

Lahontan Regional Water Quality Control Board

April 29, 2015

Placer County Department of Public Works
7717 North Lake Boulevard
Kings Beach, CA 96143
dlaplant@placer.ca.gov

BOARD ORDER NO. R6T-2015-0019, CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND PROHIBITION EXEMPTION FOR THE LOWER CHIPMUNK AND OUTFALL WATER QUALITY IMPROVEMENT PROJECT, PLACER COUNTY, WDID 6A311503003

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 Placer County (Applicant) for the Lower Chipmunk and Outfall Water Quality Improvement Project (Project) in Kings Beach, Placer County. This Order for WQC hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A311503003. Please use this reference number in all future correspondence regarding this Project.

Any person aggrieved by this action of the Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and California Code of Regulations (CCR), title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

PROJECT DESCRIPTION

Table of Project Information:

WDID Number	6A311503003
Applicant	Dan LaPlante, P.E. Placer County Department of Public Works 7717 North Lake Boulevard Kings Beach, CA 96143
Agent	Stephen Peck, P.E. Cardon 295 Highway 50, Suite 1 Zephyr Cove, NV 89448-1533

KIMBERLY COX, CHAIR | PAITY Z. KOUYOUMDJIAN, EXECUTIVE OFFICER

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Table of Project information Continued:

Project Name	Lower Chipmunk and Outfall Water Quality Improvement Project						
Project Purpose and Description	Install stormwater drainage and treatment improvement in the Kings Beach commercial core area.						
Project Type	Water quality improvement						
Project County	Placer						
Project Address or other Locating Information	Kings Beach at terminus of lower Chipmunk Street and Lake Tahoe.						
Location Latitude/Longitude	Latitude 39.232, Longitude -120.0166						
Hydrologic Unit(s)	634.00 – Lake Tahoe Hydrologic Unit						
Overall Project Area	1.8 acres						
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	Sediment and other construction-related pollutants						
Area of Water(s) within the Overall Project Area	0.01 acre						
Impacts of Fill to Waters of the state, including Waters of the U.S. (WOUS)	Waterbody Type	Permanent			Temporary		
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
	<i>Lake</i>	0.003	10		0.009	20	
	<i>Riparian</i>						
	<i>Stream</i>						
Impacts of Dredging (Excavation) to Waters of the state, and WOUS.	Waterbody Type	Permanent			Temporary		
		Acres	Linear Feet	Cubic Yards	Acres or Sq. Ft.	Linear Feet	Cubic Yards
	<i>Lake</i>						
	<i>Riparian</i>						
	<i>Stream</i>						
	Total	0.003	10		0.009	20	
Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Nationwide Permit, pursuant to CWA section 404.						
Non-Compensatory Mitigation	Work will be conducted in the fall when lake levels are lower. No work will be conducted below the water line. Perimeter sediment controls will be installed below the work area and above the lake level. Disturbed areas will be stabilized with rock surface treatment.						
Compensatory Mitigation	None						
Applicable Fees	\$200 [\$200 flat fee for low impact discharges]						
Fees Received	\$200						

CEQA COMPLIANCE

Placer County adopted a Mitigated Negative Declaration (State Clearinghouse No. 2008082034 on August 8, 2008, and filed a Notice of Determination on December 15, 2008, for the Project pursuant to the California Environmental Quality Act, (CEQA Public Resources Code 21000, et seq.).

The Water Board, acting as a CEQA Responsible Agency in compliance with CCR, Title 14, section 15096, has considered Placer 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. This Order includes mitigation monitoring requirements for impacts to waters of the state, including WOUS.

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 prohibitions:

1. The discharge attributable to human activities of any waste or deleterious material to surface waters of the Lake Tahoe Hydrologic Unit (HU) is prohibited...
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.

STREAM ENVIRONMENT ZONES WASTE DISCHARGE PROHIBITION EXEMPTION

An exemption to this Prohibition 1 may be granted whenever the Water Board finds all of the following:

- 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 involves installing in the shore area of Lake Tahoe an outfall culvert that receives flow from a stormwater and erosion control project. The erosion control project is designed to improve drainage capture and treatment in an area built without adequate drainage infrastructure. The collected stormwater must be discharged from a stable conveyance and the Project will improve stormwater discharges adversely affecting beneficial uses of Lake Tahoe. There is no reasonable alternative to having an outfall for the area drainage at some location at the Lake, and no reasonable way to construct an outfall in the Lake bed without a waste discharge. The Applicant has incorporated control practices to minimize any erosion and sedimentation due to the minor, short-term construction activity.

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

- (1) For erosion control projects, habitat restoration projects, wetland rehabilitation projects, SEZ restoration projects, and similar projects, programs, and facilities, 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; and
 - (b) Impacts are fully mitigated.

The Project is an erosion control project and must be located as proposed to allow for an outfall of treated stormwater. There is no alternative to further avoid SEZ disturbance. All impacts will be mitigated by using appropriate temporary best management practices during construction and permanent stabilization from erosion upon Project completion.

EXEMPTION GRANTED

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

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

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

Except in emergency situations, the Executive Officer shall notify the Water Board and interested members of the public of the intent to issue an exemption at least ten (10) days before the exemption is issued. A notice of exemption will also be posted on the Water Board website and distributed through an interested-persons mailing list allowing at least ten (10) days to submit comments.

SECTION 401 WATER QUALITY CERTIFICATION

Authority

Section 401 of the CWA (33 U.S.C., paragraph 1341) requires that any applicant for a CWA section 404 permit, who plans to conduct any activity that may result in discharge of dredged or fill materials to WOUS, must provide to the permitting agency a certification that the discharge will be in compliance with applicable water quality standards of the state in which the discharge will originate. No section 404 permit may be granted (or 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 certification:

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and CCR title 23, section 3867.
2. This certification action is not intended and must not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license unless the pertinent certification application was filed pursuant to CCR title 23, section 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial certification action must be conditioned upon total payment of the full fee required under CCR title 23, section 3833, unless otherwise stated in writing by the certifying agency.
4. Neither Project construction activities nor operation of the Project may cause a violation of the Basin Plan, 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 section 2050 et seq.) or the federal Endangered Species Act (16 U.S.C. sections 1531 et seq.). If a "take" will result from any act authorized under this certification, the Applicant must obtain authorization for the take prior to construction or operation of the Project. The Applicant is responsible for meeting all applicable requirements of the Endangered Species Act for the Project authorized under this certification.

Additional Conditions

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

1. No debris, cement, wet concrete (or wash water therefrom), oil or petroleum product must enter into, or be placed where it may be washed from the Project site by rainfall or runoff, into waters of the state. When operations are completed, any excess material must be removed from the Project work area, and from any areas adjacent to the work area where such material may be transported into waters of the state.
2. All dewatering waste must be disposed in a manner to prevent such waste from re-entering waters of the state.

3. The Applicant must immediately (within two hours) notify Water Board staff by telephone whenever an adverse condition occurs as a result of this discharge. Such a condition includes, but is not limited to, a violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. A written notification of the adverse condition must be provided to the Water Board within two weeks of occurrence. The written notification must identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to any modifications by Water Board staff, for the remedial actions.
4. The Applicant must prevent the introduction or spread of noxious/invasive weeds within the Project and staging area. Measures must include the cleaning of all equipment and gear that has been in an infested site with water heated to 120 degrees Fahrenheit or more, the use of weed-free erosion control materials (including straw), and the use of weed-free seeds and plant material for revegetation of disturbed areas.
5. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
6. An emergency spill kit must be at the Project site at all times.
7. A copy of this Order must be maintained at the Project site so as to be available at all reasonable times to site operating personnel and Water Board staff.

Enforcement

1. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation must be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of CWA section 401(d), the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
2. In response to a suspected violation of any condition of this certification, the State Water Board or the Water Board may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring report the State Water Board or Water Board deems appropriate, provided that the burden, including costs, of the reports must be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
3. In response to any violation of the conditions of this certification, the Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

Section 401 Water Quality Certification Requirements Granted

I hereby issue an Order certifying that any discharge from the referenced Project will comply with the applicable provisions of CWA sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards), and with other applicable requirements of state law. This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this WQC.

Except insofar as may be modified by any preceding conditions, all WQC certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the Applicant's Project description and the terms specified in this WQC Order, and (b) compliance with all applicable requirements of the Basin Plan.

We look forward to working with you in your efforts to protect water quality. If you have questions, please contact Bud Amorfini, Engineering Geologist, at (530) 542-5463 or Alan Miller, Chief, North Basin Regulatory Unit, at (530) 542-5430.



PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

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