

## Truckee Donner Public Utility District

Board of Directors  
Joseph R. Aguera  
Jeff Bender  
J. Ron Hemig  
John Hillstrom  
Patricia S. Sutton  
  
General Manager  
Michael D. Holley

June 26, 2009

State Water Resources Control Board  
Office of Chief Counsel  
Jeannette L. Bashaw, Legal Analyst  
1001 "I" Street, 22<sup>nd</sup> Floor  
Sacramento, CA 95814

**Subject:** Petition to Denial of Clean Water Act Section 401 Water Quality Certification and Basin Plan Waste Discharge Prohibition Exemption for the Donner Lake Electric Substation Culvert Installation Project, Nevada County, WDID # 6A290808003

Dear Ms. Bashaw,

The Truckee Donner Public Utility District (District) received a California Regional Water Quality Control Board, Lahontan Region (Regional Water Board) letter dated May 29, 2009 informing the District of denial of Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) for the Donner Lake Electric Substation Culvert Installation Project. The Regional Board letter states that the denial of the WQC is based upon project activities not conforming to the Lahontan Basin Plan Waste Discharge Prohibition Exemption criterion, specifically "*the installation of a 107 linear foot culvert within the 100-year floodplain of an unnamed tributary of Donner Lake*". A copy of the Regional Board letter dated May 29, 2009 is included in this Petition as Exhibit A. A copy of the District's response to the denial dated June 22, 2009 is included in this Petition as Exhibit B.

Pursuant to Water Code section 13320; Title 23, California Code of Regulations (CCR) sections 2050-2068, any person who is aggrieved by an action, or a failure to act, by a Regional Water Board may file a petition for review with the State Water Resources Control Board (State Water Board).

According to the instructions for filing a Petition obtained at the State Water Board web site, the following information is provided.

1. Name, address, telephone number and e-mail address (if available) of the petitioner.
2. The action or inaction of the Regional Water Board being petitioned, including a copy of the action being challenged or any refusal to act, if available. If a copy of the regional board action is not available, the petitioner must explain why it is not included.



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3. The date the Regional Water Board acted, refused to act, or was requested to act.
4. A statement of the reasons the action or inaction was inappropriate or improper.
5. How the petitioner is aggrieved.
6. The action the petitioner requests the State Water Board to take.
7. A statement of points and authorities for any legal issues raised in the petition, including citations to documents or hearing transcripts that are referred to.
8. A statement that copies of the petition have been sent to the Regional Water Board.
9. A statement that the issues raised in the petition were presented to the Regional Board before the Regional Board acted, or an explanation of why the petitioner could not raise those objections before the Regional Board.

The District has adopted a CEQA Final Mitigated Negative Declaration (SCH#2007122022) for the project, and has received a Nationwide Permit 12 from the U.S. Army Corps of Engineers and a Streambed Alteration Agreement from the California Department of Fish and Game for this project action.

This Petition is being sent by mail and fax per the filing instructions. A copy of the Petition is also being sent via e-mail to [jbashaw@waterboards.ca.gov](mailto:jbashaw@waterboards.ca.gov). The District is requesting a return receipt to ensure the e-mail transmittal is received by the State Water Board.

If you have any questions please call Mr. Joe Horvath directly at (530) 582-3969. I look forward to your response to this Petition.

Sincerely,

Michael D. Holley, P.E.  
General Manager

cc: Harold J. Singer, Lahontan Regional Water Quality Control Board

**Petition to Denial of Clean Water Act Section 401 Water Quality Certification and Basin Plan Waste Discharge Prohibition Exemption for the Donner Lake Electric Substation Culvert Installation Project, Nevada County, WDID # 6A290808003**

To: State Water Resources Control Board  
Office of Chief Counsel  
Jeannette L. Bashaw, Legal Analyst  
1001 "I" Street, 22<sup>nd</sup> Floor  
Sacramento, CA 95814

The Truckee Donner Public Utility District (District) hereby Petitions the State Water Resource Control Board (State Board) for review of denial of Clean Water Act Section 401 Water Quality Certification (WQC) and Basin Plan Waste Discharge Prohibition Exemption for the Donner Lake Electric Substation Culvert Installation Project, Nevada County, WDID# 6A290808003.

The formal denial of the Basin Plan Prohibition Exemption and WQC application by the Lahontan Regional Water Quality Control Board (Regional Board) pursuant to California Code of Regulations (CCR) Title 23, Section 3837, subdivision b(1) was dated May 29, 2009 (Exhibit A). The letter states that the denial of the WQC is based upon project activities not conforming to the prohibition exemption criterion, specifically the installation of a 107 linear foot culvert within the 100-year floodplain of an unnamed tributary of Donner Lake.

The District wrote a response to the denial letter, dated June 22, 2009, that was sent to the Regional Board by certified mail on June 23, 2009 and is included as Exhibit B. A copy of this Petition has been sent to Mr. Harold Singer, Executive Director, Lahontan Regional Board by certified mail on June 26, 2009.

The District conducted an extensive alternatives analysis that assessed multiple system designs. For the District to provide an essential public service the Donner Lake substation needs to be expanded to be serviceable in a manner consistent with the safe operation of an electric substation facility. A 107 linear foot-long drainage channel must be contained within a 6 foot-wide arched culvert system to convey storm water runoff underneath the substation and protect electrical infrastructure. Approximately 70% of the existing drainage channel leading from Interstate 80 to Donner Lake is already contained in culverts (Figure 2). There is no reasonable alternative to locating the substation facility anywhere but at the present site.

There is no negative impact to either Donner Lake or the Truckee River from the project. The culvert will be placed at a gradient that is much more flat than the existing channel, which will result in a reduction of water flow velocity that will correspondingly reduce scouring and improve water quality into Donner Lake and the Truckee River.

The District has adopted a CEQA Final Mitigated Negative Declaration (SCH#2007122022) for the project. In addition a Nationwide Permit 12 from the U.S. Army Corps of Engineers and a Streambed Alteration Agreement from the California Department of Fish and Game has been issued for the project.

This Petition is filed in accordance with Section 13320 of the California Water Code and CCR, Title 23, Sections 2050. The District hereby provides the following information required by 23 CCR 2050(a):

**1. Name and Address of Petitioner**

Truckee Donner Public Utility District  
11570 Donner Pass Road  
P.O. Box 309  
Truckee, CA 96160

Attn: Michael D. Holley, P.E., General Manger  
Telephone: (530) 587-3896  
Email: [michealholley@tdpud.org](mailto:michealholley@tdpud.org)

**2. The Specific Action or Inaction of the Regional Board which the State Board is requested to Review**

The District seeks review of the Regional Boards denial of a Basin Plan prohibition exemption and WQC application associated with the Donner Lake Electric Substation Culvert Installation Project, Waste Discharge Identification Number (WDID) #6A290808003. Copies of the Regional Board denial letter and the Districts response are included as Exhibits A and B, respectively.

**3. The date the Regional Water Board acted, refused to act, or was requested to act.**

The Regional Boards denial of the WQC application and Basin Plan prohibition exemption letter was dated May 29, 2009.

**4. A Statement of the Reasons the Action or Inaction was Inappropriate or Improper.**

The Regional Board Order is inappropriate and improper for the reasons set forth in the following documents and correspondence, all of which are incorporated herein by reference:

- On December 22, 2007, the District circulated a California Environmental Quality Act (CEQA) Initial Study/Mitigated Negative Declaration for the Project through the State Clearinghouse (SCH#2007122022). A copy was sent

to the Lahontan Regional Water Quality Control Board through the Clearinghouse process.

- No comments were received by any state agency on the CEQA document which was subsequently adopted by the District Board of Directors.
- On August 7, 2008 the District submitted a Clean Water Act Section 401 WQC application to the Regional Board.
- On September 5, 2008 the Regional Board responded to the application and requested additional information to complete the application.
- On September 25, 2008, a site visit took place and included Regional Board environmental specialist Tobi Tyler and District representatives.
- On November 3, 2008 the following additional information was provided to the Regional Board by the District including a Revised WQC application; a comprehensive Hydrology-Hydraulic Report prepared by the engineering firm R.W. Beck, Inc. which includes Q10 and Q100 discharges for pre- and post-construction; a copy of the CEQA Final Mitigated Negative Declaration (SCH#2007122022); a copy of the Pre-Construction Notification submitted to the U.S. Army Corps of Engineers for coverage under Nationwide Permit 12 for the Donner Lake drainage channel; demarcation of the 100-year flow and ordinary high water; alternatives analysis; mitigation; diversion plan; demonstration that the Project meets Exemption Criteria for the 100-year Floodplain Prohibition; and compliance with Storm Water Regulations. The District also submitted a copy of the approved California Department of Fish and Game Streambed Alteration Agreement Number 1600-2008-0223-R2 to the Regional Board.
- On November 3, 2008, the District submitted a revised WQC application and additional information requested in the Regional Boards September 5, 2008 letter. Information contained in this letter was based on best available technology and on site communication with Ms. Tyler on September 25, 2008 and included a comprehensive Hydrology-Hydraulic Report prepared by the engineering firm of R.W. Beck, Inc.
- On January 9, 2009 the District submitted a letter to the Regional Board requesting an Application Status for Water Quality Certification.
- On April 3, 2009, the District submitted a Notice of Intent (NOI) for the project to be regulated under Regional Board Order No. R6T-2003-0004, general waste discharge requirements for construction activities disturbing between 10,000 square feet and one acre of land.

- On May 1, 2009 Ms. Tyler submitted an email to Dr. Glenn Merron requesting additional information to support the following exemption criteria: *"The project is necessary to provide essential public services and protect public health and safety"* and *"There is no reasonable alternative to locating the project or portions of the project within the 100-year floodplain"*.
- An email response was submitted to Ms. Tyler on May 5, 2009 by Dr. Glenn Merron explaining that the Donner Lake substation project was required to continue providing an essential public service and that there is no reasonable alternative to locating the new substation facility anywhere but at the present site. The location of the existing Donner Lake substation and the proximity of the NV Energy transmission corridor and utility infrastructure along Donner Lake Road and Cedar Point Drive necessitates that a new substation be contiguous with the existing substation.
- The steep topography (i.e., slopes >25%) above and below Donner Lake Road and at the substation site, prohibits any engineering design for the rebuilt substation other than that as shown in our application and referenced documents.
- On May 12, 2009 a phone conference took place between Alan Miller and Tobi Tyler from the Regional Board, District representatives, and Dr. Glenn Merron to discuss the prohibition exemption criteria associated with the project.
- On May 29, 2009 the District received a letter from the Regional Board stating the Denial of CWA Section 401 WQC and Basin Plan Waste Discharge Prohibition Exemption for "Donner Lake Electric System Distribution Project", Nevada County, WDID# 6A290808003. Note the incorrect title as used by the Regional Board in the May 29, 2009 letter to the District.
- On June 22, 2009 the District submitted a written response to the denial letter received from the Regional Board.

**5. The Manner in Which the Petitioner is Aggrieved.**

The District is aggrieved by the Order which sets forth limitations which are more stringent than required under current water quality regulations. In the District's judgment, the Order does not provide for measurable betterment of water quality of its receiving waters. The District is also aggrieved because it will be exposed to greater hardship from not providing an essential public service in a safe and effective environment. The culvert is designed to improve water quality over existing conditions in a safe and effective manner.

**6. The Action the Petitioner requests the State Water Board to take.**

Petitioner requests that the State Board reverse the denial Order by the Regional Board.

**7. A statement of points and authorities for any legal issues raised in the Petition , including citations to documents or hearing transcripts that are referred to.**

The District's points and authorities in support of this Petition are contained in the documents outlined in Section 4 above. The District reserves the right to supplement this statement upon receipt and review of the administrative record.

**8. A statement that copies of the Petition have been sent to the Regional Water Board and to the discharger, if different from the Petitioner.**

A true and correct copy of the Petition was mailed First Class on June 26, 2009, to the Regional Board at the following address:

Mr. Harold Singer, Executive Officer  
Lahontan Regional Water Quality Control Board  
2501 Lake Tahoe Blvd.  
South Lake Tahoe, CA 96150

**9. A statement that the issues raised in the Petition were presented to the regional board before the Regional Board acted, or an explanation of why the Petitioner could not raise those objections before the regional board.**

The substantive issues and objections raised in this Petition were raised before the Regional Board as provided in the documentation outlined in Section 4. The District is requesting a prohibition exemption and submitting a Petition to the State Water Resource Control Board to review the action of the Regional Board in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050. The information included in this Petition will demonstrate that the project meets the prohibition exemption criterion and the installation of the culvert is the best alternative to convey water through the project site, improve water quality, and provide public safety.

The Regional Board responded to the District's application as follows:

*"I recommend that you consider redesigning the electrical substation project to completely avoid the 100-year floodplain. The redesigned project could include a bridge or two that spans the 100-year floodplain areas on the project site to access the District-owned parcels on either side of the stream."*

The District responded that the project design and the culvert installation is based on recommendations by the District's engineering consultant to create the most effective and efficient electrical substation. It is necessary to contain the drainage within an arched culvert in order to ensure that water is diverted away from the electrical infrastructure. The "bridge" idea proposed by the Regional Board is completely unreasonable due to the steep slope (in excess of 25%) of the project site. The information provided to the Regional Board presents alternatives analyzed that demonstrate reasonable options are not available other than the District's proposed project.

#### **10. Conclusion**

The information included in this Petition demonstrates that the project meets the prohibition exemption criterion and the installation of the culvert is the best alternative to convey water through the project site and improve water quality. Based on the information previously provided to the Regional Board and supplemental information above, the District is requesting a prohibition exemption and submits a Petition to the State Water Resource Control Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050.

**EXHIBIT A**



# California Regional Water Quality Control Board

## Lahontan Region



Linda S. Adams  
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

Arnold Schwarzenegger  
Governor

MAY 29 2009

05-02-09A00:57 RCVD

Joe Horvath  
Truckee Donner Public Utility District  
P.O. Box 309  
Truckee, CA 96160

### **DENIAL OF CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND BASIN PLAN WASTE DISCHARGE PROHIBITION EXEMPTION FOR THE DONNER LAKE ELECTRIC SYSTEM DISTRIBUTION PROJECT, NEVADA COUNTY, W DID 6A290808003**

The California Regional Water Quality Control Board, Lahontan Region (Water Board) has received a complete application for Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) from the Truckee Donner Public Utility District (Applicant or District) for the above-cited proposed project that includes covering 107 linear feet of an unnamed stream with a six-foot wide arched culvert to expand the Applicant's electric substation near Donner Lake. The stream is tributary to Donner Lake, a tributary to the Truckee River.

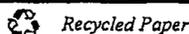
#### **Basin Plan Prohibition**

The Water Board has adopted the *Water Quality Control Plan for the Lahontan Region* (Basin Plan), which specifies that "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 Truckee River or any tributary to the Truckee River, is prohibited." The Water Board may grant an exemption to this prohibition provided relevant exemption criteria in the Basin Plan are satisfied. In most cases, the approval of exemptions is delegated to the Water Board Executive Officer. The proposed project activities do not conform with this prohibition since the activities include the installation of 107 linear feet of culvert within the 100-year floodplain of an unnamed tributary to Donner Lake.

#### **Background**

On September 5, 2008, Water Board staff responded to the August 7, 2008 WQC application and requested additional information needed to complete the application, including an alternatives analysis and information to demonstrate that the Project meets the criteria for an exemption to the 100-year floodplain discharge prohibition (see enclosure). Staff inspected the Project site and a proposed mitigation site with District representatives on September 25, 2008. We received additional information on November 5, 2008, including a revised WQC application, a copy of the California Environmental Quality Act (CEQA) Final Mitigated Negative Declaration for the Electric System Distribution Project and

*California Environmental Protection Agency*



the District's responses to information requests in our September 5, 2008 letter. On April 3, 2009, we received a Notice of Intent (NOI) from the District as application for the project to be regulated under Water Board Order No. R6T-2003-0004, general waste discharge requirements for construction activities disturbing between 10,000 square feet and one acre of land.

### **100-year Floodplain Discharge Prohibition and Exemption Criteria**

As stated in our September 5, 2008 letter, one prohibition exemption criterion that the project must meet is the following:

- "The project, by its very nature, must be located within the 100-year floodplain. (This finding is not required for those portions of outdoor public recreation projects to be located in areas that were substantially altered by grading and/or filling activities before June 26, 1975.) **The determination of whether a project, by its very nature, must be located in a 100-year floodplain shall be based on the kind of project proposed, not the particular site proposed.** Exemptions for projects such as recreational facility parking lots and visitor centers, which by their very nature do not have to be located in a 100-year floodplain, will not be allowed in areas that were not substantially altered by grading and/or filling prior to June 26, 1975." (emphasis added)

In order to evaluate whether this project meets this exemption criterion, I must analyze the Project as a whole; i.e., the type of project being considered is an electric substation expansion project. As such, an electric substation project does not, by its very nature, have to be located in a 100-year floodplain. "Electric substation" is a project type that is not water-dependent, unlike linear projects requiring stream crossings or water supply intake pipeline projects. Therefore, this project does not qualify for an exemption as proposed. I recommend that you consider redesigning the electric substation project to completely avoid the 100-year floodplain. The redesigned project could include a bridge or two that spans the 100-year floodplain areas on the project site to access the District-owned parcels on either side of the stream.

In addition to the exemption criterion cited above, another exemption criterion that must be met is the following:

- There is no reasonable alternative to locating the project or portions of the project within the 100-year floodplain.

Information satisfactory to support this finding has not been located in any of the materials provided thus far. The explanation provided to satisfy this criterion states, in part, "the location of the existing Donner Lake substation and the utility infrastructure necessitates that a new [expanded] substation be contiguous with the existing substation." The information provided does not explain or demonstrate why the two parcels could not be utilized for the expanded substation without covering 107 feet of the stream with an arched culvert. Other than the proposed arched culvert, the only proposed structure over the stream is a proposed access road, which could span the stream and floodplain. Since the 100-year floodplain is less than 20 feet wide at its widest section, it appears reasonable (without demonstration to the contrary) to avoid the floodplain altogether and still utilize both parcels for the substation

without violating the discharge prohibition. The information provided does not present alternatives analyzed, or demonstrate that reasonable alternatives are not available.

#### **Action on the Water Quality Certification Application**

Pursuant to California Code of Regulations (CCR) Title 23, section 3837, subdivision b(1), this letter also serves as a formal denial with prejudice of your WQC application on the basis that the proposed project does not comply with the Basin Plan. This denial is with prejudice because the activity proposed in the application would violate the discharge prohibition in the Basin Plan as described above. This letter, therefore, serves as both a formal denial of a Basin Plan prohibition exemption and a formal denial of your WQC application. I cannot make the required findings (mentioned above) to meet the exemption criteria and therefore I cannot certify that the proposed discharge is in accordance with State requirements.

The District may request that the Water Board consider a prohibition exemption. Please contact me to arrange a hearing date, if desired (July 8, 2009, at earliest). Alternatively, I recommend revising the project to avoid the floodplain entirely, in which case a prohibition exemption or WQC Order would not be required.

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 the 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.

If you have questions, please contact Tobi Tyler, Water Resources Control Engineer, at (530) 542-5435 or Alan Miller, Chief, North Basin Regulatory Unit, at (530) 542-5435.



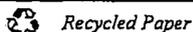
HAROLD J. SINGER  
EXECUTIVE OFFICER

Enclosure: September 5, 2008 letter

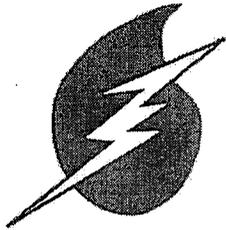
cc: Glenn Merron Ph.D., Inland Ecosystems  
Dave Smith / Wetlands Regulatory Office (WTR-8), US EPA, Region 9  
Erin Hess / U.S. Army Corps of Engineers, Sacramento Office  
Bill Orme / State Water Resources Control Board, Division of Water Quality

TT/clhT: Donner Lake Substation denial.doc  
[File: Donner Lake Electric Substation Culvert Project/WDID 6A290808003]

*California Environmental Protection Agency*



**EXHIBIT B**



## Truckee Donner Public Utility District

Board of Directors  
Joseph R. Aguera  
Jeff Bender  
J. Ron Hemig  
John Hillstrom  
Patricia S. Sutton

General Manager  
Michael D. Holley

June 22, 2009

Mr. Harold J. Singer  
Executive Officer  
California Regional Water Quality Control Board, Lahontan Region  
2501 Lake Tahoe Blvd.  
South Lake Tahoe, CA 96150

**Subject:** Response to Denial of Clean Water Act Section 401 Water Quality Certification (Regional Board letter dated May 29, 2009), WDID # 6A290808003

Dear Mr. Singer,

The Truckee Donner Public Utility District (District) received the California Regional Water Quality Control Board, Lahontan Region (Regional Board) letter dated May 29, 2009 informing the District of denial of Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) for the "Donner Lake Electric System Distribution Project". The Regional Board letter states that the denial of the WQC is based upon project activities not conforming to the Basin Plan Waste Discharge Prohibition Exemption criterion, specifically "*the installation of a 107 linear foot culvert within the 100-year floodplain of an unnamed tributary of Donner Lake*".

The "Donner Lake Electric System Distribution Project" as indicated in your May 29, 2009 letter is not the appropriate title for this project. Please note that the Project is entitled the "Donner Lake Electric Substation Culvert Installation Project" as stated in the District's original Application of August 5, 2008. This title was also correctly used by the Regional Board in a letter to the District dated September 5, 2008. The retrofit and expansion of the District's existing substation is necessary to provide an adequate and reliable electric supply and distribution system to meet current and future needs and is not within the Regional Board's jurisdiction. The project title has not changed.

The District's Application with the Regional Board is that the installation of an arched culvert covering 107-feet of a drainage channel, artificially created by the construction of Interstate 80 (I-80) some 50 years ago, is the best alternative to convey water through the project site, provide an essential public service in a safe environment, and improve water quality. The District believes that this project is relatively "minor" in relation to "major" projects occurring in the Truckee area (e.g., construction and drainage modifications on I-80 immediately above the District's Project site). The arched culvert design, in contrast to the original oval culvert design, was Alan Miller's suggestion to the District on April 23, 2008 as the best alternative to minimize water quality impacts. Both Robert Erlich and Tobi Tyler of the Regional Board visited the



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project site on May 20, 2008 and September 25, 2008 respectfully. The project site does not contain any sensitive plant or wildlife communities. The project contains no suitable habitat for any listed species. The close proximity to residential roadways with high human activity levels significantly limits any potential available habitat at the project site.

## 1.0 Project Description

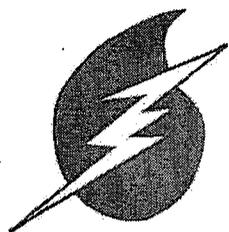
The existing Donner Lake Substation was constructed approximately 35 years ago and will be decommissioned and demolished to make room for the construction of rebuilt and expanded facility. The rebuilt substation will occupy both the current property and an adjacent property owned by the District. The rebuilding of the Donner Lake Substation is a component of the master plan required to maintain an essential public service. For the rebuilt substation to be serviceable in a manner consistent with the safe operation of an electric facility, a 107 linear foot drainage channel, located between the two properties, must be contained within a 6 foot wide arched culvert system to convey storm water runoff underneath the substation and protect electrical infrastructure. The total area for the rebuilt substation is approximately 0.6 acres, which is spread between the two adjacent properties. Of the total 0.6 acres, approximately 393 square feet of drainage channel (<0.009 acres) would be modified to install the arched culvert.

The District has adopted a California Environmental Quality Act (CEQA) Final Mitigated Negative Declaration (SCH#2007122022) for the project and no substantial comments were received from any state, federal, or local agency through the public review period. The District has also received Nationwide Permit 12 from the U.S. Army Corps of Engineers and a Streambed Alteration Agreement from the California Department of Fish and Game associated with the installation of a culvert in the drainage channel at Donner Lake Substation. Copies of these approved permits were submitted to the Regional Board in November 2008.

## 2.0 Basin Plan Prohibition and Exemption Criteria

The following section responds to the May 29, 2009 letter from the Regional Board denying the WQC application for the Project. Since the original submittal of the WQC application, there has been a substantial amount of additional paperwork, staff time, and documented justification submitted as requested by the Regional Board. A timeline of coordination between the Regional Board, the District, and the District's consultants for this project is included in Appendix A.

The Regional Board states that the project activities do not conform to the prohibition since the activities include the installation of a 107 linear foot culvert within the 100-year floodplain of an



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unnamed tributary of Donner Lake. The letter continues to outline two specific exemption criteria that the project does not comply with including:

- A. *"There is no reasonable alternative to locating the project or portions of the project within the 100-year floodplain".*
- B. *"The project, by its very nature, must be located within the 100-year floodplain".*

The following information has been previously submitted in the original WQC application packets, personal communications, and additional request for information from the Regional Board. The District is restating these facts as follows.

## 2.1 Location of Project in 100-year Floodplain

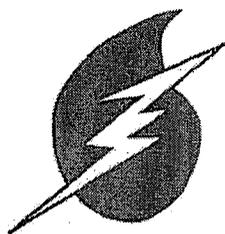
*"The determination of whether a project, by its very nature, must be located in a 100-year floodplain shall be based on the kind of project proposed, not the particular site proposed." ... "An electric substation project does not, by its very nature, have to be located in a 100-year floodplain. "Electric substation" is a project type that is not water-dependent, unlike linear projects requiring stream crossings or water supply intake pipeline projects."*

The existing substation was constructed adjacent to the drainage channel approximately 35 years ago. In order to provide an adequate, reliable, and high quality electric supply and distribution system to meet current and future needs, the substation must be retrofitted and expanded.

There is no reasonable alternative to locating the rebuilt substation facility anywhere but at the present site. The location of the existing Donner Lake substation and the proximity of the NV Energy transmission corridor and utility infrastructure along Donner Lake Road and Cedar Point Drive necessitates that a rebuilt substation be contiguous with the existing substation.

The steep slopes >25% above Donner Lake Road and below the existing substation on Cedar Point Drive also prohibit expanding an electrical facility to any other location but the proposed site. The steep topography prohibits any engineering design that could have been mechanically functional as a safe substation.

*"I recommend that you consider redesigning the electrical substation project to completely avoid the 100-year floodplain. The redesigned project could include a bridge or two that spans the 100-year floodplain areas on the project site to access the District – owned parcels on either side of the stream."*



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It is necessary to contain the drainage within an arched culvert in order to ensure that water is diverted away from the electrical infrastructure. The project design and the culvert installation is based on recommendations by the District's engineering consultant to create the most effective and efficient electrical substation. The property topography (slopes in excess of 25%) is not conducive for construction of "bridges" over a 2-foot wide channel.

## 2.2 Reasonable Alternatives to Locating the Project within the 100-year Floodplain

*"There is no reasonable alternative to locating the project or portions of the project within the 100-year floodplain." In addition, "Information satisfactory to support this finding has not been located in any of the materials provided thus far. The explanation provided to satisfy this criterion states, in part, "the location of the existing Donner Lake substation and the utility infrastructure necessitates that a new [expanded] substation be contiguous with the existing substation." The information provided does not explain or demonstrate why the two parcels could not be utilized for the expanded substation without covering 107 feet of the stream with an arched culvert. Other than the proposed arched culvert, the only proposed structure over the stream is a proposed access road, which could span the stream and floodplain. Since the 100-year floodplain is less than 20 feet wide at its widest section, it appears reasonable (without demonstration to the contrary) to avoid the floodplain altogether and still utilize both parcels for the substation without violation of the discharge prohibition. The information provided does not present alternatives analyzed, or demonstrates that reasonable alternatives are not available."*

The District and our consultant R.W. Beck conducted an extensive alternatives analysis that assessed multiple system designs and infrastructure locations and routing. Construction of the rebuilt substation requires that storm water runoff in the drainage channel be managed compatible with safety and operation standards of an electrical utility. It is not practical or economically feasible to construct bridges to access both sides of the property as the Regional Board suggests due to site topography. There is already an existing access road leading to the substation from Donner Lake Road with an existing culvert under the road conveying runoff from I-80 and the immediate hillside through the adjoining parcel.

The District objects to the water terminology as used in the Regional Board's letter. We are concerned on the use of the following terminology, specifically "floodplain," "discharge," and "stream." Included as Appendix B are definitions from the Water Quality Control Board and other prominent sources as to what constitutes the definitions of these terms. The terminology used in the Regional Board's letter for describing this drainage channel environment does not accurately depict the existing environmental setting of the project. This drainage channel does



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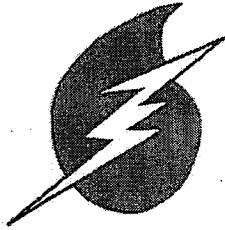
not meet the California State Water Resources Control Board's definition of "Floodplain: The flat or nearly flat land along a river or stream or in a tidal area that is covered by water during a flood". This drainage channel is located on a steep slope (in excess of 25%) does not meet this definition and therefore is not a floodplain. The Donner Lake Substation does not discharge any water, and the existing drainage channel is a conveyance of water to Donner Lake that is already 70% culverted. The California State Water Resources Board defines "Discharger: Any person who proposes to discharge or discharges waste that could affect water quality of California waters. The term includes any person who owns, or is responsible for the operation of, a waste management unit." This project will only improve water quality. These clarifications alone should remove the reasons for Denial of this request.

### 3.0 Existing Water Quality Conditions

Donner Lake is historically and recreationally important. Donner Lake's watershed is the most highly urbanized watershed of any lake in the Truckee River watershed. It is affected by forest management activities and stormwater from Interstate 80, the railroad, subdivisions and commercial development (RWQCB Truckee River Watershed Overview). Caltrans and the Town of Truckee are currently rehabilitating the existing drainage and storm water treatment systems on I-80 and Donner Pass Road. The majority of the water originating from the north side of I-80 into Donner Lake is conveyed through multiple culverts and drainage channels under the interstate and through various roadways and subdivisions. Water quality issues in the area include sediment transport from degraded drainages and pollutants from vehicular traffic.

The Project includes the installation of a 6 foot bottomless arch culverts in a narrow, incised, drainage channel approximately 107-feet in length. Water in the drainage channel originates from the north side of I-80 and is conveyed in culverts under the interstate, Donner Pass Road, and a recently installed subdivision access road. The drainage channel continues down slope through several additional culverts (approx. 70% of the entire drainage is already culverted) and discharges into Donner Lake. Figures and Photos have been previously submitted to the Regional Board for this project and updated site photos (including the original Figure 2 submitted in August 2008) are included as Appendix C. There are no defined pools or riffles in this section of drainage channel and the channel is devoid of aquatic life. The channel serves as a water conveyance and this function would not be affected. Drainage channel function for groundwater recharge would be maintained by the construction of a bottomless arched culvert instead of an enclosed culvert.

There is no direct impact to either Donner Lake or the Truckee River from the project. The project will include both temporary and permanent Best Management Practices (BMPs) intended



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to prevent pollutants from affecting water quality. The project will improve existing water quality conditions by providing sediment traps at the vaults and lining the bottomless arch culvert with riprap. Considerable particulate matter pollutants are contained in the existing surface water runoff that originates from I-80 vehicular traffic during storm events and the design of the riprap basin will improve existing water quality flowing into Donner Lake.

Based on the results of the R.W. Beck report, the project will improve drainage hydraulics above existing conditions. The proposed culvert will be placed at a gradient that is much more flat than the existing channel, which will result in a reduction of water flow velocity that will correspondingly reduce scouring.

The new sections of bottomless arch culvert will not inhibit existing surface water flow or affect surface or ground water flow treatment capacity in the channel bed from existing conditions. There are no project elements that will reduce flood flow attenuation capacity.

#### 4.0 Compensatory Mitigation

In 2004, the Regional Board adopted Board Order Resolution (R6T-2004-0032) for the District's Donner Lake Water System Improvement Project that included exemption criteria from the Basin Plan prohibition. The project included numerous upgrade/replacement projects that disturbed wetland habitats and other surface water features. The District mitigated temporal losses of 2,613 square feet of wetland habitat (0.5:1 mitigation credit) by creating approximately 8,712 square feet of mitigation wetlands at its Greenpoint Springs property. As stated in the Regional Board's letter of August 11, 2004 (bottom of page 3) *"This amount of wetland mitigation substantially exceeds the Regional Board's 0.5:1 off-site mitigation ratio requirement."* The increased area of functional wetland has reduced erosion, improved water quality flowing into Donner Lake, and created self-sustaining habitat for wildlife, including state listed special-status species.

The total surface area of the drainage channel that would be impacted for culvert and headwall installation is approximately 393 square feet or <0.009 acres. As part of the August 5 and November 3, 2008 correspondence with the Regional Board, the District requested the consideration that compensatory mitigation for the 393 square feet of impacted drainage channel at the rebuilt substation be offset by a 2:1 mitigation ratio totaling 786 square feet of additional wetland already created at Greenpoint Springs.



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## 5.0 Conclusions

The information included in this response letter demonstrates that the project meets the prohibition exemption criterion and the installation of the culvert is the best alternative to convey water through the project site, improve water quality over existing conditions and provide an essential public service. Based on the information previously provided to the Regional Board and supplemental information in this letter, the District is requesting a prohibition exemption and petition of the State Water Resources Control Board to review the Denial of 401 WQC in accordance with Water Code Section 13320 and California Code of Regulations, Title 23, Section 2050. The following is a summary of the information demonstrating the proposed project meets the prohibition exemption criterion:

- In order to provide an adequate reliable electric system to meet current and future needs, the substation must be retrofitted and expanded.
- The District has adopted a CEQA Final Mitigated Negative Declaration (SCH#2007122022), and has received Nationwide Permit 12 from the U.S. Army Corps of Engineers, and a Streambed Alteration Agreement from the California Department of Fish and Game associated with impacts to the Donner Lake drainage channel.
- There is no direct impact to either Donner Lake or the Truckee River from the project. The project will include both temporary and permanent BMPs intended to prevent pollutants from affecting water quality. In fact, this project will improve existing water quality conditions by providing sediment traps at the vaults and lining the bottomless arch culvert with riprap.
- A diversion plan to protect water quality will be implemented during construction.
- Improvements to the channel represent a significant opportunity to improve water quality conditions flowing into Donner Lake.
- Donner Lake is one of the most urbanized lakes in the Truckee River watershed. Approximately 70% of the drainage channel is culverted and the channel is devoid of aquatic life.
- The District has requested that compensatory mitigation for the 393 square feet of impacted drainage channel at the substation be offset by a 2:1 mitigation ratio totaling 786 square feet of additional wetland already created at Greenpoint Springs. No response has been received from the Regional Board regarding the request.
- There is no reasonable alternative to locating the substation facility anywhere but at the present site. The location of the existing Donner Lake substation and the proximity of the NV Energy transmission corridor and utility infrastructure along Donner Lake Road and Cedar Point Drive necessitates that a rebuilt substation be contiguous with the existing substation.



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- The project design and the culvert installation is based on recommendations by the District's engineering consultant to create the most effective and efficient electrical substation. It is necessary to contain the drainage within a culvert to ensure that water is diverted away from the electrical infrastructure.
- The District and our consultant conducted an extensive alternatives analysis that assessed multiple system designs and infrastructure locations and routing. Construction of the rebuilt substation requires that storm water runoff in the drainage channel be managed in a manner compatible with safety and operation standards of an electrical utility.
- It is not practical or economically feasible to construct bridges to access both sides of the property as the Regional Board suggests due to the topography.

As stated in the conference call held on May 12, 2009 with District and Regional Board staff, we request that you inspect this site again as we feel the Regional Board does not have a full understanding of the site conditions or what the District is trying to accomplish to ensure an essential public service and improve water quality flowing into Donner Lake.

The District is requesting a Prohibition Exemption for this project. The District will file a petition with the State Water Resources Control Board, concurrent with this response, to review the Regional Board's action in accordance with Water Code Section 13320 and California Code of Regulations, Title 23, Sections 2050. We intend to pursue this action prior to the 30-day dead line which began with your letter dated May 29, 2009.

Sincerely,

Michael D. Holley, P.E.  
General Manager

cc: Alan Miller, Chief, Regional Water Quality Control Board, Lahontan Region  
Glenn Merron Ph.D., Inland Ecosystems  
Dave Smith, Wetlands Regulatory Office (WTR-8), U.S. EPA, Region 9  
Erin Hess, U.S. Army Corps of Engineers, Sacramento Office  
Bill Orme, State Water Resources Control Board, Division of Water Quality  
Theresa Lawson, R.W. Beck, Inc.

**APPENDIX A**  
**Timeline of coordination between the Regional Board, the District, and the**  
**District's consultants**

## **Project Consultation with the Regional Board**

Since the original submittal of the WQC application, there has been a substantial amount of additional paperwork, staff time, and justification requested by the Regional Board. The following is a chronological timeline of coordination between the Regional Board, the District, and the District's consultants for this project:

- On August 7, 2008, the District submitted the original Clean Water Act Section 401 WQC application and \$500 review fee.
- On September 5, 2008, the Regional Board responded to the application and requested additional information to complete the application, including:
  1. Demarcation of 100-year floodplain elevation and ordinary high water
  2. Alternative analysis
  3. Mitigation
  4. Diversion Plan
  5. Demonstration that the Project meets Exemption Criteria for the 100-year Floodplain Prohibition
  6. Compliance with Storm Water Regulations
- On September 25, 2008, a site visit took place and included Regional Board staff Tobi Tyler, District representatives, and the District's environmental consultant for the project, Dr. Glenn Merron.
- On November 3, 2008, the District submitted a revised WQC application and responded to additional information requested in the Regional Board's September 5, 2008 letter. Information contained in this letter was based on best available technology and information provided by the District's consultants and personal communications on site with Ms. Tyler on September 25, 2008. A comprehensive Hydrology-Hydraulic Report prepared by R.W. Beck was also included.
- On April 3, 2009, the District submitted a Notice of Intent (NOI) for the project to be regulated under Regional Board Order No. R6T-2003-0004, General Waste Discharge Requirements for construction activities disturbing between 10,000 square feet and one acre of land and a \$250 review fee.
- On May 1, 2009 Ms. Tyler sent an email to Dr. Glenn Merron requesting additional information to support the following exemption criteria:
  1. *"The project is necessary to provide essential public services and protect public health and safety"*
  2. *"There is no reasonable alternative to locating the project or portions of the project within the 100-year floodplain"*.
- A detailed email response was sent to Ms. Tyler on May 5, 2009 by Dr. Glenn Merron explaining that the Donner Lake substation project was required to continue providing an essential public service and that there is no reasonable alternative to locating the rebuilt substation facility anywhere but at the present site. This information had previously been submitted to the Regional Board in August, September (site visit), and November 2008.

- In May 2009, a phone conference took place between Regional Board staff Alan Miller and Tobi Tyler, District staff Joe Horvath, and Dr. Glenn Merron to discuss the prohibition exemption criteria associated with the project.
- On May 29, 2009, the District received a letter from the Regional Board stating the Denial of CWA Section 401 WQC and Basin Plan Waste Discharge Prohibition Exemption for Donner Lake Electric System Distribution Project, Nevada County, and WDID # 6A290808003.

**APPENDIX B**  
**Glossary of Water Quality Terminology**

## **Floodplain:**

California State Water Resources Control Board/EPA Glossary:

**Floodplain:** The flat or nearly flat land along a river or stream or in a tidal area that is covered by water during a flood.

Army Corps of Engineers:

### **Floodplain:**

1. A flat tract of land bordering a river, mainly in its lower reaches, and consisting of ALLUVIUM deposited by the river. It is formed by the sweeping of the meander belts downstream, thus widening the valley, the sides of which may become some kilometers apart. In time of flood, when the river overflows its banks, sediment is deposited along the valley banks and plains.
2. Synonymous with 100-year floodplain. The land area susceptible to being inundated by stream derived waters with a 1 percent chance of being equaled or exceeded in any given year.

The New Oxford American Dictionary:

**Floodplain:** An area of low-lying ground adjacent to a river, formed mainly of river sediments and subject to flooding

## **Discharge:**

California State Water Resources Control Board

**Discharger:** Any person who proposes to discharge or discharges waste that could affect the quality of California waters. The term includes any person who owns, or is responsible for the operation of, a waste management unit.

EPA Glossary:

**Discharge:** Flow of surface water in a stream or canal or the outflow of ground water from a flowing artesian well, ditch, or spring. Can also apply to discharge of liquid effluent from a facility or to chemical emissions into the air through designated venting mechanisms.

Army Corps of Engineers:

**Discharge:** The volume of water per unit of time flowing along a pipe or a channel. Commonly measured in cubic feet per second (cfs).

The New Oxford American Dictionary:

### **Discharge:**

2. Allow (a liquid, gas, or other substance) to flow out from where it has been confined.

**Stream/River/Ditch:**

Water Board:

**Stream:** No definition given

**River basin:** The land area drained by a river and its tributaries (See also Drainage basin).

EPA:

**Stream:** No definition given

Army Corps of Engineers:

**Stream :**

1. A course of water flowing along a bed in the Earth.
2. A current in the sea formed by wind action, water density differences, etc.; e.g. the Gulf Stream. See also CURRENT, STREAM.

Army Corps of Engineers:

**Ditch:**

A channel to convey water for irrigation or drainage.

The New Oxford American Dictionary:

**Stream:**

1. A small, narrow river.

**River:** A large, natural stream of water flowing in a channel to the sea, a lake, or another such stream.

**Ditch:** A narrow channel dug in the ground, typically used for drainage alongside a road or the edge of a field.

**APPENDIX C**  
**Photographs of Site and Figure 2**

**Photos clockwise from top left.**

Photo 1: Construction on Westbound Interstate 80 north of Donner Lake Substation.

Photo 2: Existing culvert on drainage ditch located on Eastbound Interstate 80.

Photo 3: Drainage from Interstate 80 runs east into the culvert shown in Photo 2 and enters the drainage ditch.

Photo 4: Staging area for Interstate 80 construction off of Donner Lake Road.

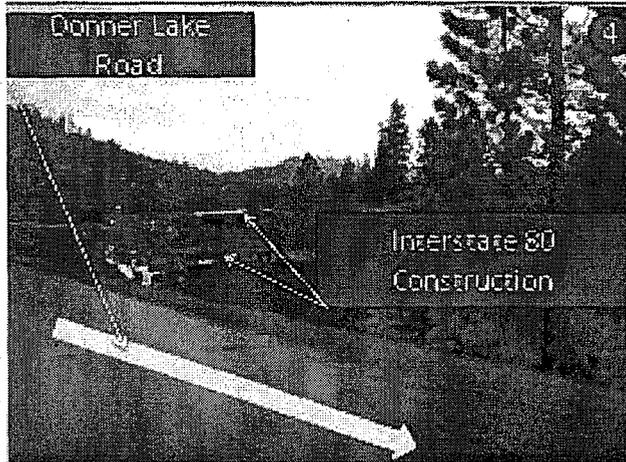
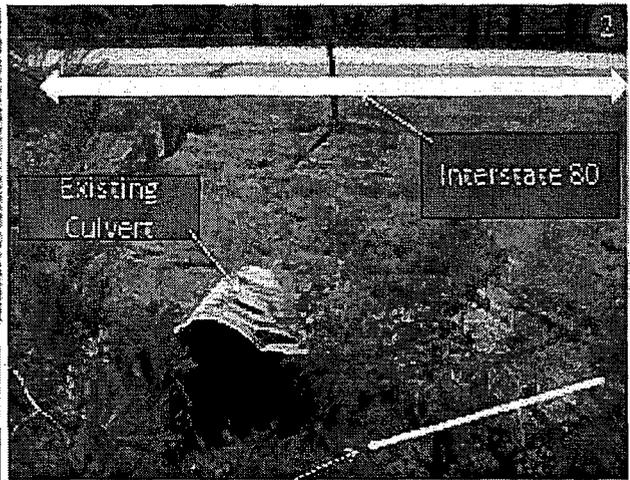
Photo 5: Recently installed culvert under subdivision access road within same drainage channel above the project site.

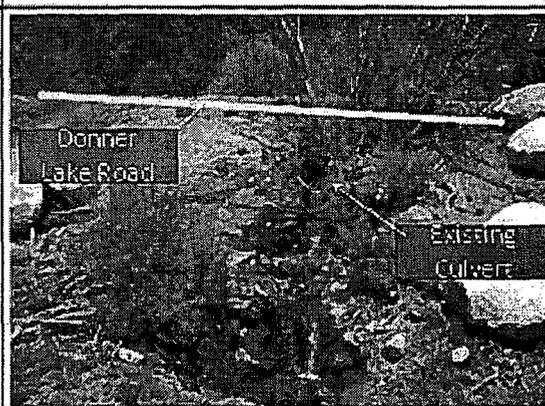
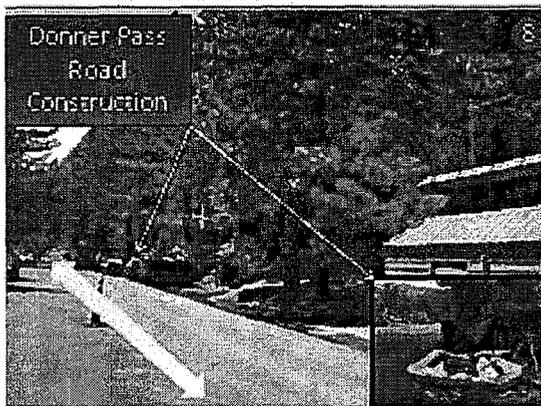
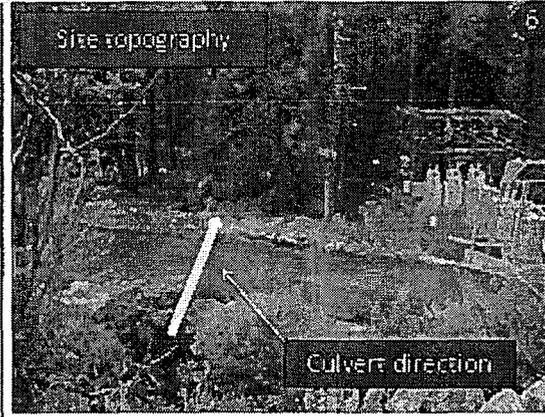
Photo 6: Donner Lake Substation shown on right, with existing culvert indicated by yellow arrow. Photograph shows the irregularity and steepness of site topography.

Photo 7: Donner Lake Substation off camera to the left of photograph. The existing culvert which runs under Donner Lake Road and a portion of the drainage ditch are shown.

Photo 8: Construction on Donner Pass Road south of the Donner Lake Substation.

Photo 8 *Inset*: Drop Inlet near construction on Donner Pass Road with BMP's. Drop inlets convey storm water runoff near the terminus of drainage ditches.





**Figure 2.**  
**Location of drainage channel**  
**from Interstate 80 to Donner Lake.**

