

Lahontan Regional Water Quality Control Board

October 30, 2015

Lane Murray, General Manager
Fleur Du Lac Estates Association
P.O. Box 628
Homewood, CA 96141

BOARD ORDER NO. R6T-2015-0067 CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND NOTICE OF APPLICABILITY FOR COVERAGE UNDER THE MARINA GENERAL PERMIT FOR FLEUR DU LAC MAINTENANCE DREDGING AND ROCK RIP RAP INSTALLATION PROJECT, PLACER COUNTY, GENERAL PERMIT NO. R6T-2011-0024-027 WDID NO. 6A311408002

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, a Notice of Intent (NOI) to comply with the *National Pollutant Discharge Elimination System General Permit for Industrial Activities and Maintenance Dredging at Marinas in the Lake Tahoe Basin*, Board Order No. R6T-2011-0024 (Marina General Permit), and application filing fee for the Fleur Du Lac Maintenance Dredging Project (Project) on August 14, 2014. The Water Board deemed the application complete on September 11, 2015. Based on the information contained in your application, it is our determination this Project meets the required conditions for WQC and to be approved under the Marina General Permit. All of the requirements for maintenance dredging contained in the Marina General Permit are applicable to your Project; you must comply fully with sections V.A., VI., VII. (except C.3., but including section C.3.e.), VIII., Attachment E (the Monitoring and Reporting Program), and Attachment I. This Order for WQC and Notice of Applicability (NOA) for coverage under the Marina General Permit hereby assigns this Project the following reference number: Waste Discharge Identification (WDID) No. 6A311408002. Please use this reference number in all future correspondence regarding this Project. A copy of the Marina General Permit may be found at the Water Board website at:

http://www.waterboards.ca.gov/lahontan/water_issues/programs/permitting/index.shtml.

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	6A311408002
Applicant	Lane Murray, General Manager Fleur Du Lac Estates Association P.O. Box 628 Homewood, Ca 96141
Agent	Jan Brisco P.O. Box 1888 Tahoe City, CA 96145
Project Name	Fleur Du Lac Maintenance Dredging and Rock Rip Rap Installation Project
Project Purpose and Description	<p>The Applicant proposes maintenance dredging operations to remove sediment from the existing marina to maintain access to the harbor and boat slips. The area will be dredged to elevation 6,219 feet Lake Tahoe Datum (LTD). A total of approximately 2,150 cubic yards of sediment will be dredged from three areas totaling approximately 24,710 square feet. A turbidity curtain (18 mm thickness) will be secured in place with a heavy chain across the mouth of the harbor and around the outer boat slip area to be dredged. The dredging will be done using a long-armed excavator located on the shore of the harbor above ordinary high water elevation 6,223 LTD). The excavator will deposit the material into loading hoppers and low level conveyors will move the material approximately 135 feet to be deposited into sealed trucks. The dredged material will be transported to the Placer County sanitary landfill outside the Lake Tahoe Basin.</p> <p>The Applicant also proposes placing rock rip rap in two locations: (a) 300 cubic yards (over 1,355 square feet) for wave-attenuation on the lake side of an existing steel sheet pile wall at the entrance of the harbor, and (b) 120 cubic yards (over 870 square feet) covering existing concrete steps and a vertical concrete wall inside the harbor.</p>
Project Type	Boating and Navigation
Project County	Placer
Project Address or Other Locating Information	4000 West Lake Boulevard Homewood, CA 96145
Location Latitude/ Longitude	Latitude: 39.102456 N; Longitude: 120.160561 W (center)
Hydrologic Unit(s)	Lake Tahoe Hydrologic Unit, 634.00
Project Area	1.05 acres (46,000 square feet)
Receiving Water(s) Name	Lake Tahoe
Water Body Type(s)	Lake
Designated Beneficial Uses	MUN, AGR, GWR, NAV, REC-1, REC-2, COMM, COLD, WILD, BIOL, MIGR, SPWN
Potential Water Quality Impacts	Discharge of waste earthen materials from dredging activities.

Table of Project Information Continued:

Impacts of Dredging to Waters of the State, including Waters of the U.S. (WOUS)	Water-body Type	Temporary			Permanent					
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards			
	<i>Lake</i>				0.57		2,150			
Impacts of Fill and Excavation to Waters of the State, including WOUS	Water-body Type	Temporary			Permanent					
					Physical Loss of Area			Degradation of Ecological Condition		
	Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards	
	<i>Lake</i>				0.05	175	420			
Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACE) authorization to proceed under Nationwide Permit No. 35, pursuant to CWA section 404 and section 10 of the Rivers and Harbors Act.									
Non-compensatory Mitigation (for Dredge and Fill Discharge to Waters of the State)	To minimize turbidity, all dredging will be done behind turbidity curtains, which will remain until the turbidity is reduced to acceptable levels, as specified in the Marina General Permit. The 30-inch wide conveyor belts to move the dredged material will be above a continuous, 12-foot-wide, Mirafi woven filter fabric bordered by staked fiber rolls. The filter fabric will capture any material spilled from the conveyor belts so personnel can deposit it into the trucks for transport.									
Compensatory Mitigation	Compensatory mitigation will be satisfied through the USACE Sacramento District In-Lieu Fee Program within the Tahoe Watershed (Hydrologic Unit 1650301). Mitigation credits will be purchased at the ratio of 2.5:1 for a total of 0.125 acres of lake habitat.									
Application Fee	\$2,963									
Estimated Annual Active discharge Fee ¹	\$1,200 (annual active discharge fee assessed each fiscal year or portion of the state fiscal year during which discharges occur until the Water Board issues a Notice of Completion of Discharges Letter to the Applicant; fee based on \$600 for less than 2,860 cy of dredged material removed, or number of cubic yards X \$0.21 per cubic yard for 2,860 cy and over and \$600 for fill and excavation discharges.)									
Total Fees Due at Time of Permit Issuance	\$2,963									
Fees Received	\$2,963									

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).

CEQA COMPLIANCE

Water Board staff has determined that this Project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.). In accordance with CEQA Guidelines section 15304(g), the basis for CEQA exemption for the dredging operations is "Minor Alterations to Land." The Water Board will file a Notice of Exemption with the State Clearinghouse concurrently with this Order.

MONITORING AND REPORTING PROGRAM NO. R6T-2011-0024

This is a one-time maintenance dredging project. In accordance with the Marina General Permit, section VII.B, the Applicant must adhere to the monitoring and reporting requirements specified in Attachment E, Section IV.C, Maintenance Dredging Monitoring. It is your responsibility to ensure that all required analyses are conducted in accordance with the reporting requirements and limits specified in the Monitoring and Reporting Program for the Marina General Permit.

BASIN PLAN DISCHARGE PROHIBITIONS

The Basin Plan specifies the following waste discharge prohibitions applicable to surface waters, 100-year floodplains, and Stream Environment Zones (SEZs) in the Lake Tahoe basin:

1. *The discharge attributable to human activities of any waste or deleterious materials to surface waters of the Lake Tahoe Hydrologic Unit is prohibited.*
2. *The discharge attributable to human activities of any waste or deleterious material to land below the highwater rim of Lake Tahoe or within the 100-year floodplain of any tributary to Lake Tahoe is prohibited.*
3. *The discharge attributable to human activities of any waste or deleterious material to SEZs in the Lake Tahoe Hydrologic Unit is prohibited.*

BASIN PLAN DISCHARGE PROHIBITION EXEMPTION CRITERIA AND FINDINGS

1. The Water Board may grant an exemption to Prohibition 1, above, when the Water Board finds all of the following criteria are satisfied:
 - a. The discharge of waste will not individually or collectively, directly or indirectly, adversely affect beneficial uses, and
 - b. There is no reasonable alternative to the waste discharge, and
 - c. All applicable and practicable control and mitigation measures have been incorporated to minimize potential adverse impacts to water quality and beneficial uses.

The Project is intended to maintain access to the Fleur Du Lac Harbor and provide wave attenuating stabilization and rock revetment to areas outside and inside the harbor. The combination of temporary BMPs (e.g., turbidity curtains) and Project design elements (e.g., woven fabric and fiber rolls under the conveyor belts used to transport the dredged material) will prevent adverse impacts to the lake's beneficial uses. There is no reasonable alternative that would preclude the need for a discharge exemption. All applicable and practicable control and mitigation measures as described, above, have been incorporated to minimize potential adverse impacts to water quality and beneficial uses.

2. The Water Board may grant exemptions to Prohibitions 2 and 3, above, for repair and replacement of existing structures, provided that the repair or replacement does not involve the loss of additional lake habitat, or SEZ or floodplain function, when the Water Board finds that all applicable and practicable control and mitigation measures have been incorporated

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into the Project to minimize any discharges of wastes to surface water during or following construction.

As described, above, the Applicant has minimized the impact of wastes to the extent feasible while still providing needed repairs and stabilization of existing structures. There is no reasonable alternative to the proposed Project, as all structures to be repaired, stabilized, and protected are located within Lake Tahoe. All applicable and practicable control and mitigation measures as described above have been incorporated into the Project to minimize any discharges of wastes to surface waters during or following construction.

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

DELEGATION OF AUTHORITY FOR GRANTING AN EXEMPTION

The Water Board has delegated authority to grant exemptions for Basin Plan waste discharge prohibitions to the Executive Officer pursuant to Resolution No. R6T-2015-0038 for specific discharges where the proposed Project meets the conditions in the Basin Plan.

PROHIBITION EXEMPTION GRANTED

As demonstrated above, the Project meets the conditions and criteria for exemptions to the above-cited waste discharge prohibitions. A draft notice of exemption was posted on the Water Board website and distributed through an interested persons mailing list allowing at least ten (10) days to submit comments. The Project is hereby granted an exemption to the above-cited waste discharge prohibitions.

SECTION 401 WATER QUALITY CERTIFICATION

Authority

Section 401 of the CWA (33 U.S.C., paragraph 1341) requires that any applicant for a CWA section 404 permit, who plans to conduct any activity that may result in discharge of dredged or fill materials to waters of the United States, shall 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 has submitted a complete application and applicable filing fees for WQC under section 401 for the Project. This Order for WQC is based upon the information provided in the application and subsequent correspondence. The USACE will regulate the Project under Nationwide Permit No. 35 pursuant to section 404 of the CWA and section 10 of the Rivers and Harbors Act.

CCR, title 23, section 3831(e) grants the Water Board Executive Officer the authority to grant or deny water quality certification for projects in accordance with section 401 of the CWA. The Project qualifies for such WQC.

Standard Conditions

Pursuant to CCR title 23, section 3860, the following standard conditions are requirements of this certification:

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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 shall 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 shall be conditioned upon total payment of the full fee required under CCR, title 23, section 3833, unless otherwise stated in writing by the certifying agency.
4. Neither Project construction activities nor operation of the Project may cause a violation of the Water Quality Control Plan for the Lahontan Region (Basin Plan), may cause a condition or threatened condition of pollution or nuisance, or cause any other violation of the 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 which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under the California Endangered Species Act (Fish and Game Code sections 2050 et seq.) or the federal Endangered Species Act (16 U.S.C. sections 1531 et seq.). If a "take" will result from any act authorized under this certification, the Applicant must obtain authorization for the take prior to construction or operation of the Project. The Applicant is responsible for meeting all requirements of the applicable Endangered Species Act for the Project authorized under this certification.

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Additional Conditions

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

1. This WQC Order authorizes maintenance dredging to a **lake bottom depth elevation of 6,219 feet** LTD within the 0.57 acre area of Fleur Du Lac Harbor described in the application.
2. The Project must be implemented only after removal of aquatic invasive species at the marina. The Project must not introduce, or increase the presence of, aquatic invasive species.
3. Water Board staff must be notified a minimum of **forty-eight hours** prior to commencing dredging.
4. Turbidity curtains must be used during Project implementation to effectively contain and isolate wastes from dredging and prevent turbidity from lakebed sediments outside of the curtained area.
5. All rock imported to the site for use in the Project must be thoroughly washed and be free of any silt or clay material (free of minus #200 sieve material).
6. No later than **November 16, 2015** and prior to initiating the Project, the Applicant must provide to the Water Board a report, acceptable to the Executive Officer, that includes the following:
 - a) Pre-dredge monitoring results, as required in the Marina General Permit, Attachment E, section IV.C.1; and
 - b) Aquatic invasive species monitoring and removal results.
7. Prior to initiating the Project, the Applicant must provide documentation of whether there are any subsurface utilities in the area of construction. Locating subsurface utilities within the Project's area of construction can be accomplished by: (1) contacting all utilities (both public and private) that provide service in the area, documenting these contacts; (2) contacting Underground Service Alert, documenting this contact; or, (3) some other equivalent affirmative action to determine whether or not there are any subsurface utilities in the area of construction. The area of construction is defined as any area within the Project boundaries where there will be excavation, boring, or driving of piles or other materials/products. If subsurface utilities are located in the area of such activities, the Applicant must also provide a utility avoidance plan that will be followed during construction.
8. **No later than April 29, 2016**, you must provide to this office a technical report that fulfills the requirements in section V.C.1 of Attachment E to the Marina General Permit, including the final bathymetric survey of the dredging area that describes the actual final depths in the area of the dredging activities and the volumes of material dredged from the area. This report must evaluate a statistically representative portion of the dredged area, and include a certification from a California licensed land surveyor or registered civil engineer that the elevations, as measured **within one week** after dredging operations are completed, are as reported.

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9. In addition to the monitoring and reporting requirements specified in the Marina General Permit's Attachment E, section IV.C.2. during dredging, if a sediment plume is visible at any time outside of the turbidity curtain, the Applicant must immediately cease dredging operations, measure the turbidity within the plume area, and implement measures to eliminate the discharge. The Applicant must also delineate the size of the area by visually documenting the extent of the plume with a series of at least six photographs. Turbidity measurements may be taken with a hand held field meter. The sample location and sample results must be recorded in a logbook and emailed to the Water Board at Lahontan@waterboards.ca.gov within 12 hours of taking the turbidity measurements.
10. Dredging operations must immediately cease if inclement weather or wave and/or wind action threatens to cause suspended sediment discharges to spread turbidity beyond the curtained dredging area. The Applicant must take immediate action to ensure that turbidity outside the curtained containment area is kept to a minimum at all times, even in adverse conditions, such as high winds, wave action, or currents.
11. A copy of this WQC Order, a copy of the complete WQC application submitted to the Water Board, and the utility avoidance plan (required by additional condition, above) must be available **at the Project site** during dredging operations and until Water Board staff accepts monitoring results and authorize turbidity curtain removal.
12. The turbidity curtain shall not be removed until Water Board staff verifies monitoring results demonstrating that the turbidity within the Project area do not exceed 3 NTU or current, post-project, background turbidity levels, whichever is higher.
13. Construction and mechanical equipment must be monitored for leaks, and removed from service if necessary to protect water quality. Mechanical equipment that will be submersed in Lake Tahoe during the dredging operation must be steam-cleaned and inspected for leaks prior to use.
14. The use of chitosan or any flocculent to reduce turbidity in the lake is prohibited.
15. An emergency spill kit must be at the Project site at all times.
16. The Applicant is responsible for informing any contractors of the specific conditions contained in this WQC Order and maintaining compliance with the conditions of this Order.
17. The Applicant must provide information to the Water Board verifying the purchase of mitigation credits from the USACE Sacramento District In-Lieu Fee Program within the Lake Tahoe Watershed (Hydrologic Unit 16050101). Mitigation credits must be purchased by **September 30, 2016** for a total of 0.125 acres of lake habitat.

Enforcement

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

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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 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 shall 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.

CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION GRANTED

I hereby issue this Order certifying that any discharge from the referenced Project will comply with the applicable provisions of 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) of the Clean Water Act, and with other applicable requirements of state law. This discharge is also regulated under the Marina General Permit and 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 Order.

Except insofar as may be modified by any preceding conditions, all 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 Order and (b) compliance with all applicable requirements of the Basin Plan.

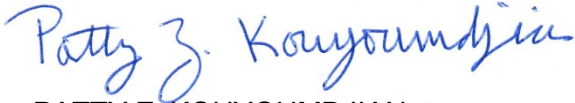
General Information

1. Failure to abide by the conditions of the Marina General Permit and this Order could result in an enforcement action as authorized by provisions of the Porter-Cologne Water Quality Control Act.
2. You are responsible for informing any contractors of the waste discharge requirements, the specific conditions contained in this Order, and for verifying compliance with these requirements.
3. The required annual fee for this Order (as specified in the annual billing you will receive from the State Water Resources Control Board) must be submitted until this Order is officially revoked. The Water Board will initiate revocation procedures after a Notice of Termination is provided to this office.

If you have any questions or comments regarding this permit, please contact Tobi Tyler, Water Resources Control Engineer, at tobi.tyler@waterboards.ca.gov (530.542.5435) or Alan Miller, PE, Chief, North Basin Regulatory Unit, at alan.miller@waterboards.ca.gov (530.542.5430).

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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 Facility Name in the Subject Line.



PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

cc (via email):

Jan Brisco
Tiffany Good, TRPA
Ninette Lee, California State Lands Commission, Sacramento
Bob Hosea, CA Dept. of Fish and Game, Rancho Cordova
Kristine Hanson, U. S. Army Corps of Engineers, Reno
Jason Brush, Wetlands Regulatory Office (WTR-8), USEPA, Region 9
Bill Orme, SWRCB, Division of Water Quality

TT/ma/T: R6T-2015-0067_Fleur Du lac Dredging 401 and NOA_6A311408002
ECM/ WDID No. 6A311408002