in the watershed below the lake, but only brook trout (a stream-spawning strain) are present in the lake at this time. The Project will install a fish barrier below the flashboard weir to help ensure migration of other fish species into Independence Lake will not occur in the future, thereby removing or mitigating a potential cause of impairment to beneficial uses of water.

- b. *There is no feasible alternative to the project that would comply with provisions of this Basin Plan, precluding the need for an exemption.*

There is no feasible alternative to the Project location that would preclude the need for an exemption because preventing fish passage up the spillway channel requires construction of a fish barrier within the channel.

- c. *Land disturbance will be limited to the absolute minimum necessary to correct or mitigate existing sources of soil erosion, water pollution, and/or impairment of beneficial uses of water.*

The site was selected to minimize disturbance. Access to the site is almost entirely on existing dirt roads. To minimize the volume of imported fill materials, boulders that were previously placed within the spillway channel to prevent headcutting will be incorporated into the Project to the greatest extent possible. All staging and temporary access areas will be reseeded with native vegetation and re-graded to pre-project contours. Concrete for the fish barrier, where possible, will be placed directly into the excavation without forms. Doing so will reduce the amount of earthwork required for the Project (additional excavation is required to accommodate concrete forms compared to pouring concrete into the excavation without forms or fewer concrete forms). The spillway channel has been highly modified and is straight and even-sided, functioning primarily as a water-conveyance channel to relieve pressure on the dam. The fish barrier has been designed so as to not impact spillway function or impair dam safety. Land disturbance has been limited to the absolute minimum.

- d. *All applicable Best Management Practices and mitigation measures have been incorporated into the project to minimize soil erosion, surface runoff, and other potential adverse environmental impacts.*

The Project will be constructed during the late summer or fall when surface flows will be at their lowest or absent. Construction will be completed by October 15, 2011. Existing conditions include channel banks downstream of the proposed barrier that are actively eroding. The Project includes measures that will correct and mitigate these existing sources of erosion. Those measures include re-grading the channel banks to a milder, more stable slope (3:1, horizontal:vertical), covering the banks with slope protection fabric, and revegetating the banks with a mixture of native shrubs, forbs and grasses. The net overall project will improve local spillway channel stability and reduce erosion. Spill control kits will be kept on site to ensure timely cleanups of any accidental equipment leaks. The Project includes the implementation and maintenance of numerous site-specific BMPs that are designed to control storm-driven erosion at the sites. These measures will ensure that any adverse erosion or surface runoff problems caused by the Project are mitigated to levels of insignificance.

- e. *The project complies with all applicable laws, regulations, plans, and policies.*

The Applicant is performing the work under the proper USACE Nationwide Permits. The California Department of Fish and Game has completed and certified a Mitigated Negative Declaration for the Project. This Order also includes coverage under the Small Construction Permit, Water Board Order No. R6T-2003-0004, for upland disturbance greater than 10,000 square feet.

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 is necessary for public health, safety, or environmental protection.*

Based on the information contained in the application materials submitted by you and your consultant, the Project meets the above-referenced criteria. I hereby grant an exemption to Basin Plan prohibition 4(c), as cited above, for the Project.

### **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 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 Nature Conservancy (Applicant) submitted a complete application and the \$640.00 application filing fee required for WQC under Section 401 for the Independence Lake Spillway Fish Barrier Project. The Applicant has applied for USACE 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 Independence Lake Spillway Fish Barrier Project qualifies for such a 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 shall 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 shall be conditioned upon total payment of the full fee required under CCR Section 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 water quality certification 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 that 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 requirements of the applicable 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 submit a complete Clean Water Act section 401 application, including final design plans, for the Fish Weir Removal and Bank Restoration Project by **March 31, 2012**.
2. The Applicant must complete construction of the fish Weir Removal and Bank Restoration Project by **October 15, 2012**.
3. The Applicant must stabilize from erosion all areas of temporary impacts to waters of the State and all other areas of temporary upland disturbance due to placement of dredge and/or fill material which could result in a discharge or a threatened discharge to waters of the State.
4. If the Project is not completed with permanent BMPs in place by October 15, 2011, the Applicant must temporarily stabilize the site from erosion (winterize) by October 15 in a manner that will remain effective until May 1 of the following year.
5. 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, using weed-free erosion control materials (including straw), and using weed-free seeds and plant material for revegetation of disturbed areas.
6. Water Board staff must be notified 48 hours prior to commencement of ground disturbance.
7. 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 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.
8. Debris, cement, concrete (or wash water therefrom), oil or petroleum products are prohibited from being allowed to enter into or being 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.
9. 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.



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 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 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.

**GENERAL INFORMATION**

1. The Project must be constructed in accordance with the requirements contained in the Small Construction Permit and in accordance with the information submitted in the Notice of Intent.
2. The required annual fee for waste discharge requirements (as specified in the annual billing you will receive from the State Water Resources Control Board) must be submitted until the Notice of Applicability is officially revoked. Revocation procedures are specified in Section IV.C. of the Permit.
3. Failure to abide by the conditions of the Small Construction Permit could result in an enforcement action as authorized by provisions of the Porter-Cologne Water Quality Control Act.

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, North Basin Regulatory Unit Chief, at (530) 542-5430.

HAROLD J. SINGER  
EXECUTIVE OFFICER

cc: Beth Christman / Truckee River Watershed Council  
Chris Fichtel / The Nature Conservancy  
Dave Smith / Wetlands Regulatory Office (WTR-8), US EPA, Region 9  
(via email at [R9-WTR8-Mailbox@epa.gov](mailto:R9-WTR8-Mailbox@epa.gov))  
Erin Hess / U.S. Army Corps of Engineers, Sacramento Office  
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