

Lahontan Regional Water Quality Control Board

June 26, 2014

Joseph and Laurie Colmery
170 Alamo Hills Court
Alamo, CA 94507

BOARD ORDER NO. R6T-2014-0054 FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND BASIN PLAN PROHIBITION EXEMPTION FOR THE COLMERY PIER RELOCATION PROJECT, PLACER COUNTY, WDID NO. 6A311310001

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 Agan Consulting Corporation on behalf of Joseph and Laurie Colmery (Applicant) for the Colmery Pier Relocation Project (Project) in Placer County. The Water Board also received information to support granting an exemption to 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. 6A311310001. 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	6A311310001
Applicant	Joseph and Laurie Colmery 170 Alamo Hills Court Alamo, CA 94507
Agent	Kevin Agan Agan Consulting Corporation P.O. Box 9180 Incline Village, NV 89450

Table of Project Information Continued:

Project Name	Colmery Pier Relocation Project						
Project Purpose and Description	The purpose of the Project is to replace an existing 40' by 14' pier with a similar sized pier approximately 60 feet to the north. The Project would also remove a lakeside patio, rock gabions, wood bulkhead, and related debris in the area of the new pier. The majority of the existing structures to be removed are above the ordinary high water mark (OHWM). The bulkhead and gabions to be removed take up approximately 175 square feet of area below the OHWM of Lake Tahoe. Approximately 140 linear feet of near vertical bluff, the toe of which is at the OHWM (6229.1 feet), will be sloped back and stabilized with a sloping permeable rock revetment of cobble, boulders and native vegetation.						
Project County	Placer						
Project Type	Pier relocation and shoreline restoration						
Project Address or other Locating Information	632 Olympic Drive, approximately one mile south of Tahoe City						
Location Latitude/Longitude	Latitude: 39.157831 Longitude: -120.1415						
Hydrologic Unit(s)	Lake Tahoe Hydrologic Unit, 634.00						
Project Area	0.11 acres						
Receiving Water(s) Name	Lake Tahoe						
Water Body Type(s)	Lake						
Designated Beneficial Uses	MUN, AGR, GWR, FRSH, REC-1, REC-2, COMM, COLD, WILD, MIGR, SPWN, WQE, FLD						
Potential Water Quality Impacts	Sediment from the construction of the Project, including temporary impacts from excavation and discharge of construction-related materials.						
Area of water(s) of the U.S. (WOUS) within the Project area	0.13 acres and 140 linear feet						
Impacts of Fill within waters of the state, including WOUS.	Waterbody Type	Permanent			Temporary		
		Square Feet	Linear Feet	Cubic Yards	Acres (Square Feet)	Linear Feet	Cubic Yards
	<i>Lake</i>				175	140	
	<i>Riparian</i>						
	<i>Stream</i>						
<i>Wetland</i>				0.004 (182)			
Federal Permit(s)	The Applicant has applied for and received U.S. Army Corps of Engineers (USACOE) authorization to proceed under Nationwide Permit No. 3, pursuant to CWA section 404, contingent upon the issuance of this WQC.						
Non-Compensatory Mitigation	Best Management Practices (BMPs), including placement of fiber rolls and other temporary erosion control protection, will be employed on the site at all times and throughout construction. The shoreline and upland work will be performed via upland access, while the pier piling removal and placement will be done from an amphibious rubber-tired barge.						

Table of Project Information Continued:

Compensatory Mitigation	The 175 square feet of lakebed temporarily disturbed at the Project site will be restored at the same location with the removal of fill (gabions, bulkhead, and pier) and restoration to spawning habitat with rock cobbles.
Applicable Fees	\$1,201 (\$1,201 base fee + \$0 for low-impact discharges).
Fees Received	\$1,201

CEQA COMPLIANCE

Water Board staff have determined that this Project is exempt from the California Environmental Quality Act (CEQA)(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

To protect beneficial uses and achieve water quality objectives for the waters of Lake Tahoe and its tributaries, the Basin Plan specifies the following discharge prohibition:

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 below the highwater rim of Lake Tahoe or within the 100-year floodplain of any tributary to Lake Tahoe is prohibited.

As proposed, the Project threatens to discharge waste earthen materials associated with construction. The proposed Project includes removal of a patio, rock gabions and a wooden bulkhead and the installation of a sloping rock revetment along 140 linear feet of shoreline of Lake Tahoe.

Prohibition Exception

Resolution No. R6T-2008-031 delegates authority to the Water Board Executive Officer to grant exceptions to the above-referenced discharge prohibition for projects that satisfy criteria specified in Resolution No. R6T-2008-031. The criteria that the Project must satisfy are:

The Executive Officer has the authority to authorize the project under an existing general permit, general waiver or individual water quality certification order, excluding projects that require a Board action; and

1. *The project meets the exemption or exception criteria set forth in the Basin Plan; and*
2. *The project's primary purpose is to reduce, control, or mitigate existing sources of erosion or water pollution.*

The primary purpose of the Project is to reduce and mitigate existing sources of erosion by stabilizing the shorezone and removing deteriorating structures.

The Basin Plan allows exceptions to the above-cited discharge prohibition for activities below the highwater rim of Lake Tahoe for erosion control and similar projects provided that:

(a) The project, program, or facility is necessary for environmental protection:

The proposed Project is necessary for environmental protection to stabilize a near vertical slope after removal of the dilapidated wooden bulkhead, patio and rock gabions. Upon removal of the dilapidated structure, the slope will be laid back and 140 linear feet of sloping rock revetment with inclusion of native vegetation will be installed above the OHWM but within the 100-year floodplain or the Lake Tahoe dam's crest elevation of 6233.2 feet (Lake Tahoe datum). The proposed Project is necessary for environmental protection as it is designed to reduce erosion and prevent sediment from discharging directly to the lake.

(b) There is no reasonable alternative, including relocation, which avoids or reduces the extent of encroachment:

Alternatives to the placement of a sloping rock revetment with a native vegetation component, as proposed, would be replacement of dilapidated structures that currently stabilize the near vertical bank, which would be less protective of beneficial uses. The proposed Project includes removing soil from behind the dilapidated structures to be removed and installing a sloping rock revetment consisting of 15- to 27-inch diameter boulders on top of 6- to 10-inch diameter cobbles on top of gravel and sand at the base. The amount of disturbance below the OHWM will be from removal of gabion and bulkhead structures and is limited to that needed to address concerns regarding stabilization of the shoreline within the property boundary. There is no reasonable alternative to reduce encroachment to the area below the highwater rim and 100-year floodplain.

(c) Impacts are fully mitigated:

The impacts of the Project are mitigated by the use of a sloping rock revetment apron landward of the existing gabions and bulkhead. The revetment includes revegetation with native plants. All imported materials will be washed. Due to low lake levels, a turbidity curtain will not be necessary as all work will be performed above the water line. Placement of rock will be from top of bank. Working from the upland area will significantly reduce disturbance in the shore zone. Any equipment used will be clean and non-leaking. The Project includes measures that will fully mitigate potential impacts.

EXEMPTION GRANTED

As demonstrated above, the Project meets the conditions and criteria for an exemption to the above-cited discharge prohibition. The applicant has incorporated appropriate BMPs into the Project to ensure that erosion and surface runoff problems caused by the Project are minimized to levels of insignificance. 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 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 received USACOE authorization to proceed with the Project under a Nationwide Permit No. 3 pursuant to CWA section 404 contingent upon receiving this WQC.

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/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. To ensure implementation of the Project proceeds as proposed in the application, the landscape architect and engineer whose names are on the final design plans must monitor the implementation of the stabilization components of the Project.
2. Implementation of all elements of the Project may occur in non-submerged areas only during May 1 to October 1. Work in areas that are submerged must only proceed during the periods between October 1 and May 1 to protect spawning habitat.
3. Rock proposed for placement in the Project area must be washed and/or free of all adhered soil particles prior to placement. Wash water from rock washing must be disposed of either to the sanitary sewer, as allowed by the sewer agency, or directed to non-wetland, upland areas a minimum of 100 feet from Lake Tahoe where the water is infiltrated into the soil.
4. Prior to initiating construction of the pier portion of the Project, the Applicant must document whether there are any subsurface utilities in the area of construction. This can be accomplished by: (1) contacting all utilities (both public and private) that provide service in the area and documenting these contacts; (2) contacting Underground Service Alert, and documenting this contact; or (3) some other equivalent affirmative action to determine and document whether or not there are any subsurface utilities in the area of construction. The area of construction is defined as any area within the Project boundaries where there will be excavation, construction of borings or driving of piles. If subsurface utilities are located in the construction area, the Applicant must also prepare a utility avoidance plan that will be followed during construction.
5. The Applicant must review the forecasted local weather prior to implementing the stabilization portion of the Project and only begin construction when there are at least three consecutive days forecasted days with no precipitation. For each day of construction, the Applicant must obtain a printed copy of the precipitation forecast information from the National Weather Service (NWS) Forecast Office and keep the copy with this Order at the Project site. The Applicant can access the daily forecasts by entering the zip code of the Project's location at the following website:
<http://www.srh.noaa.gov/>.
6. Refueling and/or lubricating of any equipment on the barge while it is on the lake or adjacent to the Project site is prohibited.
7. No debris, cement, concrete (or wash water therefrom), oil or petroleum products must be allowed to 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 any areas where such material may erode into waters of the state.

8. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
9. 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.
8. 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 wetland fill or wetland 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.
9. An emergency spill kit must be at the Project site at all times.
10. The Applicant must maintain a copy of this Order at the Project site so as to be available during construction to site operating personnel and agencies.

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 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

cc: Kevin Agan, Agan Consulting Corporation
Kenneth Kasman, Tahoe Regional Planning Agency
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