

Lahontan Regional Water Quality Control Board

October 7, 2013

Stephen Cohn
29 La Fonda Lane
Orinda, CA 94563

ORDER NO. R6T-2013-0085, CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND 100-YEAR FLOODPLAIN WASTE DISCHARGE PROHIBITION EXEMPTION FOR THE SUMMIT CREEK BANK STABILIZATION PROJECT, 10260 ASPEN STREET, TRUCKEE, NEVADA COUNTY, WDID 6A291308002

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, 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) and application filing fee for the Summit Creek Bank Stabilization Project (Project). This Order for WQC hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A291308002. 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	6A291308002
Applicant	Stephen Cohn 29 La Fonda Lane Orinda, CA 94563
Agent	Micki Kelly, Kelly Biological Consulting P.O. Box 1625 Truckee, CA 96160

PETER C. PUMPHREY, CHAIR | PATTY Z. KOUYOUMDJIAN, EXECUTIVE OFFICER

Table of Project Information Continued:

Project Name	Summit Bank Stabilization Project						
Project Purpose and Description	The Applicant proposes to place rock slope protection, with incorporated plant pockets or terraces, along the Summit Creek bank at 10260 Aspen Street west of Donner Lake. The stream at the site location is influenced by the Donner Lake reservoir fluctuations and has had extensive bank erosion in recent years. Since 2000, the stream has moved laterally approximately 20 feet due to erosion at the site. The bank is vertical in areas with drops of approximately four to five feet. The rock stabilization will vary vertically from flatter than 1:1 to about ½:1 (horizontal to vertical). The Project will involve bioengineered stream restoration activities to reestablish stream bank stability. This includes installing willow wattles along a portion of the bank, incorporating plant pockets and terraces among the rock slope protection where willow stakes and other vegetation will be planted, maintaining and working around the root wads and other woody material present along the shoreline, and protecting the wetland adjacent to the shoreline.						
Project County	Nevada						
Project Type	Bank Stabilization Project						
Project Address or other Locating Information	Summit Creek at 10260 Aspen Street, Truckee						
Location Latitude/Longitude	Latitude: 39.319285 Longitude: 120.291848						
Hydrologic Unit(s)	Truckee River Hydrologic Unit, 635.00						
Project Area	0.75 acres						
Receiving Water(s) Name	Wetlands and drainage ditch/swale tributary to the Truckee River						
Water Body Type(s)	Stream and seasonal wetland						
Designated Beneficial Uses	MUN, AGR, GWR, FRSH, REC-1, REC-2, COMM, COLD, WILD, BIOL, RARE, MIGR, SPWN, WQE, FLD						
Potential Water Quality Impacts	Discharge of materials from construction project						
Area of Water(s) of the U.S. (WOUS) within the Project area	0.251 acres of jurisdictional wetlands and other waters						
Project Impacts (Fill) to Waters of the state, including WOUS.	Waterbody Type	Permanent			Temporary		
		Square Feet	Linear Feet	Cubic Yards	Square Feet	Linear Feet	Cubic Yards
	<i>Lake</i>						
	<i>Riparian</i>						
	<i>Stream</i>	830	260	96			
	<i>Wetland</i>						
Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Nationwide Permit No. 13 (bank stabilization), pursuant to CWA section 404.						

Table of Project Information Continued:

Non-Compensatory Mitigation	A detailed Dewatering and Diversion Plan have been submitted for diverting flows from the stream bank and near shore wetland, which will be undisturbed. A Best Management Practices (BMPs) Plan and Revegetation Plan have also been provided. BMPs will be employed on the site throughout construction and post-construction until the site is stabilized from erosion.
Compensatory Mitigation	No compensatory mitigation is needed as the bank stabilization incorporates bioengineered bank stabilization procedures and practices, such as sloping the bank back, planting with native vegetation, willow wattle installation in addition to rock slope protection.
Applicable Fees	\$944 (restoration)
Fees Received	\$944

CEQA COMPLIANCE

The Water Board has determined that this Project is exempt from the California Environmental Quality Act (CEQA)(Public Resources Code Section 21000 et seq.). In accordance with section 15304, the basis for CEQA exemption is "Minor Alterations to Land." 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 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 proposed Project would violate the prohibition as it involves disturbance within the 100-year floodplain of Summit Creek, a tributary to the Truckee River by way of Donner Creek. The Water Board may grant an exception to the above-cited prohibition under certain conditions.

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, which would stabilize the creek bank using a bio-engineered approach, is intended to reduce or mitigate existing sources of erosion. The site has had extensive bank erosion in recent years. Since the year 2000, the stream has eroded laterally approximately 20 feet into the referenced site. The proposed Project would reduce erosion by sloping the bank back and providing rock stabilization to the bank while incorporating vegetation and woody material into the bank.

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 100-year floodplain because of the nature of the Project, which is a bank stabilization project, which must be located within the 100-year floodplain of Summit Creek. 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. Due to the location of the unstable bank along Summit Creek, the Project, by its very nature must be located within the 100-year floodplain of Summit Creek. Therefore, 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 BMPs that will be in place during Project implementation, including scheduling the work when the stream levels are low, providing a dewatering and diversion plan, and installing stormwater basins, fiber rolls and erosion control fencing. 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 or temporary impacts within the 100-year floodplain to reduce long-term erosion rates. When the Project is complete, the Applicant will stabilize the portion of the Project site 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 groundwater 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 groundwater 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 groundwater flow treatment capacity from existing conditions.

The existing 100-year floodplain volume and area will be increased slightly by the Project by sloping the bank back from a near vertical slope to a slope of 1:1 or $1\frac{1}{2}:1$ (vertical to horizontal). The addition of rock will not prevent infiltration. Rocks at the base of the wall will stabilize the areas of shoreline from erosion. The Project will not change the site in a way that will reduce the flood flow, surface water, or groundwater flow treatment capacity. Rock and vegetation will replace rock and soil. Thus, there will be no reduction in the flood flow attenuation capacity, the surface flow treatment capacity, or the groundwater flow treatment capacity from existing conditions.

DELEGATION OF AUTHORITY FOR GRANTING AN EXEMPTION

The Water Board has delegated authority to the Executive Officer pursuant to Resolution No. R6T-2008-0031 to grant exceptions to the 100-year floodplain discharge prohibition in the Truckee River Hydrologic Unit for specific discharges where the proposed Project meets the conditions in the Basin Plan and will be regulated under WQC. The Project will be regulated under the terms and conditions of this WQC, which includes coverage under general waste discharge requirements of State Water Resources Control Board Order No. 2003-0017-DWQ.

PROHIBITION EXEMPTION GRANTED

The Water Board has notified the Project proponent and interested agencies and persons of its intent to adopt this prohibition exemption through a public notice (internet publication). The Water Board has considered all comments and determined that the Project satisfies the exemption criteria listed above. The Water Board has delegated authority to the Executive Officer to grant exemptions to the prohibition against discharge to lands in the 100-year floodplain for projects whose primary purpose is for reducing existing sources of erosion. As described above, the Project also meets all of the exemption criteria listed in the Basin Plan. I hereby grant an exemption to the above-stated Basin Plan prohibition 4.c. for the Project.

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 a Nationwide Permit No. 13 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, or 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/or 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 (California Fish and Wildlife 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. Wetland areas near the Project area and staging area that, according to the application, will be avoided must be protected by colored construction fencing or equivalent barriers.
2. Fueling, lubrication, maintenance, operation, and storage of vehicles and equipment must not result in a discharge or a threatened discharge to waters of the state. The Applicant must not use any vehicle or equipment which leaks any substance that may impact water quality. Staging, maintenance and storage areas for vehicles and equipment must be located outside of waters of the state. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
3. The introduction or spread of invasive and noxious weeds during implementation of the Project must be minimized by using weed-free products to contain sediments, weed-free seed stocks, and washing vehicles that transit through areas where there are known populations of invasive plants.
4. All surface waters must be diverted away or isolated from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. The Applicant must implement the *Cohn Property Streambank Restoration Dewatering Plan* dated September 17, 2013. If surface water is present at the diversion, then visual monitoring for turbidity must be conducted on a daily basis during normal work days until the in-water work is complete. Diversion activities must not result in the degradation of water quality for beneficial uses, or exceedance of any water quality objective for the receiving waters.

5. 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.
6. 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 one week of occurrence. The written notification must identify the adverse condition, describe the actions taken or necessary to remedy the condition, and specify a timetable, subject to any modifications by Water Board staff, for the remedial actions.
7. The Applicant must permit Water Board staff or its authorized representative upon presentation of credentials:
 - a) Entry onto Project premises for inspection purposes, including all areas on which earthen materials, discharged wastes, or construction activity is located.
 - b) Access to copy any records 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.

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 Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State WQC" 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, P.E., Chief, North Basin Regulatory Unit, at (530) 542-5430.



PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

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