



Matthew Rodriguez  
Secretary for  
Environmental Protection

# California Regional Water Quality Control Board Lahontan Region

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150  
(530) 542-5400 • Fax (530) 544-2271  
<http://www.waterboards.ca.gov/lahontan>



Edmund G. Brown Jr.  
Governor

## MEMORANDUM

TO: Water Board Members

*Harold*

FROM: Harold J. Singer  
Executive Officer

LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: **FEB 21 2012**

SUBJECT: EXEMPTION TO THE 100-YEAR FLOOD PLAIN WASTE DISCHARGE PROHIBITION WITHIN THE TRUCKEE RIVER HYDROLOGIC UNIT FOR THE CALTRANS DISTRICT 3 NEVADA 89 SAGEHEN CREEK BANK REPAIR PROJECT, NEVADA 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 to repair a failing embankment adjacent to Sagehen Creek. The project location is on Highway 89 at approximately post mile 7.8.

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.

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

BA/clhT: Nev 89 Sagehen Creek Floodplain Exemption Board Notice.docx  
File: 6A291202001



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### MEMORANDUM

**TO:** Brooks Taylor, Environmental Planner  
Caltrans District 3  
703 B Street  
Marysville, CA 95901

**FROM:** Harold J. Singer  
Executive Officer  
**LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD**

**DATE:**

**SUBJECT: ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND EXEMPTION TO THE 100-YEAR FLOODPLAIN WASTE DISCHARGE PROHIBITION WITHIN THE TRUCKEE RIVER HYDROLOGIC UNIT, NEVADA 89 SAGEHEN CREEK BANK REPAIR PROJECT, NEVADA COUNTY, WDID NO. 6A291202001**

The California Regional Water Quality Control Board, Lahontan Region (Water Board) received project information and an application filing fee from the California Department of Transportation (Applicant) to complete an application for Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) for the Nevada 89 Sagehen Creek Bank Repair Project (Project) in Nevada County. This Order for WQC is based upon the information provided in the application.

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](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

**PROJECT DESCRIPTION****Table of Project Information:**

WDID Number	6A291202001
Applicant	Caltrans District 3 703 B Street Marysville, CA 95901
Applicant's Agent	Brooks Taylor
Project Name	Nevada 89 Sagehen Creek Bank Repair

**Table of Project Information continued:**

Project Purpose and Description	The project involves repairing a very small segment of the embankment along the north-bound lane of Highway 89, which also forms the bank of Sagehen Creek. An approximately 20-foot section of bank has eroded and poses a threat of failure to the roadway above. Applicant proposes to stabilize the bank with a combination of woody material, cottonwood root ball, and rock slope protection with willow cuttings.
Location (closest City & County)	Truckee, Nevada County.
Location Latitude/Longitude	Latitude 39.433783 N, Longitude - 120.204823 W
Hydrologic Unit(s)	Little Truckee River Hydrologic Unit 636.00
Project Area	100 square feet
Receiving Water(s) Name	Sagehen Creek
Water Body Type(s)	Perennial Stream
Area of Temporary Fill/Excavation of WOUS	None
Linear feet of Temporary Fill/Excavation in WOUS	None
Area of Permanent Fill/Excavation of WOUS	0.01 acres
Linear feet of Permanent Fill/Excavation in WOUS	20 feet
Permanent Volume of Fill/Excavation from WOUS	50 cubic yards
Federal Permit(s)	The applicant will conduct work under U.S. Army Corps of Engineers (USACOE) Nationwide Permit #13 – non-reporting, pursuant to Clean Water Act section 404.
Non-Compensatory	Construction will be conducted during winter low flow period and stream

Mitigation	flows will be diverted around work area with sand bags and plastic sheeting. Construction site Best Management Practices (BMPs) will be used in accordance with the Caltrans Storm Water Management Program.
Compensatory Mitigation	None required.
Applicable Fees	\$1,133.00 (\$944.00 base fee plus \$189.00 for 20 feet of linear impact @ \$9.44 per linear foot).
Fees Received	\$1,133.00
Fees Due	none

### **100-YEAR FLOOD PLAIN PROHIBITION**

Unless an exemption is granted, the Water Quality Control Plan for the Lahontan Region (Basin Plan) contains certain waste discharge prohibitions that apply to the Little Truckee River Hydrologic Unit (HU No. 636), including prohibition 4(c), which states:

*The discharge or threatened discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand, and other organic and earthen materials to lands within the 100-year floodplain of the Little Truckee River or any tributary to the Little Truckee River is prohibited.*

### **PROHIBITION EXEMPTION**

In accordance with provisions in the Basin Plan, the Water Board may grant exemptions to prohibition 4(c) for the repair of existing structures provided that the repair or replacement does not involve the loss of additional floodplain area or volume and best management practices (BMPs) are incorporated to minimize soil erosion and surface runoff problems. The project will restore an eroded area of the embankment to maintain pre-existing conditions of the bank and floodplain. Erosion controls will include conducting work in low flow conditions, diverting stream flows around the project area, implementing temporary construction site BMPs, and using rock and bio-engineered materials to permanently stabilize the stream bank.

### **EXEMPTION AUTHORITY**

In accordance with Resolution No. R6T-2008-0031, the Lahontan Water Board has delegated authority to the Executive Officer to grant exemptions to prohibition 4(c) where the Executive Officer has the authority to authorize the project under a water quality certification order and the project is a repair or replacement of existing facilities.

### **EXEMPTION GRANTED**

Water Board staff has notified the project proponent and interested parties of its intent to adopt this prohibition exemption 10 days in advance of issuing this exemption

through online and emailed notice soliciting comments on the proposed project. The Water Board has determined that the project satisfies the exemption criteria listed above. An exemption to Basin Plan prohibition 4(c) is hereby granted.

### **CEQA COMPLIANCE**

The Project is categorically exempt from the California Environmental Quality Act (CEQA), according to the California Code of Regulations (CCR) title 14, section 15302, replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. The Water Board will file a Notice of Exemption with the State Clearinghouse concurrently with this Order.

### **SECTION 401 WATER QUALITY CERTIFICATION**

#### **Authority**

Clean Water Act (CWA) section 401 (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 Applicant submitted a complete application and appropriate application filing fee required for Water Quality Certification under Section 401 for the Project. The Applicant has applied for ACOE authorization to proceed under Nationwide Permit #13 (non-reporting), 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 water quality certification for projects in accordance with CWA section 401. The Project qualifies for such water quality certification.

#### **Standard Conditions**

Pursuant to CCR title 23, section 3860, the following standard conditions are associated with 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 water quality certification that was submitted to the Water Board. Deviation from the project description constitutes a violation of the conditions upon which the certification was granted.

### **Additional Conditions**

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

1. The Applicant must maintain a copy of this Order at the Project site so as to be available at all times to site operating personnel and agencies.
2. During construction of the project, the Applicant must follow the Water Pollution Control Plan developed for the project to prevent impacts to water quality.
3. 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 fill, excavation or 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 Order.
  - c) Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Order.
  - d) Sampling of any discharge or surface water covered by this Order.
4. The Applicant must submit a report demonstrating the success of the vegetation treatment. The report must be submitted to the Water Board a minimum of one year after completion of the project, but no later than three years after project completion.

## 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 Lahontan 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 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. Please use the WDID in the subject line for future correspondence concerning this project.

cc: Dave Smith / Wetlands Regulatory Office (WTR-8), US EPA, Region 9  
(via email at [R9-WTR8-Mailbox@epa.gov](mailto:R9-WTR8-Mailbox@epa.gov))  
Paul Maniccia / 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](mailto:Stateboard401@waterboards.ca.gov))

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File: WDID 6A291202001

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