



Lahontan Regional Water Quality Control Board

M E M O R A N D U M

TO: Water Board Members

FROM: *Patty Z. Kouyoumdjian*
Patty Z. Kouyoumdjian
Executive Officer

LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: April 30, 2014

SUBJECT: EXEMPTION TO THE 100-YEAR FLOODPLAIN AND STREAM ENVIRONMENT ZONE WASTE DISCHARGE PROHIBITION WITHIN THE LAKE TAHOE HYDROLOGIC UNIT FOR THE CALIFORNIA DEPARTMENT OF TRANSPORTATION HIGHWAY 89 CASCADE ROAD TO EMERALD BAY ENVIRONMENTAL IMPROVEMENT PROGRAM PROJECT, EL DORADO COUNTY

In ten days, I intend to sign the enclosed memorandum granting an exemption to the above-cited discharge prohibition specified in the *Water Quality Control Plan for the Lahontan Region* (Basin Plan). The exemption will allow the Project proponent to implement a water quality improvement project on Highway 89.

The Project meets requirements for an exemption to the discharge prohibition. A public notice soliciting comments on the proposed Project will be posted on the Water Board's website for 10 days.

Please contact me at (530) 542-5412, or Bud Amorfini at (530) 542-5463, if you have any questions or comments regarding this matter.

Enclosure: Draft Water Quality Certification Order and Prohibition Exemption

BA/adw/T: R6T-2014-XXXX_Emeraldbay_Board Notice
File Under:

Lahontan Regional Water Quality Control Board

MEMORANDUM

TO: Mike Bartlett, Project Manager
Caltrans District 3
703 B. Street
Marysville, CA 95901

FROM: PATTY Z. KOUYOUMDJIAN
Executive Officer
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE:

SUBJECT: BOARD ORDER NO. R6T-2014-XXXX, FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND PROHIBITION EXEMPTION FOR HIGHWAY 89 CASCADE ROAD TO EMERALD BAY ENVIRONMENTAL IMPROVEMENT PROJECT, EL DORADO COUNTY, WDID 6A091403004

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 and application filing fee from the California Department of Transportation (Applicant) for the Highway 89 Cascade Road to Emerald Bay Environmental Improvement Program (EIP) Project (Project) in El Dorado County. The Water Board also received information to support granting an exemption to 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. 6A091403004. 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 (CCR), 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	6A091403004						
Applicant	Mike Bartlett, Project Manager Caltrans District 3 703 B. Street Marysville, CA 95901						
Agent	Cassandra Evenson, Biologist Caltrans District 3 703 B. Street Marysville, CA 95901						
Project Name	Highway 89 Cascade Road to Emerald Bay EIP Project						
Project Purpose and Description	<p>The purpose of the proposed Project is to improve the quality of runoff water discharging to Lake Tahoe and its tributaries. The Project includes the following:</p> <ul style="list-style-type: none"> • Rehabilitate or replace existing drainage systems and culverts • Install additional storm water infiltration basins • Revegetate bare soils or eroding areas, install rock slope protection and energy dissipaters for runoff • Repair failed pavement sections 						
Location (closest City & County)	South Lake Tahoe, El Dorado County						
Location Latitude/Longitude	Latitude: 38.9480; Longitude: -120.0945						
Hydrologic Unit(s)	South Tahoe Hydrologic Area, 634.10 in the Lake Tahoe Hydrologic Unit, 634.00						
Project Area	15 acres (Environmental Study limits)						
Receiving Water(s) Name	Lake Tahoe, Cascade Creek, Eagle Creek						
Water Body Type(s)	Lake, Stream						
Designated Beneficial Uses	MUN, AGR, GWR, FRSH, NAV, REC-1, REC-2, COMM, COLD, WILD, BIOL, MIGR, SPWN, WQE, FLD						
Area of Water(s) of the U.S. (WOUS) within the Project area	0.05 acres						
Project Impacts (Fill) to waters of the state, including WOUS.	Waterbody Type	Permanent			Temporary		
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
	<i>Lake</i>						
	<i>Riparian</i>						
	<i>Stream</i>	0.0003	15	2.0	0.0004	15	4.0
	<i>Wetland</i>						
	Total						
Project Impacts (Dredge/Excavation) to waters of the state, including WOUS.	Waterbody Type	Permanent			Temporary		
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yard
	<i>Lake</i>						
	<i>Riparian</i>						
	<i>Stream</i>						
	<i>Wetland</i>						
	Total						

Table of Project Information Continued:

Federal Permit(s)	The Applicant has applied to the U.S. Army Corps of Engineers (USACOE) to proceed under a Nationwide Permit No. 3, pursuant to CWA section 404.
Non-Compensatory Mitigation	Impacts to Environmentally Sensitive Areas (ESAs) beyond those identified will be avoided and protected by ESA fencing. Potential direct impacts to streams and fisheries will be avoided by conducting work during seasonal low water levels or when flows have ceased. Clear water diversions may be required at Cascade and Eagle Creeks as part of rehabilitating or replacing the existing culverts. All disturbed areas will be re-contoured to match pre-Project conditions as much as possible to minimize erosion. All bare areas will be re-vegetated using soil amendments, seed and mulch. Sediment and erosion control Best Management Practices (BMPs) will be used throughout the construction period and for winterization to control erosion.
Compensatory Mitigation	0.0004 acres of temporary impacts restored 1:1.
Applicable Fees	\$1,201 (\$1,097 low impact flat discharge fee, plus \$104 ambient surcharge at 9.5 % = \$1,201).
Fees Received	\$1,201

CEQA COMPLIANCE

The Water Board has determined that this Project is exempt from the California Environmental Quality Act (CEQA)(Public Resources Code Section 21000 et seq.). In accordance with section 15301, the basis for CEQA exemption is “Existing Facilities.” A Notice of Exemption will be filed with the State Clearinghouse concurrently with issuing this Order.

WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITION

The Water Board has adopted a Basin Plan, in which Chapter 5 specifies the following discharge prohibition:

“13. The discharge or threatened discharge, attributable to new development in Stream Environment Zones (SEZs) 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.”

The Project involves disturbance attributable to new development for placement of extended culverts, flared-end sections, rock energy dissipation, and scour protection within SEZs that would threaten violations of the above-cited prohibition.

STREAM ENVIRONMENT ZONES WASTE DISCHARGE PROHIBITION EXEMPTION

Chapter 5 of the Basin Plan allows exemptions to the above-cited SEZ discharge prohibition for erosion control if all the following findings can be made:

1. *The project, program, or facility is necessary for environmental protection.*

The Project is necessary to control and treat pollutants in roadway stormwater runoff as required under the Applicant's Municipal Separate Storm Sewer System NPDES permit (No. 2012-0011-DWQ). The Project is necessary for environmental protection.

2. *There is no reasonable alternative, which avoids or reduces the extent of encroachment in the SEZ.*

The purpose of the Project is to stabilize eroding areas and reduce potential erosion from existing flows using energy dissipation structures. There are no reasonable alternatives that would reduce the extent of encroachment in the SEZ because the erosion and drainage control structures must, by their very nature, be placed in the SEZ.

3. *Impacts are fully mitigated.*

The Applicant has proposed BMPs that will be in place during Project implementation, including scheduling the work when stream levels are low, installing temporary sediment control and stabilization BMPs during construction, and implementing permanent post-construction stabilization measures. The Project incorporates BMPs to ensure that erosion and surface runoff problems caused by the Project will be mitigated to levels of insignificance. Impacts are fully mitigated.

EXEMPTION GRANTED

In accordance with Resolution R6T-2008-0031, the Water Board delegated authority to the Executive Officer to grant exemptions to the Basin Plan prohibition cited above where the following is met.

The executive officer has the authority to authorize the project under an individual water quality certification, the project meets the exemption criteria set forth in the Basin Plan, and the project's primary purpose is reduce, control, or mitigate existing sources of erosion or water pollution.

The Project will be regulated under a CWA section 401 WQC, meets the exemption criteria set forth in the Basin Plan, and is needed to reduce, control, or mitigate existing sources of erosion. The Applicant meets the criteria for an exemption and the Project is hereby granted an exemption to the above-cited waste discharge prohibition.

Except in emergency situations, the Executive Officer shall notify the Water 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 WOUS, 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 is valid) until such certification is obtained. The Applicant submitted a complete application and fee required for WQC under section 401 for the Project. The Applicant has applied for USACOE authorization to proceed under Nationwide Permit No. 3 pursuant to CWA section 404.

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 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 Basin Plan, or may cause a condition or threatened condition of pollution or nuisance, or cause any other violation of the 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 CWA, 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 CWA.
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 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. No debris, cement, concrete (or wash water therefrom), oil or petroleum product 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.
2. The Applicant must immediately (within two hours) 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.

3. The Applicant must prevent the introduction or spread of noxious/invasive weeds within the Project and staging area. Measures must include the cleaning of all equipment and gear that has been in an infested site with water heated to 120 degrees Fahrenheit or more, 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.
4. Rock materials must be washed and free of adhered soil materials prior to placement into SEZs. The discharge of wastewater to surface waters from rock washing is not authorized by this Order.
5. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
6. An emergency spill kit must be at the Project site at all times.
7. 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.
8. A dewatering plan must be developed and provided for Water Board review prior to beginning any dewatering or clear water diversion operations.

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 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 CWA 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 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 Bud Amorfini, Engineering Geologist, at (530) 542-5463 or Alan Miller at (530) 542-5430.

cc: Patrick Moeszinger, California Department of Fish and Wildlife,
Rancho Cordova Office
Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9
(via email at R9-WTR8-Mailbox@epa.gov)
Leah Fisher, U.S. Army Corps of Engineers, California North Branch Office
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Bill Orme, State Water Resources Control Board, Division of Water Quality
(via email at Stateboard401@waterboards.ca.gov)