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## Lahontan Regional Water Quality Control Board

September 25, 2014

Gardner Combs, President  
Donner Lake Property Owners' Association  
P.O. Box 8387  
Truckee, CA 96162

### **BOARD ORDER NO. R6T-2014-0088, FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND BASIN PLAN PROHIBITION EXEMPTION FOR THE SOUTH SHORE DRAINAGE DLPOA/MAHONEY PROJECT, TOWN OF TRUCKEE, WDID 6A290811003**

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 the Donner Lake Property Owners' Association (Applicant) for the South Shore Drainage DLPOA/Mahoney Project (Project) in Nevada County. The Project is the final element of the Applicant's 2007 Donner Lake shoreline stabilization project that was constructed without Water Board authorization. The Project will restore and enhance the functionality of a storm drain pipe that may have been adversely impacted by the 2007 shoreline stabilization project. 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. 6A290811003. 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](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

**PROJECT DESCRIPTION**

**Table of Project Information:**

WDID Number	6A290811003
Applicant	Gardner Combs, President Donner Lake Property Owners' Association P.O. Box 8387 Truckee, CA 96162
Project Name	South Shore Drainage DLPOA/Mahoney Project
Project Purpose and Description	The purpose of the Project is to authorize replacement of an existing 18-inch diameter storm drain corrugated metal pipe (CMP) with a new 18-inch diameter high-density polyethylene pipe in a manner that restores the storm drain's functionality while preventing erosion and reducing sediment discharges to Donner Lake. The existing storm drain pipe's outfall is currently located below grade, contributing to localized flooding and subsequent erosion of Donner Lake's lakeshore. The existing storm drain pipe also does not have any sediment-trapping capacity, which will be addressed by replacing an existing vertical CMP sump inlet with a new one that has sediment-trapping capacity. A second vertical CMP sump inlet structure with sediment-trapping capacity will be also be installed between the Applicant's gravel road and up-gradient neighboring properties. Rock-slope protection will be placed at the new storm drain pipe's outfall to prevent lakeshore erosion that has occurred in the past. The Town of Truckee is installing and maintaining the new storm drain pipe pursuant to its agreement with the Applicant and neighboring property owners.
Project County	Nevada
Project Type	Storm drain pipe replacement with lakeshore stabilization.
Project Address or other Locating Information	15600 South Shore Drive, Truckee, CA, APNs 17-240-01, -05, and -16
Location Latitude/Longitude	Latitude: 39°19'03.81"N Longitude: 120°17'17.82"W
Hydrologic Unit(s)	Truckee River Hydrologic Unit, 635.00
Project Area	2,400 square feet/0.055 acres
Receiving Water(s) Name	Donner Lake
Water Body Type(s)	Lake
Designated Beneficial Uses	MUN, AGR, FRSH, NAV, REC-1, REC-2, COMM, COLD, WILD, RARE, SPWN
Potential Water Quality Impacts	Sediment discharges to Donner Lake during and following Project construction.
Area of Water(s) of the U.S. (WOUS) within the Project Area	1,200 square feet/0.028 acres

**Table of Project Information Continued**

	Waterbody Type	Permanent			Temporary		
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
Impacts of Fill within Waters of the state, including WOUS	<i>Lake</i>	0.002	15 feet	3.7			
	<i>Riparian</i>						
	<i>Stream</i>						
	<i>Wetland</i>						
	<b>Total</b>	<b>0.002</b>	<b>15</b>	<b>3.7</b>			
Impacts of Excavation to Waters of the state, including WOUS	<i>Lake</i>				0.028	60	56
	<i>Riparian</i>						
	<i>Stream</i>						
	<i>Wetland</i>						
	<b>Total</b>				<b>0.028</b>	<b>60</b>	<b>56</b>
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) will be employed on the site at all times and throughout construction. Use of equipment will be restricted to that necessary to excavate and backfill the replacement pipe trench, and to install the pipe and vertical CMP inlet sumps. Rock-slope protection will be installed by hand.						
Compensatory Mitigation	The temporary impacts at the Project site will be restored at the same location. The Project is designed to restore the storm drain pipe's functionality in a manner that eliminates erosion and reduces sediment discharges to Donner Lake without eliminating any habitat or habitat function.						
Applicable Fees	\$2,660 (This was the appropriate fee for the shoreline stabilization work completed in 2007 and subject to the 2008 fee schedule. The proposed storm drain work became necessary, in part, due to impacts of the 2007 shoreline stabilization project. The WOUS-related storm drain system Project area is located within the 2007 shoreline stabilization project area, and no additional fees are required.						
Fees Received	\$2,660						

**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 15302, the basis for CEQA is "Replacement or Reconstruction." 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 waste 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 Project proposes excavation and backfill within the 100-year floodplain to replace the existing storm drain pipe and to place rock-slope protection at the pipe outfall to prevent lakeshore erosion. Approximately 3.7 cubic yards of rock will be placed at the pipe outfall below Donner Lake's high water elevation/100-year floodplain elevation.

### **Prohibition Exemption Criteria For Repair or Replacement of Existing Structures**

The Basin Plan allows exemptions to the above-referenced discharge prohibition for repair or replacement of existing structures, provided there is no additional loss of floodplain area or volume. Before granting such an exemption, the Applicant must demonstrate that all applicable BMPs and mitigation measures have been incorporated into the proposed Project to minimize any potential soil erosion and/or surface runoff problems. (Basin Plan page 4.1-5).

The Project's purpose is to replace a non-functioning storm drain pipe whose outfall is currently below grade and has never been stabilized. These conditions have caused localized flooding conditions that have contributed to lakeshore erosion in the past. The Project incorporates Project boundary, vegetation protection, and erosion and stormwater runoff control BMPs to prevent soil erosion and surface runoff problems from occurring during Project construction. The Project also includes new permanent BMPs such as sediment-trapping facilities and outfall stabilization. The Project will also reduce or eliminate localized flooding conditions that contributed to surface runoff problems such as lakeshore erosion. The pipe outfall area will be stabilized with rock-slope protection to prevent the lakeshore erosion that has occurred in the past without reducing floodplain area or volume.

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

*3. The Project is replacing an existing facility.*

The primary purpose of the Project is replacing a non-functioning storm drain pipe in a manner that reestablishes and enhances its function, addresses a localized flooding condition created by the current pipe slope, and reduces sediment discharges to Donner Lake. These Project objectives will be achieved by installing the storm drain pipe with sediment traps and with a slope that allows the pipe to daylight to a stabilized lakeshore. The Project meets the criteria necessary for the Executive Officer to grant an exemption.

**Exemption Granted**

As demonstrated above, the Project meets the conditions and criteria for an exemption to the above-referenced waste 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-referenced waste discharge prohibition. Except in emergency situations, the Executive Officer shall notify the Water Board and interested members of the public of the intent to issue an exemption at least ten 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 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 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. Water Board staff must be notified within **forty-eight hours** prior to commencing construction of the Project.
2. Any additional work or variation from the described work, which may result in additional or increased impacts to the 100-year floodplain or waters of the state, including WOUS, is not authorized unless approved in writing by the Executive Officer prior to implementation.
3. The Applicant must prevent the introduction or spread of noxious/invasive weeds associated with the Project. Control measures may include removing existing invasive vegetation, cleaning all equipment and gear prior to use on the Project site, using weed-free erosion control materials, and using weed-free seeds and plant material for revegetation of disturbed areas.
4. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
5. All rock, gravel bags, or other construction-related materials imported to the Project site and placed at the Project site must be clean, washed, and free of any adhered soil material.
6. The Applicant must minimize and prevent water quality degradation to waters of the state during and following construction, and must ensure that all pollutant source controls and soil erosion prevention or stabilization procedures are in place and effective prior to and during precipitation events.
7. No debris, cement, concrete (or wash water therefrom), oil or petroleum products are 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. 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.
9. The Applicant must permit Water Board staff or its authorized representative upon presentation of credentials:
  - a. Entry onto Project premises, including all areas where the Project 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.
10. An emergency spill kit must be at the Project site at all times.
11. 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 Scott C. Ferguson, Senior Water Resources Control Engineer, at (530) 542-5432.

  
PATTY Z. KOUYOUMDJIAN  
EXECUTIVE OFFICER

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