



Lahontan Regional Water Quality Control Board

September 17, 2014

Shaun Mitchell
Truckee Donner Recreation and Park District
8924 Donner Pass Road
Truckee, CA 96161

BOARD ORDER NO. R6T-2014-0081, FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION FOR THE TRUCKEE DONNER RECREATION AND PARK DISTRICT FLOATING DOCK PROJECT, NEVADA COUNTY, WDID NO. 6A291408001

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 for the Truckee Donner Recreation and Park District Floating Dock Project (Project) in Nevada County. This Order for WQC hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A291408001. Please use this reference number in all future communications 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	6A291408001
Applicant	Shaun Mitchell 8924 Donner Pass Road Truckee, CA 96161
Agent	Same
Project Name	Truckee Donner Recreation and Park District Floating Dock Project

Table of Project Information Continued:

Project Purpose and Description	The proposed Project includes the installation of two 2-square-foot concrete anchors, and two 2-inch posts within Donner Lake. Installation will occur during low water conditions in fall or winter, 2014.
Project Type	Floating dock installation
Project County	Nevada
Project Address or other Locating Information	Shoreline Park at Donner Lake
Location Latitude/Longitude	Latitude: 39° 32655" Longitude: 120° 26502"
Hydrologic Unit(s)	Truckee River Hydrologic Unit, 635.00
Project Area	600 square feet
Receiving Water(s) Name	Donner Lake, Truckee River
Water Body Type(s)	Lake, River
Designated Beneficial Uses	MUN, AGR, GWR, NAV,, REC-1, REC-2, COMM, COLD, WILD, BIOL, MIGR, SPWN
Potential Water Quality Impacts	Discharge of sediment from shoreline or lake bed into the lake from installation of the anchors and installation of posts into the lakebed.
Area of Water(s) of the U.S. (WOUS) within the Project area	600 Square Feet
Project Impacts (Fill) to Waters of the state, including WOUS	The Project involves placement of two 2-square-foot concrete anchor blocks over an area of 4 square feet. No net loss of waters will occur as a result of the Project.
Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Non-Reporting Nationwide Permit 18, pursuant to CWA section 404.
Non-Compensatory Mitigation	Applicable Best Management Practices (BMPs) will be employed on the site at all times, and throughout implementation.
Compensatory Mitigation	None required
Applicable Fees	\$1,097 (base application fee) + \$104 (9.5% surcharge)
Fees Received	\$1,201

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 15311, the basis for the CEQA exemption is "Accessory Structures." A Notice of Exemption will be filed with the State Clearinghouse concurrently with issuing this Order.

100-YEAR FLOODPLAIN WASTE DISCHARGE PROHIBITION

The *Water Quality Control Plan for the Lahontan Region* (Basin Plan) contains certain waste discharge prohibitions that apply to the Truckee River Hydrologic Unit (HU No. 635), 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 Truckee River or any tributary to the Truckee River is prohibited.”

The proposed Project threatens discharges that would violate the prohibition as it involves alterations within the 100-year floodplain of Donner Lake and tributaries to the Truckee River. The Water Board may grant an exemption to the above-cited prohibition under certain conditions.

WASTE DISCHARGE PROHIBITION EXEMPTION

In accordance with provisions in the Basin Plan, the Water Board may grant exemptions to prohibition 4(c) for public recreation projects if the project meets all of the following criteria:

1. *The Project purpose is included in one or more of the five categories listed in Section 4.1 of the Basin Plan that read as follows: “(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 purpose satisfies category (4) above, “projects necessary for public recreation.” The Project will install two 2-square-foot concrete blocks and two 2-inch posts within Donner Lake in order to anchor and stabilize a seasonal floating dock. All appropriate BMPs will be implemented for erosion or sediment control; impacts to the quality or impairment of beneficial uses of water will be eliminated, reduced or mitigated.

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

The Project involves installing a seasonal floating deck with associated anchors in Donner Lake. There is no reasonable alternative location for the Project or associated anchoring devices.

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

The purpose of the Project is for public recreation at Shoreline Park within the 100-year floodplain of Donner Lake. The Project, therefore by its very nature, must be located within the 100-year floodplain.

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

The Project has been designed to minimize all potential impacts at the site. The Project will be conducted by positioning concrete anchor blocks and installing anchor posts into the lake bed of Donner Lake. Project implementation will occur during low lake levels in order to expedite the installation process. The Applicant has incorporated all applicable BMPs into the proposed Project to minimize sediment disturbance or conveyance, and to avoid, reduce or mitigate other potential adverse environmental impacts.

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, as described above, involves installation methods to prevent direct or indirect water quality degradation or beneficial use impairment. 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.*

The installation of the Project will not block or reduce the flood flow; therefore, attenuation capacity will be unaffected. The surface flow treatment capacity or the ground water flow treatment capacity will not be modified from the existing conditions. No mitigation is required.

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 exemptions 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 a 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 Board Order No. 2003-0017-DWQ.

Resolution No. R6T-2008-031 delegates authority to the Water Board Executive Officer to grant exemptions 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:

1. *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*

With this Order, the Executive Officer is issuing an individual water quality certification order for the Project.

2. *The project meets the exemption or exception criteria set forth in the Basin Plan;*

The Project meets all exemption criteria in the Basin Plan as noted above.

and

3. *The project is within the following specific size limitations:*

- *less than 2000 square feet of new ground disturbance, and*
- *less than 100 cubic yards of fill or excavation.*

The Project will create a total of 4.5 square feet of new disturbance within Donner Lake and meets the size limitations as noted above.

PROHIBITION EXEMPTION GRANTED

As demonstrated above, the Project meets the conditions and criteria for an exemption to the 100-year floodplain waste discharge prohibitions. The Applicant has incorporated appropriate BMPs into the Project to ensure that any erosion and surface runoff problems caused by the Project are minimized to levels of insignificance. A draft notice of exemption was posted on the Water Board website and distributed through an interested persons mailing list allowing at least ten (10) days to submit comments. The Project is hereby granted an exemption to the above-cited waste discharge prohibition.

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 has 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 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, 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 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 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 (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. Prior to initiating construction of the Project, the Applicant must provide documentation of 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 or other structures into the subsurface. If subsurface utilities are located in the construction area, the Applicant must also provide a utility avoidance plan that will be followed during construction.
2. A copy of this WQC Order, a copy of the complete WQC application submitted to the Water Board, and the utility avoidance plan (if required by additional condition above) must be available at the Project site during construction of the Project.
3. 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.

4. 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 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.
5. The Applicant must prevent discharge of any materials foreign to the lake water from implementation of this Project.
6. An emergency spill kit must be at the Project site at all times.

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 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 Dale Payne, Environmental Scientist, at (530) 542-5464, or Alan Miller, P.E., Chief, North Basin Regulatory Unit, at (530) 542-5430.



PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

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