



Lahontan Regional Water Quality Control Board

MEMORANDUM

TO: Water Board Members

for

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

DATE: July 5, 2016

SUBJECT: Exemption to Stream Environment Zone Waste Discharge Prohibition within the Lake Tahoe Hydrologic Unit for the CSA 5 Erosion Control Project, Tahoma, 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, El Dorado County Transportation Division, to rehabilitate and install erosion controls in two ephemeral drainages in a Tahoma residential area as part of the Lake Tahoe Environmental Improvement Program.

The project meets requirements for an erosion control project 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

cc/w enc.: Dan Kikkert, P.E., El Dorado County Transportation Division
(via email at dan.kikkert@edcgov.us)
Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9
(via email at R9-WTR8-Mailbox@epa.gov)
Bill Orme, State Water Resources Control Board, Division of Water Quality
(via email at Stateboard401@waterboards.ca.gov)
Aaron Park, U.S. Army Corps of Engineers, Reno Field
(via email at Aaron.C.Park@usace.army.mil)
Patrick Moesinger, California Department of Fish and Wildlife
(via email at Patrick.Moesinger@wildlife.ca.gov)

AMY L. HONE, PH.D., CHAIR | PATTY Z. KOUYOUMDJIAN, EXECUTIVE OFFICER

Lahontan Regional Water Quality Control Board

Dan Kikkert, P.E.
El Dorado County Transportation Division
924B Emerald Bay Road
South Lake Tahoe, CA 96150
(via email at: dan.kikkert@edcgov.us)

Board Order No. R6T-2016-XXXX, Clean Water Act Section 401 Water Quality Certification for CSA 5 Erosion Control Project (Project), Tahoma, El Dorado County, WDID No. 6A091606001

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 El Dorado County Transportation Division (Applicant) for the CSA 5 Erosion Control Project (Project) in El Dorado County. The application received on June 9, 2016 was deemed complete on June 21, 2016. This WQC hereby assigns this Project the following reference number: Waste Discharge Identification (WDID) No. 6A091606001. 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 WQC, except that if the thirtieth day following the date of this WQC 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	6A091606001
Applicant	Dan Kikkert, P.E. El Dorado County Transportation Division 924B Emerald Bay Road South Lake Tahoe, CA 96150
Agent	None
Project Name	CSA 5 Erosion Control Project

Table of Project Information Continued

Project Purpose and Description	The Project purpose is to modify existing infrastructure to control erosion and improve downstream water quality. Project elements include replacing failing culverts, installing sediment traps, rock bowls, and rock slope protection, adding rock and erosion blankets to protect eroding drainage channels, and revegetating disturbed areas.									
Project Type	Non-restoration bank stabilization									
Project County	El Dorado									
Project Address or other Locating Information	Tahoma residential neighborhood on First Avenue near Oak Street, and Fourth Avenue near Hazel Street.									
Location Latitude/Longitude	Latitude: 39.061513, Longitude: -120.130985									
Hydrologic Unit(s)	Lake Tahoe Hydrologic Unit, 634.00, North Tahoe Hydrologic Area (634.20)									
Overall Project Area	300 acres (subdivision)									
Receiving Water(s) Name	Lake Tahoe and unnamed minor surface waters									
Water Body Type(s)	Ephemeral drainages									
Designated Beneficial Uses	MUN, AGR, GWR, REC-1, REC-2, COMM, COLD, WILD, SPWN									
Potential Water Quality Impacts	Sediment and other construction materials entering waters									
Area of Water(s) Within the Overall Project Area	0.13 acres									
Impacts of Fill and Excavation to Waters of the State, including Waters of the U.S.	Water-body Type	Temporary			Permanent					
					Physical Loss of Area			Degradation of Ecological Condition		
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
	<i>Lake</i>									
	<i>Riparian Zone</i>									
<i>Stream Channel</i>	0.025	145	14				0.009	11.5	2.9	
<i>Wetland</i>										
Federal Permits	The Applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Nationwide Permit 3, pursuant to CWA section 404.									
Non-Compensatory Mitigation	Work will be conducted in fall when conditions are expected to be relatively dry. Standard construction BMPs (temporary sediment and erosion controls, good housekeeping, etc.) will be used during construction. The Project involves installing permanent BMPs to improve water quality as part of the Lake Tahoe Environmental Improvement Program.									

Table of Project Information Continued:

Compensatory Mitigation	The Project's purpose is to improve storm water quality runoff by rehabilitating and enhancing failing drainage facilities. Permanent impacts will be mitigated onsite by restoring the capacity and function of ephemeral drainages and reducing further erosion. Temporary impacts will be mitigated by regrading and revegetating disturbed areas.						
	Mitigation for Temporary Impacts (CIWQS mitigation/restoration table side B)						
	Aquatic Resource Type	Unit	Establishment	Re-establishment	Rehabilitation	Enhancement	Preservation
	Wetland	Acres					
	Lake	Acres					
	Riparian Zone	Acres					
		Linear Feet					
	Stream Channel	Acres			0.025		
		Linear Feet			145		
	Mitigation for Permanent Degradation of Ecological Condition (CIWQS mitigation/restoration table side B)						
	Aquatic Resource Type	Unit	Establishment	Re-establishment	Rehabilitation	Enhancement	Preservation
	Wetland	Acres					
	Lake	Acres					
	Riparian Zone	Acres					
		Linear Feet					
Stream Channel	Acres					0.0009	
	Linear Feet					11.5	
Application Fee	\$200.00						
Fees Received	\$200.00						
Estimated Annual Active Discharge Fee ¹	\$0 (not applicable to "Low Impact Discharge" projects)						
Estimated Post-Discharge Monitoring Fee ¹	\$0						

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

WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITION

The Water Board has adopted a *Water Quality Control Plan for the Lahontan Region* (Basin Plan) which, in Chapter 5.2, specifies the following discharge prohibition:

“3. The discharge attributable to human activities of any waste or deleterious material to Stream Environment Zones (SEZs) in the Lake Tahoe HU is prohibited.”

The Project involves the discharge attributable to human activities of waste to surface waters within an SEZ in the Lake Tahoe HU.

EXEMPTION CRITERIA AND FINDINGS

The Water Board may grant exemptions to Prohibition 3, above, under the following circumstances:

For erosion control projects if all of the following findings can be made:

- (a) There is no reasonable alternative, including relocation, that avoids or reduces the extent of encroachment below the highwater rim of Lake Tahoe, within the 100-year floodplain, or within the SEZ;

The Project is intended to restore, protect, and enhance the capacity and function of existing water quality treatment features. These features are located within SEZs; therefore, there is no reasonable alternative to avoid encroachment into the SEZs.

- (b) Impacts are fully mitigated.

The Project incorporates appropriate temporary and permanent erosion controls that will restore, protect, and enhance the capacity and function of the SEZs. The nature of the Project fully mitigates impacts to SEZs.

EXEMPTION GRANTED

Resolution No. R6T-2015-0038 delegates to the Executive Officer the authority to grant exemptions to Basin Plan waste discharge prohibitions. The Project meets the conditions in the Basin Plan for granting an exemption. A notice of exemption will be posted on the Water Board website and distributed through an interested-persons mailing list, allowing at least 10 days for comments to be submitted.

As demonstrated above, the Project meets the conditions and criteria for an exemption to the waste discharge prohibition. The Project is hereby granted an exemption to the above-cited waste discharge prohibition.

CEQA COMPLIANCE

El Dorado County adopted a Mitigated Negative Declaration (State Clearinghouse No. 2016022058) on April 19, 2016, and filed a Notice of Determination on April 19, 2016 for the Project, pursuant to CEQA.

The Water Board, acting as a CEQA Responsible Agency in compliance with CCR, title 14, section 15096, has considered El Dorado County's Mitigated Negative Declaration (MND) for the Project and mitigation measures incorporated into the MND to reduce potentially significant water quality impacts to less than significant with mitigation. As a result of the analysis, the Water Board finds, with the conditions required herein, the mitigation measures in the MND are adequate to reduce potentially significant water quality impacts to less than significant.

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 U.S., must provide to the permitting agency a certification that the discharge will be in compliance with applicable water quality standards of the state in which the discharge will originate. No section 404 permit may be granted (or valid) until such certification is obtained. The Applicant submitted a complete application and the fees required for WQC under section 401 for the Project. The Applicant has applied for 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 WQC:

1. This WQC 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 WQC 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 WQC 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. 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 Water Code.
5. The Project must be constructed and operated in accordance with the Project described in the WQC application that was submitted to the Water Board. Deviation from the Project description constitutes a violation of the conditions upon which this WQC was granted. Any significant changes to this Project that would have a significant or material effect on the findings, conclusions, or conditions of this WQC, 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 WQC and civil or criminal liability.
7. The Water Board may add to or modify the conditions of this WQC 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 WQC, 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 WQC does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under the California Endangered Species Act (Fish and Game Code sections 2050, et seq.) or the federal Endangered Species Act (16 U.S.C. sections 1531, et seq.). If a "take" will result from any act authorized under this WQC, 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 WQC.

Additional Conditions

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

1. Construction equipment must be clean and free from oil, grease, and loose metal material and must be removed from service if necessary to protect water quality.

2. Debris, cement, concrete (or wash water therefrom), oil or other petroleum products must not be allowed to enter into or be placed where they may be washed from the Project site by rainfall or runoff into waters of the state. When operations are completed, any excess material must be removed from the Project work area and any areas adjacent to the work area where such material may be transported into waters of the state.
3. The Applicant must immediately notify Water Board staff by telephone whenever an adverse condition occurs as a result of this discharge. Such a condition includes, but is not limited to, a violation of the conditions of this WQC, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. Pursuant to CWC section 13267(b), a written notification of the adverse condition must be provided to the Water Board within two weeks of occurrence. The written notification must identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to any modifications by Water Board staff, for the remedial actions.
4. An emergency spill kit must be at the project site at all times.
5. 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 SEZ fill or SEZ 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 WQC.
 - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this WQC.
6. The Applicant must ensure that Contractor employs necessary measures to prevent the introduction or spread of noxious/invasive weeds within the Project and staging areas. These measures may include the treatment of onsite infestations, the cleaning of all equipment and gear that has been in an infested site, 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.

Enforcement

1. In the event of any violation or threatened violation of the conditions of this WQC, 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 WQC.

2. In response to a suspected violation of any condition of this WQC, the State Water Board or the Water Board may require the holder of any permit or license subject to this WQC 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 WQC, the Water Board may add to or modify the conditions of this WQC as appropriate to ensure compliance.

Section 401 Water Quality Certification Requirements Granted

I hereby issue this WQC 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 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, 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. Please contact Bud Amorfini at bud.amorfini@waterboards.ca.gov (530-542-5463) or Alan Miller at alan.miller@waterboards.ca.gov (530-542-54300) if you have any questions or comments regarding this permit. **Electronic document submittal is required. Please send your comments or documents to the Water Board's email address at Lahontan@waterboards.ca.gov and include your WDID No. and Project/Facility Name in the Subject Line.**

PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

cc: Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9
(via email at R9-WTR8-Mailbox@epa.gov)
Bill Orme, State Water Resources Control Board, Division of Water Quality
(via email at Stateboard401@waterboards.ca.gov)
Aaron Park, U.S. Army Corps of Engineers, Reno Field
(via email at Aaron.C.Park@usace.army.mil)
Patrick Moesenger, California Department of Fish and Wildlife
(via email at Patrick.Moesinger@wildlife.ca.gov)