

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
LAHONTAN REGION

**RESOLUTION NO. R6T-2005-0006**

**EXEMPTION TO A WASTE DISCHARGE PROHIBITION CONTAINED IN THE  
WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION - FINN  
BRIDGE PROJECT, NORTH FORK PROSSER CREEK, CARPENTER VALLEY**

\_\_\_\_\_ Nevada County \_\_\_\_\_

**WHEREAS**, the California Water Quality Control Board, Lahontan Region finds:

1. Margaret Elrod is the owner of a 660-acre parcel in the Carpenter Valley, approximately 11 miles north of the Town of Truckee in Nevada County. The North Fork of Prosser Creek passes through Margaret Elrod's property before flowing into Prosser Reservoir, which discharges into the Truckee River. Terrence and Brendan Finn have an easement through Margaret Elrod's property to access their property on the north side of the creek, where they have a second residence and periodically conduct timber harvest activities. Terrence and Brendan Finn are proposing to construct a permanent bridge crossing on Margaret Elrod's property to provide year-round access to their property. Currently, Terrence and Brendan Finn have access to their property via a wet ford across the North Fork of Prosser Creek. Periodically, the Finns use a temporary culvert crossing to access the north side of the creek for timber harvest activities. The temporary crossing when installed, goes in the summer and is removed by mid-October. Attachments "A" and "B" illustrate the general location of the project site.
2. The proposed bridge site will be located approximately 65 feet downstream of the existing wet ford crossing as shown in Attachment "C". The proposed bridge consists of an 81-foot single-span crossing of the main creek channel, supported by two bridge abutments. Total bridge length will be approximately 90 feet. The bottom of the bridge structure will be located approximately two feet above the 100-year flood elevation. Approximately 43 cubic yards of fill will be permanently placed within the creek's 100-year flood plain impacting approximately 2,610 square feet (0.06 acres) of wetland habitat. The fill material will be used to construct the road approaches to the bridge. The use of retaining walls to contain the fill material lessen the amount of fill needed. The southern road approach will have four arched culverts within the road fill to allow flood flows to pass through. Rock-slope protection will be placed at the toe of the creek bank to protect the bridge structure, and will permanently affect 870 square feet (0.02 acres of creek channel).

There will also be approximately 3,735 square feet (0.08 acres) of temporary impacts to creek channel and associated 100-year flood plain. This disturbance will result in part from placing a temporary access road with two culverts across the creek at the existing wet ford crossing to permit construction equipment to access the northern bridge approach and abutment sites (2,800 square feet). Recontouring the southern creek bank (located between the existing wet ford and immediately downstream of the bridge structure) to create wetland habitat will result in temporary impacts to 935 square feet of 100-year flood plain.

3. The current mitigation proposal includes restoring approximately 2,975 square feet of wetlands on site, and enhancing 1,175 square feet of willow habitat approximately one quarter mile upstream of the bridge, to mitigate the loss of 2,610 square feet of wetlands. The on-site mitigation proposal consists of restoring the abandoned portion of the existing road located on Margaret Elrod's property that accesses the southern end of the wet ford crossing (2,040 square feet). A near-vertical section of the southern creek bank at the bridge site

would also be laid back and benched to create the remainder of the on-site wetlands mitigation (935 square feet). The off-site mitigation proposal consists of removing lodgepole pines and replanting the area with willows (1,175 square feet).

The current flood plain mitigation proposal includes over-excavating the existing southern road approach to create a small depression within the existing 100-year flood plain to offset the loss of 100-year flood plain volume associated with the new bridge approach fills. Wetland sod harvested from the new southern road approach will be used to restore this depression and the wetland mitigation sites. The current wetlands/100-year flood plain mitigation proposal would be sufficient to compensate for the loss of flood flow attenuation capacity, surface flow treatment capacity, and ground water flow treatment capacity associated with the disturbance within the 100-year flood plain/wetland habitat.

Margaret Elrod contends that the Court Judgment does not necessarily give Terrence Finn perpetual right to use the existing road for flood plain and wetland mitigation. The Regional Board's Clean Water Act Section 401 Water Quality Certification (WQC) will require Terrence Finn to provide adequate documentation that he has legal authority to implement and maintain the proposed mitigation measures at the proposed mitigation site in question. The WQC will also provide Terrence Finn the alternative of developing and submitting an alternative mitigation plan to be implemented on land under Terrence Finn's ownership or his full control. The Regional Board must receive adequate documentation regarding Terrence Finn's legal authority to access the currently proposed on-site mitigation site (existing southern road approach) or accept an alternative mitigation plan, before project construction begins."

4. The Water Quality Control Plan for the Lahontan Region (Basin Plan) prohibits 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, due to the placement of said materials within the 100-year flood plain of any tributary of the Truckee River.
5. The Basin Plan contains provisions for granting exemptions to the Truckee River flood plain discharge prohibitions. Exemptions may be allowed for six categories of projects, including bridge abutments, approaches, or other essential transportation facilities identified in an approved county general plan. An exemption for these types of projects can be allowed only where all of the following findings can be made:
  - a. *The project type falls within one or more of the exemption categories listed in the Basin Plan.*

The project elements that affect the 100-year flood plain prohibition area are bridge approaches and bridge abutments. This is one of the exemption categories listed in the Basin Plan.

The current methods of crossing the creek involve a wet ford that introduces sediments and other pollutants every time vehicles cross the creek or a temporary culvert crossing that potentially introduces sediment into the creek when it is installed and removed. Vehicles also disturb the creek bottom re-suspending sediments and creating turbidity. Vehicles crossing the creek also destabilize the streambanks and promote streambank erosion. The bridge crossing will 1) prevent direct introduction of pollutants from vehicles, 2) eliminate creek bottom disturbance, 3) allow the streambanks at the access points to restabilize, thus reducing streambank erosion, and 4) eliminate the need for a temporary culvert crossing that potentially discharges sediment during installation and removal. Therefore, the proposed bridge will reduce existing sources of erosion and water pollution.

The proposed bridge will also provide safe passage into and out of Terrence and Brendan Finn's property. Currently, the wet ford crossing provides relatively safe passage during the mid-summer through early fall months when creek flows are relatively low. Summer thunderstorms and fall rainstorms can cause unsafe passage conditions at any time. During the winter and spring seasons, ice, snow, and high creek flows make passage unsafe via the wet ford crossing. The bridge will provide a safe crossing allowing year-round access to Terrence and Brendan Finn's property and residence. The bridge will also provide safe passage for emergency response vehicles.

- b. *There is no reasonable alternative to locating the project or portions of the project within the 100-year flood plain.*

There are other bridge designs that could reduce the effect upon the 100-year flood plain; however, such bridges would be higher in profile and therefore, more visually distracting to the overall area. This has historically been a major point of contention between Margaret Elrod and Terrence Finn. Previous court decisions have found that higher bridge structures would pose an undue burden upon Margaret Elrod. The current bridge design is acceptable to the courts.

The bridge design includes the use of retaining walls to reduce the extent of 100-year flood plain losses by containing the bridge approach fills. The bridge location also takes advantage of a slightly narrowing flood plain width to further reduce loss of flood plain area.

There is no reasonable alternative to locating the project or portions of the project within the 100-year flood plain given court-imposed constraints, use of retaining walls to contain bridge approach fills, and the proposed alignment.

- c. *The project, by its very nature, must be located within the 100-year flood plain.*

The only way to cross the creek and comply with court decisions involves disturbing the 100-year flood plain and its wetland habitat. Therefore, the project, by its very nature, must be located within the 100-year flood plain.

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

Terrence Finn has committed to implementing temporary and permanent erosion and storm water runoff controls for this project, including: 1) construction and filtration fencing to restrict construction equipment access and sediment migration, 2) lined concrete washout basin, 3) appropriate dewatering plan, 4) rock and/or crushed gravel with a geotextile liner beneath the temporary road, 5) retaining walls to contain the bridge approach fills, and 6) a revegetation plan. Implementing these controls and measures will ensure that any erosion and surface runoff problems caused by the project will be reduced to an insignificant level.

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

Staff anticipates the project improving water quality by 1) eliminating direct contact between the creek and vehicular traffic, 2) reducing erosion associated with the destabilized streambanks at the access points for the wet ford crossing, and 3) eliminating creek bottom disturbance associated with vehicular traffic that increases turbidity within

the creek. The wetlands mitigation plan has a very good chance of success since the existing southern road approach that will be restored to wetland habitat is currently located in a wet meadow habitat. The willow enhancement will likely be successful since this activity has already been proven successful near the proposed willow enhancement site. The project proponent will also be required to monitor for changes in creek channel geometry. If creek channel geometry begins to change as a result of the bridge in combination with significant flood events, the Regional Board in its Water Quality Certification Order will require the project proponent to evaluate the site conditions causing the alterations and implement a plan to mitigate and/or prevent the identified adverse effects. Therefore, the project will not individually or cumulatively with other projects, directly or indirectly, degrade water quality or impair beneficial uses of water.

- f. *All 100-year flood plain areas and volumes lost as a result of the project will be completely mitigated by restoration of a previously disturbed flood plain area within the project site, or if there is no previously disturbed flood plain area within the project site, creation of a new 100-year flood plain or enlargement of an existing 100-year flood plain within or as close as practical to the project site.*

The current 100-year flood plain/wetland mitigation proposal would be sufficient in area and volume to compensate for the flood flow attenuation capacity, surface flow treatment capacity, and ground water flow treatment capacity which will be lost as a result of the project.

Prior to beginning construction, Terrence Finn will be required to either provide the documentation as described in Finding No. 3, or develop, submit, and receive Regional Board acceptance of an alternative mitigation plan as described in Finding No. 3. This requirement will be included in the Regional Board's Clean Water Act Section 401 Water Quality Certification, and will address the current dispute regarding Terrence Finn's legal authority to implement portions of the mitigation plan located on Margaret Elrod's property.

- 6. Nevada County adopted a Mitigated Negative Declaration for this project in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.). The Mitigated Negative Declaration was subsequently appealed. On December 7, 1999, Nevada County held a hearing regarding the appeal and after receiving testimony, denied the appeal.
- 7. The Regional Board has notified Terrence and Brendan Finn and interested agencies and persons of its intent to adopt this Resolution.
- 8. The Regional Board, in a public meeting, heard and considered all comments and determined that the Project satisfies the exemption criteria stated above.

**THEREFORE, BE IT RESOLVED THAT:**

- 1. The criteria established for exemptions to the Basin Plan prohibitions stated in Finding No. 5 above will be met for the Finn Bridge Project.
- 2. The Regional Board hereby grants an exemption to the Basin Plan prohibitions stated in Finding No. 4 for the Finn Bridge Project.
- 3. The Executive Officer will issue Clean Water Act Section 401 Water Quality Certification for the Finn Bridge Project.

I, Harold J. Singer, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Lahontan Region, on March 9, 2005.

---

HAROLD J. SINGER  
EXECUTIVE OFFICER

Attachments: A. Project Vicinity Map  
B. Project Site Map  
C. Project Site Plan

SCF/dcc T:\RESOLUTION\Finn Bridge Resolution-2.doc  
[Pending File: Finn Bridge, Nevada County]