



California Regional Water Quality Control Board
Lahontan Region



Linda S. Adams
*Acting Secretary for
Environmental Protection*

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150
(530) 542-5400 • Fax (530) 544-2271
www.waterboards.ca.gov/lahontan

Edmund G. Brown Jr.
Governor

M E M O R A N D U M

TO: Water Board Members
FROM: *Harold J. Singer*
HAROLD J. SINGER
EXECUTIVE OFFICER
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: MAY 19 2011

**SUBJECT: EXEMPTION TO DISCHARGE PROHIBITION CONTAINED IN THE
WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION –
3794 MONTREAL ROAD PROJECT, EL DORADO 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 3794 Montreal Road Project (Project) in El Dorado County. The exemption will allow the project proponent to restore historic wetland and Stream Environment Zones (SEZ) at the site of the old Colony Inn, which has been removed.

The Project is located on 3794 Montreal Road in South Lake Tahoe behind Raley's near Stateline, Nevada. The Project meets requirements for an exemption to the discharge prohibition as a wetland and SEZ restoration project.

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 Prohibition Exemption

TT/clhT: 3794 Montreal Road Memo 4_29_11 TT.doc
[File: 6A091103001 / 3794 Montreal Road Project/ El Dorado County]



California Regional Water Quality Control Board

Lahontan Region



Linda S. Adams
Acting Secretary for
Environmental Protection

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150
(530) 542-5400 • Fax (530) 544-2271
www.waterboards.ca.gov/lahontan

Edmund G. Brown Jr.
Governor

Gordon Lane
P.O. Box 456
Zephyr Cove, NV 89448

ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND PROHIBITION EXEMPTION FOR THE 3794 MONTREAL ROAD PROJECT, EL DORADO COUNTY, WDID 6A091103001

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 3794 Montreal Road Project (Project) in El Dorado 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. 6A091103001. 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	6A091103001
Applicant	Gordon Lane P.O. Box 456 Zephyr Cove, NV 89448
Agent	Sloan Gordon P.O. Box 10341 Zephyr Cove, NV 89448
Project Name	3794 Montreal Project

Table of Project Information continued:

Project Purpose and Description	The proposed Project would restore a parcel that, previous to the 1960's, consisted of wetlands and a stream course flowing through it. The site was filled in the late 1960's to build a motel, which has recently been demolished. The Project would remove approximately 2,262 cubic yards of fill on which the motel previously stood, place approximately 70 cubic yards of fill in the incised streambed on the northwest boundary of the parcel to raise the groundwater and restore the adjacent wetland on both sides of the stream, and place approximately 134 cubic yards of fill along the western boundary (along Montreal Road) to redirect excess floodwaters back to the stream channel. The raised streambed will allow the stream to overflow into the adjacent wetlands during 2-year storm events.
Location (closest City & County)	South Lake Tahoe, El Dorado County
Location Latitude/Longitude	Latitude: 38.95407; Longitude: 119.9414
Hydrologic Unit(s)	South Tahoe Hydrologic Area 634.10 in the Lake Tahoe Hydrologic Unit, 634.00
Project Area	1.2 acres
Receiving Water(s) Name	Intermittent stream and Stream Environment Zones (SEZs) draining to Lake Tahoe
Water Body Type(s)	Intermittent stream
Area of Water(s) of the U.S. (WOUS) within the project area	500 square feet (0.012 acres)
Area of Permanent Fill in WOUS	300 square feet (0.007 acre)
Linear feet of Permanent Fill/Excavation in WOUS	150 linear feet
Volume of fill in WOUS	70 cubic yards
Federal Permit(s)	The applicant has applied for U.S. Army Corps of Engineers (USACE) authorization to proceed under a Nationwide Permit, pursuant to Clean Water Act section 404.
Non-Compensatory Mitigation	Site-specific Best Management Practices (BMPs) will be used throughout the construction period and for winterization to control erosion. See further discussion below under SEZ prohibition exemption.
Compensatory Mitigation	None required for this restoration project, which will create approximately one acre of wetland.
Applicable Fees	\$640.00 (\$640.00 application fee)
Fees Received	\$640.00
Fees Due	\$0.00

CEQA COMPLIANCE

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

accordance with Section 15333, the basis for CEQA exemption is "Small Habitat Restoration Projects." 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 new development or permanent disturbance in Stream Environment Zones, of solid or liquid waste, including soil, silt, sand, clay, rock, metal, plastic, or other organic, mineral or earthen materials, to Stream Environment Zones in the Lake Tahoe Basin is prohibited.

Stream Environment Zone Disturbance

The proposed Project is located within the Stream Environment Zone (SEZ) and wetland areas of tributary streams to Lake Tahoe. The project by its very nature will impact SEZ areas with proposed new permanent disturbance.

Prohibition Exemption

Resolution No. R6T-2008-031 delegates authority to the Regional 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 3794 Montreal Project is wetland and SEZ restoration to mitigate existing sources of pollution.

The Basin Plan allows exemptions to the above-cited discharge prohibition for projects within SEZs where all of the following findings can be made:

- a) *The project, program, or facility is necessary for environmental protection.*

The Project proposes to restore wetlands and Stream Environment Zones to an area that had been filled in the 1960's to build a parking structure and hotel. Areas of previous on-site development within the historic wetland/SEZ will be restored to natural conditions by removing 2,262 cubic yards of fill from 52,571 square feet of the Project area and treating the soils by loosening the compacted soils, applying two inches of topsoil or compost, and seeding the area. Since the Project area gently slopes toward Montreal Road, a berm will be constructed next to Montreal Road to redirect excess floodwaters back to the stream channel while capturing and containing water in the above 52,571 square-foot area. This berm will contain an elevated channel to direct elevated floodwaters toward the creek on the northwest boundary of the Project area. The bottom elevation of the creek on the northwest boundary, which is incised for most of the length of the property, will be increased by placing approximately 70 cubic yards of fill composed of soil and rock and revegetated with willows. The Project is a restoration project and is necessary for environmental protection.

- b) *There is no reasonable alternative, including relocation, which avoids or reduces the extent of encroachment in the Stream Environment Zone.*

The Project is located entirely within the SEZ. Disturbing the existing vegetation in the incised channel is necessary to raise the groundwater level and establish the wetland and restored SEZ in this area. There is no reasonable alternative to further avoid or reduce SEZ encroachment.

- c) *Impacts are fully mitigated.*

The Applicant has proposed a number of soil stabilization and sediment controls Best Management Practices (BMPs) in a Storm Water Pollution Prevention Plan (SWPPP) provided in the application. These BMPs include mulch, seeding, soil binders (prior to winter), erosion control mats, wood mulching, outlet protection, silt fence, desilting basin, fiber rolls, and storm drain inlet protection. The application also included Meadow Restoration Specifications for the Project. A Monitoring and Reporting Plan, based on these specifications, must be submitted to the Water Board, including annual reporting to the Water Board for a period of three years. The impacts are fully mitigated with these BMPs.

EXEMPTION GRANTED

As demonstrated above, the Project meets the conditions and criteria for an exemption to the SEZ 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. 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 his intent to issue an exemption or exception

subject to this Resolution at least ten (10) days before the exemption or exception 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 \$640.00 application filing fee required for WQC under Section 401 for the 3794 Montreal Road 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 3794 Montreal Road 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 implement the *Meadow Restoration Specifications for the Colony Inn Site Restoration Project*, dated January 7, 2010, and follow the recommendations in the *Existing Conditions Memorandum*, dated July 28, 2008.
2. Project commencement must not begin until the soils on site are not saturated and stream flow has ceased.
3. A Monitoring and Reporting Plan based on the *Meadow Restoration Specifications* must be submitted **July 15, 2011** that includes implementation and monitoring/reporting schedules. The first year implementation report must include an as-built report, including topographic map, and must describe any problems encountered or variances from the approved design. All reports must also include photographs showing the sites before and after construction. Following the first year of implementation, the monitoring and reporting schedule must also include a minimum of two (2) years of monitoring, annual reports that summarize monitoring findings and evaluates the success in restoring wetlands and SEZ, and a final report indicating whether performance standards have been met.
4. Annual reports must be submitted to the Water Board by **November 15th** of each year following implementation of the project beginning **November 15, 2011** and ending **November 15, 2013**. This period may be extended by the Executive Officer.
5. A qualified professional with experience in hydrology and wetland restoration must monitor the construction of the mitigation. Any additional work or variation from the described work, which may result in additional or increased impacts to waters of the State (including quantity or quality of water or habitat) or reduce the amount of wetland created, is not authorized unless approved in writing by the Executive Officer prior to implementation.
6. The Applicant must stabilize from erosion all areas of temporary impacts to waters of the State and all other areas of temporary upland disturbance which could result in a discharge or a threatened discharge to waters of the State.
7. 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.
8. 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.

9. Water Board staff must be notified 48 hours prior to commencement of ground disturbance.
10. 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.
11. 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.
12. 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.
13. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
14. 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 at (530) 542-5430.

HAROLD J. SINGER
EXECUTIVE OFFICER

cc: Sloan Gordon, Gordon Consulting Inc.
Pat Dobbs / Tahoe Regional Planning Agency
Amy Kennedy / California Department of Fish and Game, Rancho Cordova
Dave Smith / Wetlands Regulatory Office (WTR-8), US EPA, Region 9
(via email at R9-WTR8-Mailbox@epa.gov)
Lynette Blanchard / U.S. Army Corps of Engineers, Reno Office
Bill Orme / State Water Resources Control Board, Division of Water Quality
(via email at Stateboard401@waterboards.ca.gov)

TT/clhT/ 3794 Montreal Rd 401 4-27-11 TT.doc
[File: WDID 6A091103001 / 3794 Montreal Road Project / El Dorado County/]

California Environmental Protection Agency