



California Regional Water Quality Control Board
Lahontan Region



Linda S. Adams
Acting Secretary for
Environmental Protection

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Edmund G. Brown Jr.
Governor

M E M O R A N D U M

TO: Water Board Members
Husid
FROM: HAROLD J. SINGER
EXECUTIVE OFFICER
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: MAY 19 2011

**SUBJECT: EXEMPTION TO DISCHARGE PROHIBITION CONTAINED IN THE
WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION –
DONNER LAKE VILLAGE RESORT WALL REPAIR PROJECT,
NEVADA COUNTY**

In ten days, I intend to sign the enclosed letter granting an exemption to the discharge prohibition specified in the *Water Quality Control Plan for the Lahontan Region* for the Donner Lake Village Resort Wall Repair Project (Project) in Nevada County. The exemption will allow the Donner Lake Village Owners Association to repair an existing shoreline retaining wall, which is being undermined by wave action at its base. The Project would reduce active erosion and potential for future erosion.

The Project site is located at 15695 Donner Pass Road in the Town of Truckee. The Project meets requirements for an exemption to the discharge prohibition.

A public notice soliciting comments on the proposed Project will be posted on the Water Board's website for 10 days.

If you have any questions or comments regarding this matter, please contact Tobi Tyler at (530) 542-5435.

Enclosure: Draft Water Quality Certification Order and 100-year Floodplain Exemption

TT/clhT: Donner Lake Wall Repair Memo 5_10_11 TT.doc
[File: 6A291102002 / Donner Lake Village Resort Wall Repair Project / Nevada County]



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Evan Benjaminson, Granite Peak Management
Donner Lake Village Owners Association
P.O. box 3750
Olympic Valley, CA 96146

ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND PROHIBITION EXEMPTION FOR THE DONNER LAKE VILLAGE RESORT WALL REPAIR PROJECT, NEVADA COUNTY, WDID 6A291102002

The California Regional Water Quality Control Board, Lahontan Region (Water Board) has received a complete Clean Water Act Section 401 Water Quality Certification (WQC) application and application filing fee for the Donner Lake Village Resort Wall Repair Project (Project) in Nevada County. The Water Board also received information to support granting an exemption from a waste discharge prohibition in the Water Board's *Water Quality Control Plan for the Lahontan Region* (Basin Plan). This Order for WQC and waste discharge prohibition exemption hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A291102002. 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, 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	6A291102002
Applicant	Evan Benjaminson, Granite Peak Management Donner Lake Village Owners Association P.O. Box 3750 Olympic Valley, CA 96146

California Environmental Protection Agency

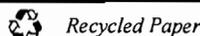


Table of Project Information continued:

Agent	Peter Gerdin, Architect 15695 Donner Pass Road, #206 Truckee, CA 96161
Project Name	Donner Lake Village Resort Wall Repair Project
Project Purpose and Description	The proposed project would repair an existing 180 foot long concrete block wall parallel to the shoreline by adding boulders and cobble at the base of the wall where exposed footings are undermining the wall. The wall surface will also receive treatment for decay such as surface sealer and re-mortaring of joints where needed. The project includes adding boulders and sand in two areas, approximately 20 square foot area each, where there are gaps in the wall.
Location (closest City & County)	Town of Truckee, Nevada County
Location Latitude/Longitude	Latitude: 39.3224; Longitude: 120.2663
Hydrologic Unit(s)	Truckee River Hydrologic Area, 635.20 in the Truckee River Hydrologic Unit, 635.00
Project Area	2,250 square feet
Receiving Water(s) Name	Donner Lake
Water Body Type(s)	Lake
Area and Linear Feet of Water(s) of the U.S. (WOUS) within the project area	2,250 square feet (0.05 acre) 450 linear feet
Area of Permanent Impacts to WOUS	410 square feet (0.01 acre)
Linear Feet of Permanent Impact to WOUS	205 linear feet
Volume of Fill to WOUS	15.2 cubic yards
Federal Permit(s)	The applicant has applied for U.S. Army Corps of Engineers (USACE) authorization to proceed under a Nationwide Permit No. 3, pursuant to Clean Water Act section 404.
Non-Compensatory Mitigation	The Project will be implemented during low water level. Filter fence will be placed lakeward of the Project area. No heavy equipment will be allowed onto the beach and lake bed. Other site-specific Best Management Practices (BMPs) will be used throughout the construction period and for winterization to control erosion if necessary.
Compensatory Mitigation	None required.
Applicable Fees	\$1,952.00 (\$640.00 application fee + \$1,312.00 for 205 linear feet of permanent impacts to Federal Jurisdictional Waters at \$6.40 per foot).
Fees Received	\$1,952.00
Fees Due	\$0.00

CEQA COMPLIANCE

Water Board staff have determined that this Project is exempt from the California Environmental Quality Act (Public Resources Code Section 21000 et seq.). In accordance with Section 15302(c), the basis for CEQA exemption is "Replacement and Reconstruction." A Notice of Exemption will be filed with the State Clearinghouse concurrently with issuing this Order.

WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITION

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

"4(c) 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 Project involves the placement of rock and sand within the 100-year floodplain to stabilize the slope and existing concrete block wall. No grading or excavation is proposed.

100-YEAR FLOOD PLAIN WASTE DISCHARGE PROHIBITION EXEMPTION

The Basin Plan allows exemptions to the above-cited discharge prohibition for projects that meet the following exemption criteria:

1. *The Project purpose is included in one or more of the five categories listed in Section 4.1 of the Lahontan Basin Plan: "(1) projects solely intended to reduce or mitigate existing sources of erosion or water pollution, or to restore the functional value to previously disturbed floodplain areas; (2) bridge abutment, approaches, or other essential transportation facilities identified in an approved county general plan; (3) projects necessary to protect public health or safety or to provide essential public services; (4) projects necessary for public recreation; and (5) projects that will provide outdoor public recreation within portions of the 100-year floodplain that have been substantially altered by grading and/or filling activities which occurred prior to June 26, 1975."*

The Project would stabilize the foundation of a shoreline retaining wall by placing rock near the base of the concrete block wall. The Project meets the first of the above five categories of project types as it is solely intended to reduce or mitigate existing or potential future sources of erosion and water pollution from increased sedimentation if the block wall were to fail.

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

There is no reasonable alternative to locating the Project within the floodplain because of the location of the retaining wall, which parallels the shoreline at approximately the level of the ordinary high water, 5935.8 feet above mean sea level. Therefore, there is no reasonable alternative to locating the Project or portions of the Project in the 100-year floodplain.

3. *The project, by its very nature, must be located within the 100-year floodplain.*

The purpose of the Project is to provide shoreline stabilization to an existing concrete block wall built in 1973. The wall has been undermined by wave action on Donner Lake and its foundation is exposed in several places. Due to the location of the existing concrete block wall, the Project, by its very nature, must be located within the 100-year floodplain.

4. *The project incorporates measures that will ensure any erosion and surface runoff problems caused by the project are mitigated to levels of insignificance.*

The Applicant has proposed a list of Best Management Practices (BMPs) that will be in place during Project implementation, including scheduling the work when the lake levels are low and installing a filter fence parallel to the Project on the lake side. The Project incorporates BMPs to ensure that erosion and surface runoff problems caused by the Project will be mitigated to levels of insignificance.

5. *The project will not individually or cumulatively with other projects, directly or indirectly, degrade water quality or impair beneficial uses of water.*

The Project will result in minor impacts within the 100-year floodplain. Once the Project is complete, the Applicant will stabilize the lakebed and shoreline temporarily disturbed during Project implementation and remove excess earthen materials not utilized in construction. The Project will not degrade water quality or impair beneficial uses of water.

6. *The project will not reduce the flood flow attenuation capacity, the surface flow treatment capacity, or the ground water flow treatment capacity from existing conditions. All 100-year floodplain areas and volumes lost as a result of the project must be completely mitigated by restoration of previously-disturbed floodplain within or as close as practical to the project site. The restored, new, or enlarged floodplain shall be sufficient area and volume to more than compensate for the flood flow attenuation capacity, surface flow treatment capacity, and ground water flow treatment capacity which are lost as a result of the project. This finding will not be required for: (1) essential public health or safety projects, (2) projects to provide essential public services for which the Regional Board finds such mitigation measures*

to be infeasible because the financial resources of the entity proposing the project are severely limited, or (3) projects for which the Regional Board finds (based on evidence presented by the proposed discharger) that the project will not reduce the flood flow attenuation capacity, the surface flow treatment capacity, or the ground water flow treatment capacity from existing conditions.

The existing 100-year floodplain volume and area will be slightly reduced by the Project. The addition of rock to the base of the block wall will not include grout between the rocks, so infiltration will be unaffected. Rocks at the base of the wall will provide stabilization of the areas of shoreline above and below the wall. The addition of sand to areas is necessary to protect tree roots. Thus, there will be no reduction in the flood flow attenuation capacity, the surface flow treatment capacity, or the ground water flow treatment capacity from existing conditions.

EXEMPTION GRANTED

In this case, the Project will be covered under individual Clean Water Act section 401 water quality certification and the project is needed to reduce, control, or mitigate existing sources of erosion. The applicant has incorporated appropriate Best Management Practices (BMPs) into the Project. The Project is hereby granted an exemption to the above-cited waste discharge prohibition.

Except in emergency situations, the Executive Officer shall notify the Board and interested members of the public of his intent to issue an exemption or exception subject to this Resolution at least ten (10) days before the exemption or exception 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 waters of the United States, 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 Donner Lake Village Owners Association (Applicant) submitted a complete application and the \$1,952.00 application filing and impact fee required for WQC under Section 401 for the Donner Lake Village Resort Wall Repair Project. The Applicant has applied for U.S. Army Corps of Engineers (ACOE) authorization to proceed under Nationwide Permit No. 3 pursuant to CWA section 404.

California Code of Regulations (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 Donner Lake Village Resort Wall 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 California 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 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 California 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 Water Quality Certification 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 Lahontan 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 Clean Water Act, 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 Clean Water Act.

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, concrete (or wash water therefrom), oil or petroleum products must enter into or be placed where it may be washed from the Project site by rainfall or runoff into waters of the State. When operations are completed, any excess material must be removed from the Project work area, and from any areas adjacent to the work area where such material may be transported into waters of the State.
2. The Applicant must immediately notify Water Board staff by telephone whenever an adverse condition occurs as a result of this discharge. Such a condition includes, but is not limited to, a violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. A written notification of the adverse condition must be provided to the Water Board within two weeks of occurrence. The written notification must identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to any modifications by Water Board staff, for the remedial actions.
3. The Applicant must ensure that the Contractor employs necessary measures to prevent the introduction or spread of noxious/invasive weeds within the Project and staging area. These measures may include the treatment of on-site 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.

4. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
5. An emergency spill kit must be at the Project site at all times.
6. 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 Clean Water Act 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 Resources Control Board (State Water Board) or the Lahontan 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 Lahontan 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 Clean Water Act 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 Resources Control 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 Tobi Tyler, Water Resources Control Engineer, at (530) 542-5435 or Alan Miller at (530) 542-5430.

HAROLD J. SINGER
EXECUTIVE OFFICER

cc: Julie Newman / California Department of Fish and Game, Rancho Cordova
Dave Smith / Wetlands Regulatory Office (WTR-8), USEPA, Region 9
(via email at R9-WTR8-Mailbox@epa.gov)
Will Ness / U.S. Army Corps of Engineers, Sacramento Office
Bill Orme / State Water Resources Control Board, Division of Water Quality
(via email at Stateboard401@waterboards.ca.gov)

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