

Lahontan Regional Water Quality Control Board

TO: Water Board Members



FROM: Patty Z. Kouyoumdjian
Executive Officer
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: March 24, 2016

SUBJECT: EXEMPTION TO WASTE DISCHARGE PROHIBITIONS WITHIN THE LAKE TAHOE AND TRUCKEE RIVER HYDROLOGIC UNITS, LAKEWIDE AQUATIC INVASIVE SPECIES (AIS) PLANT CONTROL PROJECT, TAHOE RESOURCE CONSERVATION DISTRICT, EL DORADO AND PLACER COUNTIES

In ten days, I intend to grant an exemption to discharge prohibitions specified in the Water Quality Control Plan for the Lahontan Region for the portion of the above-referenced Project.

The Project is located in portions of Lake Tahoe in El Dorado and Placer Counties and portions of the Truckee River in Placer County that have been included on the AIS Implementation Plan – Action List. The purpose of the Project is to (1) continue aquatic invasive plant control efforts in locations where previous efforts have been successful, (2) expand control efforts to include all known infestation areas, and (3) allow for rapid response to detections of new aquatic plant infestations. The Project will remove aquatic invasive plants in Lake Tahoe and the Truckee River using diver assisted suction removal, hand removal, and placement of bottom barriers. The Project will minimize the potential for AIS plants to spread throughout Lake Tahoe and the Truckee River and its floodplain.

The Project meets requirements for an exemption to the discharge prohibitions. Public notice regarding granting the prohibition exemptions was published on the Water Board's internet site as required.

If you have any questions or comments regarding this matter, please contact me at (530) 542-5412 patty.kouyoumdjian@waterboards.ca.gov or Mary Fiore-Wagner, Environmental Scientist, at (530) 542-5425 mary.fiore-wagner@waterboards.ca.gov.

Enclosure: Draft Board Order No. R6T-2016-XXXX, for Clean Water Act Section 401 Water Quality Certification and Basin Plan Prohibition Exemptions for the Lakewide Aquatic Invasive Species Plant Control Project, El Dorado and Placer Counties, WDID No. 6A091512006

Lahontan Regional Water Quality Control Board

Kim Boyd
Tahoe Resource Conservation District
870 Emerald Bay Road
South Lake Tahoe, CA 96150

WDID 6A091512006

BOARD ORDER NO. R6T-2016-XXXX, CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND BASIN PLAN PROHIBITION EXEMPTION FOR TAHOE RESOURCE CONSERVATION DISTRICT – LAKEWIDE AQUATIC INVASIVE SPECIES PLANT CONTROL PROJECT, EL DORADO AND PLACER COUNTIES,

The California Regional Water Quality Control Board, Lahontan Region (Water Board), received a complete Clean Water Act Section 401 Water Quality Certification (WQC) application and application filing fee from the Tahoe Resource Conservation District (Applicant) for the Lakewide Aquatic Invasive Species Plant Control Project (Project). The Applicant also provided information to support granting an exemption to waste discharge prohibitions in the Water Board's *Water Quality Control Plan for the Lahontan Region* (Basin Plan). The application was received on December 28, 2015. In response to Water Board staff's email requests for additional information sent on January 21, 2016 and February 10, 2016, the Applicant provided additional information, and the application was deemed complete on February 11, 2016. This Order for WQC hereby assigns this Project the following reference number: Waste Discharge Identification (WDID) No. **6A091512006**. 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. 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	6A091512006
Applicant	Tahoe Resource Conservation District 870 Emerald Bay Road South Lake Tahoe, CA 96150
Agent	N/A
Project Name	Lakewide Aquatic Invasive Species (AIS) Plant Control Project
Project Purpose and Description	The Project purpose is to continue aquatic invasive plant control efforts in locations where previous efforts have been successful, expand control efforts to include all known infestation areas, and to allow for rapid response to detections of new aquatic plant infestations. The Project will remove aquatic invasive plants in Lake Tahoe and the Truckee River using diver assisted suction removal, hand removal and placement of bottom barriers. Diver assisted suction removal and hand removal methods will be used to remove vegetation and roots from the water and transfer it for disposal via suction hose or hand to a catchment basket. Bottom barrier use will consist of securing sections of landscape cloth, plastic, rubber, jute or other material over the top of submerged vegetation to exclude sunlight.
Project Type	Aquatic Invasive Species Plant Control Project
Project County	El Dorado and Placer
Project Address or other Locating Information	Portions of Lake Tahoe in El Dorado and Placer Counties and portions of the Truckee River in Placer County that have been identified on the AIS Implementation Plan – Action List , which was developed by the Lake Tahoe AIS coordination committee and identifies areas within the shorezone and stream channel with suitable AIS plant habitat
Location Latitude/Longitude	General Location: Latitude: 39.0917 , Longitude: -120.1417 (center)
Hydrologic Unit	Lake Tahoe Hydrologic Unit, 634.00; Truckee River Hydrologic Unit, 635.00
Overall Project Area	11,300 acres, including 14.5 acres within the Truckee River. No more than 5 acres will be treated per year.
Receiving Water(s) Name	Lake Tahoe and Truckee River
Water Body Type(s)	Lake and Perennial stream
Designated Beneficial Uses	MUN, AGR, GWR, REC-1, REC-2, COLD, WILD, WQE, FLD
Potential Water Quality Impacts	Turbidity, Organic Material, Sediment
Area of Water(s) within the Overall Project Area	11,300 acres; 15,840 linear feet

Impacts of Fill and Excavation to Waters of the State, including Waters of the U.S. (WOUS)	Water-body Type	Temporary			Permanent					
					Physical Loss of Area			Degradation of Ecological Condition		
	Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards	
	<i>Lake</i>	4								
	<i>Stream</i>	1								
Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACE) authorization to proceed under a Nationwide 27 General Permit, pursuant to CWA section 404.									
Non-compensatory Mitigation	A full list of mitigation measures are incorporated into the Project as a condition of approval for the Mitigated Negative Declaration (SCH No: 2014042043) prepared for this Project. Mitigation measures may vary as appropriate for the specific treatment area being targeted within the overall project area.									
Compensatory Mitigation	No compensatory mitigation is required.									
	Total Ecological Restoration and Enhancement Quantity for Temporary Impacts (CIWQS mitigation/restoration table side B)									
	Aquatic Resource Type	Unit		Enhanced			Restored			
	Lake	Acres					4			
		Linear Feet								
Stream Channel	Acres					1				
	Linear Feet									
Application Fee	\$200									
Fees Received	\$200									
Estimated Annual Active Discharge Fee ¹	\$100 (an annual active discharge fee will be assessed each fiscal year or portion of a fiscal year during which discharges occur until the Water Board issues a Notice of Completion of Discharges Letter to the Applicant)									
Estimated Post-Discharge Monitoring Fee ¹	\$300 (a post-discharge monitoring fee will be assessed each fiscal year or portion of a fiscal year during which water quality monitoring or compensatory mitigation monitoring is required)									

¹The actual Annual Active Discharge Fee and Post-Discharge Monitoring Fee will be calculated using the fee schedule in effect at the time the annual fee is assessed per California Code of Regulations, title 23, section 2200(a)(3).

CEQA COMPLIANCE

The Applicant prepared a Mitigated Negative Declaration (MND) for this Project (Lakewide Aquatic Invasive Plant Control) pursuant to the provisions of the California Environmental Quality Act. A Notice of Determination has been issued stating that the Project will not have a significant effect on the environment. This documentation can be found on the California State Clearinghouse, item number: 2014042043.

BASIN PLAN DISCHARGE PROHIBITIONS

Chapter 4.1 of the Basin Plan specifies prohibition no. 2 below that is applicable to lands within the 100-year floodplain of the Truckee River:

Pg. 4.1-16, 4.1(2) The discharge, or threatened discharge, attributable to human activities, of waste to lands within the 100-year floodplain of Truckee River, Little Truckee River, and their tributaries is prohibited.

Chapter 5.2 of the Basin Plan specifies prohibitions nos. 2 and 3 below that are applicable to surface waters, 100-year floodplains, and Stream Environment Zones (SEZs) in the Lake Tahoe basin:

Pg. 5.2-1, 5.2 (2) The discharge attributable to human activities of any waste or deleterious material to land below the highwater rim of Lake Tahoe or within the 100-year floodplain of any tributary to Lake Tahoe is prohibited.

Pg. 5.2-1, 5.2 (3) The discharge attributable to human activities of any waste or deleterious material to SEZs in the Lake Tahoe HU is prohibited.

BASIN PLAN DISCHARGE PROHIBITION EXEMPTION CRITERIA AND FINDINGS

1. The Water Board may grant an exemption to Prohibition 4.1(2) above, for projects intended to reduce or mitigate existing sources of erosion or water pollution, or to restore or improve the floodplain function, when the Water Board finds all of the following criteria are satisfied:
 - a. There is no reasonable alternative that avoids or reduces the extent of encroachment by the project within the 100-year floodplain.

The purpose of the Project is to remove AIS plant species that have established within the 100-year floodplain of the Truckee River, which will minimize the potential for AIS plants to spread throughout the Truckee River and its floodplain. The Project is intended to reduce water pollution by removing aquatic invasive weeds.

There are no reasonable alternatives that would reduce the extent of encroachment within the 100-year floodplain of the Truckee River because the Project, by its very nature, must be located in these wet environments since these are the targeted clean up areas that have become infested. The floodplain populations of AIS plants present in these locations are susceptible to spread if left in place.

2. The Water Board may grant an exemption to the Prohibitions 5.2 (2) and 5.2 (3) above, for erosion control projects, wetland rehabilitation projects, SEZ restoration

projects, and similar projects, programs, and facilities, when the Water Board finds all of the following criteria are satisfied:

- a. There is no reasonable alternative, including relocation, that avoids or reduces the extent of encroachment below the highwater rim of Lake Tahoe, with the 100-year floodplain, or within the SEZ; and
- b. Impacts are fully mitigated.

The purpose of the Project is to remove AIS plants established in Lake Tahoe's waters, which will minimize the potential for AIS plants to spread throughout the Lake. The Project is considered a habitat restoration project eligible for a prohibition exemption. There are no reasonable alternatives that would reduce the extent of encroachment within the 100-year floodplain, or below the highwater rim of Lake Tahoe because the Project, by its very nature, must be located in these wet environments since these are the infested areas targeted for clean-up. The shorezone and floodplain populations of AIS plants present in these locations are susceptible to spread if left in place.

The Applicant is implementing the Project to eliminate or minimize the area of an existing AIS infestation and to minimize the potential for the AIS to spread throughout the Lake.

Impacts associated with the Project have been evaluated and summarized in the Lakewide Aquatic Invasive Plant Control Project Initial Study-Mitigated Negative Declaration. The Project will have no significant effect on the environment with the mitigation measures included as a condition of the approval of the project. A full list of mitigation measures can be viewed on page 14 of the [MND, Mitigation Monitoring and Reporting Program](#).

The proposed Project meets the criteria for granting an exemption, as noted above.

DELEGATION OF AUTHORITY FOR GRANTING AN EXEMPTION

The Water Board has delegated authority to grant exemptions for Basin Plan waste discharge prohibitions to the Executive Officer pursuant to Resolution No. R6T-2016-0038 for specific discharges where the proposed Project meets the conditions in the Basin Plan.

PROHIBITION EXEMPTION GRANTED

As demonstrated above, the Project meets the conditions and criteria for exemptions to the above-cited waste discharge prohibitions. 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 prohibitions.

SECTION 401 WATER QUALITY CERTIFICATION

Authority

Section 401 of the CWA (33 U.S.C., paragraph 1341) requires that any applicant for a CWA section 404 permit, who plans to conduct any activity that may result in discharge of dredged or fill materials to waters of the 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 fees required for WQC under section 401 for the Project. The Applicant has applied for U.S. Army Corps of Engineers (ACOE) authorization to proceed under a Nationwide Permit No. 27.

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 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 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 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 sections 2050 et seq.) or the federal Endangered Species Act (16 U.S.C. sections 1531 et seq.). If a "take" will result from any act authorized under this certification, the applicant must obtain authorization for the take prior to construction or operation of the project. The Applicant is responsible for meeting all applicable requirements of the Endangered Species Act for the project authorized under this certification.

Additional Conditions

Pursuant to CCR title 23, section 3859(a), the following additional conditions are requirements of this certification:

1. By **January 31, 2017**, a report must be provided to the Water Board that demonstrates the Project was implemented according to the plans provided and reviewed by this office. The report must include all locations (latitude/longitude) where AIS treatment was conducted and the associated treatment area (in acres or square feet) for each location.

2. The Project must not introduce, or increase the presence of, aquatic invasive species. 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. Prior to deployment, all equipment (e.g., turbidity curtains, barge, excavator, etc.) must be visually inspected for aquatic invasive species by either TRCD staff or a qualified professional on TRCD's list of surveyors. If decontamination is necessary, TRCD's recommended decontamination procedure must be implemented.
3. Construction equipment (hand tools in this case) must be clean and free from oil, grease and loose metal material and must be removed from service if necessary to protect water quality.
4. An emergency spill kit must be at the project site at all times.
5. Debris, cement, concrete (or wash water therefrom), oil or petroleum products must not 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 material must be removed from the Project work area and any areas adjacent to the work area where such material may be transported into waters of the state.
6. 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. Pursuant to CWC section 13267(b), 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.
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 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.
8. The Applicant must keep a copy of this Order and a copy of the Hazard Assessment and Critical Control Point Plan prepared for this Project on-site.

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 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 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 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.

If you have any questions or comments regarding this permit, please contact Mary Fiore-Wagner, Environmental Scientist, at mary.fiorewagner@waterboards.ca.gov (530-542-5435) or Dan Sussman, Chief, TMDL/Basin Planning Unit, at daniel.sussman@waterboards.ca.gov (530-542-5466). **Electronic document submittal is required. Please send your comments or documents to the Water**

Kim Boyd
Tahoe Resource Conservation District

- 10 -

Board's email address at Lahontan@waterboards.ca.gov and include your WDID No. or Facility Name in the Subject Line.

PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

cc (via email):

Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9
Bill Orme, State Water Resources Control Board, Division of Water Quality
Aaron Park, U.S. Army Corps of Engineers, Reno District
Bob Hosea, California Department of Fish and Game
Jesse Patterson, League to Save Lake Tahoe

MFW/dk/T: R6T-2016-XXXX_Lakewide AIS Control_TRCD_401_WDID 6A311406002
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