
Lahontan Regional Water Quality Control Board

September 28, 2015

Kevin and Michelle Douglas
125 East Sir Francis Drake Blvd., Suite 400
Larkspur, CA 94939

BOARD ORDER NO. R6T-2015-0061, CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND BASIN PLAN PROHIBITION EXEMPTION FOR DOUGLAS (WARD CREEK) STREAM BANK STABILIZATION PROJECT, PLACER COUNTY, WDID 6A311406002

The California Regional Water Quality Control Board, Lahontan Region (Water Board), received a complete Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) application and application filing fee from Kevin Agan, on behalf of Kevin and Michelle Douglas (Applicant), for the Douglas (Ward Creek) Stream Bank Stabilization Project (Project). The Applicant also provided information to support granting an exemption to waste discharge prohibitions in the Water Board's *Water Quality Control Plan for the Lahontan Region* (Basin Plan). The application received on June 5, 2014, was deemed complete on August 26, 2015. This Order for WQC hereby assigns this Project the following reference number: Waste Discharge Identification (WDID) No. 6A311406002. 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, 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.

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PROJECT DESCRIPTION**Table of Project Information:**

WDID Number	6A311406002
Applicant	Kevin and Michelle Douglas 125 East Sir Francis Drake Blvd., Suite 400 Larkspur, CA 94939
Agent	Kevin Agan
Project Name	Douglas (Ward Creek) Stream Bank Stabilization Project
Project Purpose and Description	The Project purpose is to stabilize approximately 900 linear feet of lower Ward Creek's northern stream bank, which has areas of steeply sloped, unstable, exposed soils with little vegetation and undercut tree roots and stumps. The proposed Project includes approximately 175 linear feet of reshaping and terracing the stream bank (taking it from the current 1:1 slope (horizontal to vertical) to 2:1 slope) with large stone revetment and vegetative infill; approximately 150 linear feet of sheet pile wall installed landward of boulder revetment and vegetative infill; approximately 180 linear feet of entrenched launched stone located below grade and about five feet landward of the top of stream bank (no modification of stream bank in this zone); and approximately 400 linear feet of vegetative enhancement and localized repair of undermined tree root balls.
Project Type	Bank and Channel Modification, Restoration Bank Stabilization
Project County	Placer
Project Address or other Locating Information	The Project is located on the north side of Ward Creek, approximately 250 feet downstream of the Ward Creek Bridge on State Highway 89 and approximately 500 feet from the shoreline of, and outfall to, Lake Tahoe.
Location Latitude/ Longitude	Latitude: 39.13095 , Longitude: -120.1565 (center)
Hydrologic Unit	Lake Tahoe Hydrologic Unit, 634.00
Overall Project Area	0.33 acres
Receiving Water(s) Name	Ward Creek
Water Body Type(s)	Perennial stream
Designated Beneficial Uses	MUN, AGR, GWR, REC-1, REC-2, COLD, WILD, WQE, FLD
Potential Water Quality Impacts	Potential for discharge of sediment into the creek and wetland due to project implementation.
Area of Water(s) within the Overall Project Area	0.33 acres, 950 linear feet

Table of Project Information continued:

Impacts of Fill and Excavation to waters of the state, including Waters of the U.S. (WOUS)	Water-body Type	Temporary			Permanent					
					Physical Loss of Area			Degradation of Ecological Condition		
	Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards	
	<i>Lake</i>									
<i>Riparian</i>										
<i>Stream</i>				0.026	525	931				
<i>Wetland</i>										
Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACE) authorization to proceed under a Letter of Permission, pursuant to CWA section 404.									
Non-compensatory Mitigation	Best Management Practices (BMPs) will be employed on the site at all times and throughout construction. The temporarily impacted sites will be restored and returned to pre-project conditions within one year of project implementation.									
Compensatory Mitigation	Temporary impacts must be restored within one month of implementation. Permanent impacts must be mitigated by enhancement using revegetation at a 2:1 ratio (replacement to loss) and five years of monitoring.									
	Total Ecological Restoration and Enhancement Quantity for Temporary Impacts (California Integrated Water Quality System mitigation/restoration table side B)									
	Aquatic Resource Type	Unit		Enhanced			Restored			
	Stream Channel	Acres		0.026						
Linear Feet		525								
Application Fee	\$7,088.00 (525 linear feet of discharge x \$13.50 per linear feet)									
Fees Received	\$7,088.00									
Estimated Annual Active Discharge Fee ¹	\$600 (an annual active discharge fee will be assessed each fiscal year or portion of a fiscal year during which discharges occur until the Water Board issues a Notice of Completion of Discharges Letter to the Applicant)									
Estimated Post-Discharge Monitoring Fee ¹	\$300 (a post-discharge monitoring fee will be assessed each fiscal year or portion of a fiscal year during which water quality monitoring or compensatory mitigation monitoring is required)									

¹The actual Annual Active Discharge Fee and Post-Discharge Monitoring Fee will be calculated using the fee schedule in effect at the time the annual fee is assessed per California Code of Regulations, title 23, section 2200(a)(3).

CEQA COMPLIANCE

The Water Board has determined that this Project is exempt from the California Environmental Quality Act (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.

BASIN PLAN DISCHARGE PROHIBITIONS

The Basin Plan specifies the following waste discharge prohibitions applicable to surface waters, 100-year floodplains, and Stream Environment Zones (SEZs) in the Lake Tahoe basin:

1. *The discharge attributable to human activities of any waste or deleterious materials to surface waters of the Lake Tahoe Hydrologic Unit is prohibited.*
2. *The discharge attributable to human activities of any waste or deleterious material to land below the highwater rim of Lake Tahoe or within the 100-year floodplain of any tributary to Lake Tahoe is prohibited.*
3. *The discharge attributable to human activities of any waste or deleterious material to SEZs in the Lake Tahoe Hydrologic Unit is prohibited.*

BASIN PLAN DISCHARGE PROHIBITION EXEMPTION CRITERIA AND FINDINGS

1. The Water Board may grant an exemption to Prohibition 1, above, when the Water Board finds all of the following criteria are satisfied:
 - a. The discharge of waste will not individually or collectively, directly or indirectly, adversely affect beneficial uses, and
 - b. There is no reasonable alternative to the waste discharge, and
 - c. All applicable and practicable control and mitigation measures have been incorporated to minimize potential adverse impacts to water quality and beneficial uses.

The Project is intended to stabilize Ward Creek's severely eroding northern stream bank that is discharging excessive sediment to Lake Tahoe, located approximately 500 feet downstream of the Project. The stream bank stabilization Project includes riparian vegetation enhancement that has been lost from ongoing stream bank erosion, in addition to protecting a nearby home and associated infrastructure. The combination of temporary BMPs and Project design elements (e.g., decreasing stream bank slope, protecting/maintaining well-established riparian vegetation, rock revetments and sheet pile wall to stabilize the stream bank, and enhancing vegetation) will prevent adverse impacts to the creek's beneficial uses.

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The Applicant has also revised the proposed project since submitting the original proposal in June 2014 based on recommendations of a consultant with geomorphology expertise. The revised plan now incorporates design principles and elements that reduce the potential waste discharges associated with the Project to the point that there is no reasonable alternative to the waste discharge. Additionally, all applicable and practicable control and mitigation measures have been incorporated to minimize potential adverse impacts to water quality and beneficial uses.

2. The Water Board may grant exemptions to Prohibitions 2 and 3, above, for erosion control projects, habitat restoration projects, wetland rehabilitation projects, SEZ restoration projects, and similar projects when the Water Board finds all of the following criteria are satisfied:
 - a. There is no reasonable alternative, including relocation, that avoids or reduces the extent of encroachment below the highwater rim of Lake Tahoe, within the 100-year floodplain, or within the SEZ; and
 - b. Impacts are fully mitigated.

As described above, the Applicant has minimized the impact to the extent feasible while still providing needed erosion control of the northern stream bank. There is no reasonable alternative to the proposed Project. All applicable and practicable control and mitigation measures have been incorporated into the Project to minimize any discharges of wastes to surface waters during or following construction. BMPs include use of fiber logs, silt fence, vegetative protection fencing, and a temporary creek flow diversion plan, if needed. The Project will also be implemented during low creek flow conditions. The impacts are fully mitigated by vegetation preservation and revegetation of reshaped banks and by incorporating BMPs into the Project.

The proposed Project meets the criteria for granting an exemption, as noted above.

DELEGATION OF AUTHORITY FOR GRANTING AN EXEMPTION

The Water Board has delegated authority to grant exemptions for Basin Plan waste discharge prohibitions to the Executive Officer pursuant to Resolution No. R6T-2015-0038 for specific discharges where the proposed Project meets the conditions in the Basin Plan.

PROHIBITION EXEMPTION GRANTED

As demonstrated above, the Project meets the conditions and criteria for exemptions to the above-cited waste discharge prohibitions. 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 prohibitions.

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 USACE authorization to proceed under a Letter of Permission pursuant to CWA section 404.

California Code of Regulations (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 California Water Code (CWC) 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 Water Quality Control Plan for the Lahontan Region (Basin Plan), cause a condition or threatened condition of pollution or nuisance, or cause any other violation of the CWC.
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

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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 Water Quality 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 Lahontan 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 sections 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. Final rock slopes must be no steeper than 1.5:1 (horizontal:vertical).
2. All rock used in the Project (boulder, cobbles) must be washed and free from fine material.
3. All surface waters, including ponded waters, must be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water in accordance with the revised application.
4. By **December 15, 2015**, a report must be provided to the Water Board that demonstrates the Project was constructed according to the plans provided and

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reviewed by this office. The report must include photo points and other methods used to evaluate revegetation and stream bank stabilization success.

5. By **December 15, 2016**, provide a report on the revegetation and stream bank stabilization success one year after implementation.
6. By **December 15, 2017**, provide a report on the revegetation and stream bank stabilization success two years after implementation.
7. By **December 15, 2018**, provide a report on the revegetation and stream bank stabilization success three years after implementation.
8. Construction equipment (hand tools in this case) must be clean and free from oil, grease and loose metal material and must be removed from service if necessary to protect water quality.
9. An emergency spill kit must be at the Project site at all times.
10. Debris, cement, concrete (or wash water therefrom), oil or petroleum products must not 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 adjacent to the work area where such material may be transported into waters of the state.
11. The Applicant must immediately 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. Pursuant to CWC section 13267(b), 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.
12. 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 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.
13. The Applicant must ensure that Contractor employs necessary measures to prevent the introduction or spread of noxious/invasive weeds within the project and staging

area. These measures may include the treatment of on-site infestations, the cleaning of all equipment and gear that has been in an infested site, the use of weed-free erosion control materials (including straw), and the use of weed-free seeds and plant material for revegetation of disturbed areas.

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.

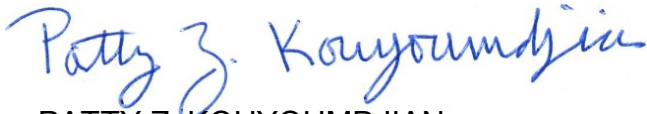
Section 401 Water Quality Certification Requirements Granted

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.

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If you have any questions or comments regarding this permit, please contact Tobi Tyler, Water Resources Control Engineer, at tobi.tyler@waterboards.ca.gov (530-542-5435) or Alan Miller, Chief, North Basin Regulatory Unit, at alan.miller@waterboards.ca.gov (530-542-5430). **Electronic document submittal is required. Please send your comments or documents to the Water Board's email address at Lahontan@waterboards.ca.gov and include your WDID No. or Facility Name in the Subject Line.**



PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

cc (via email): Kevin Agan, Agan Consulting
Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9
Bill Orme, SWRCB Division of Water Quality
Aaron Park, USACE, Reno District
Bob Hosea, California Department of Fish and Game