

Lahontan Regional Water Quality Control Board

March 5, 2013

Mike Alexander
USFS Lake Tahoe Basin Management Unit
35 College Drive
South Lake Tahoe, CA 96150

ORDER NO. R6T-2013-0012, CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND PROHIBITION EXEMPTION FOR MEEKS BAY MARINA WALL REPAIR PROJECT, EL DORADO COUNTY, WDID 6A091212002

The California Regional Water Quality Control Board, Lahontan Region (Water Board) has received a complete Clean Water Act Section 401 Water Quality Certification (WQC) application and application filing fee for the Meeks Bay Marina Wall Repair Project (Project). The Water Board also received 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). This Order for WQC and waste discharge prohibition exemption hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A091212002. Please use this reference number in all future Project-related correspondence.

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.

PROJECT DESCRIPTION

Table of Project Information:

WDID Number	6A091212002
Applicant	USFS Lake Tahoe Basin Management Unit, Mike Alexander 35 College Drive South Lake Tahoe, CA 96150
Agent	Jay Kniep PO Box 18601 South Lake Tahoe, CA 96151
Project Name	Meeks Bay Marina Wall Repair Project

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

2501 Lake Tahoe Blvd., So. Lake Tahoe, CA 96150 | www.waterboards.ca.gov/lahontan

Table of Project Information continued:

Project Purpose and Description	The Project will stabilize and reconstruct a failed slope at the edge of the marina. A slope failure occurred near the marina office building where the sheetpile wall transitions to bare soil. The location is in a high traffic area so repairs are necessary to protect public safety and support the adjacent building. The proposed repair will include placing rock boulders and rip rap fill overlain by geotextile fabric, base rock, and sand. The total volume of fill is approximately seven cubic yards, with approximately one-half above high water and one-half below the high water rim of Lake Tahoe.							
Project Type	Repair of existing facility slope failure							
Project County	El Dorado							
Project Address or other Locating Information	Meeks Bay Marina, 7901 West Lake Blvd (SR 89), Tahoe, CA							
Location Latitude/Longitude	Latitude: 39.03 Longitude: 120.12							
Hydrologic Unit(s)	Hydrologic Unit 634.30, Lake Tahoe HA							
Overall Project Area	30 acres (entire Marina parcel)							
Receiving Water(s) Name	Lake Tahoe							
Water Body Type(s)	Lake							
Designated Beneficial Uses	MUN, AGR, GWR, NAV, REC-1, REC-2, COMM, COLD, WILD, BIOL, MIGR, SPWN							
Potential Water Quality Impacts	Discharge of earthen materials to Lake Tahoe							
Area of Water(s) within the Overall Project Area	4 acres							
Project Impacts (Fill) to Waters of the State, including Waters of the U.S. (WOUS)	Waterbody Type	Permanent			Temporary			
		Acres / Sq. Ft.	Linear Feet	Cubic Yards	Acres / Sq. Ft.	Linear Feet	Cubic Yard	
		Lake	100 Sq.ft.	13	7			
		Riparian						
		Stream						
Wetland								
Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under Nationwide Permit No. 3, pursuant to Clean Water Act section 404.							
Non-Compensatory Mitigation	Impacts beyond the immediate fill area will be avoided. Potential direct impacts to water will be avoided by conducting the work during seasonal low water levels when the all of the fill will be above the lake level. Work will occur from the shore. Rock material will be placed below the Ordinary High Water Mark which will be immediately stable and remain stable after placement.							
Compensatory Mitigation	None required (repair and reconstruction).							
Applicable Fees	\$944							
Fees Received	\$944							

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 15301, the basis for CEQA exemption is "Existing Facilities." 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 placement of a boulders, rip rap, and fill along the shoreline to stabilize the slope of the marina, below the high water rim of Lake Tahoe.

Prohibition Exemption

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 a repair or replacement of existing facilities.*

The primary purpose of the Project is to repair damage to the existing marina facility; this will reduce sources of erosion by stabilizing the slope within the marina. This Project meets the criteria necessary to delegate the authority to the Water Board Executive Officer to grant an exemption to the prohibition stated above.

The Basin Plan allows exemptions to the above-cited discharge prohibition for activities below the high-water rim of Lake Tahoe for public outdoor recreation facilities provided that:

(a) The Project is a necessary part of a public agency's long range plans for public outdoor recreation:

The proposed Project is necessary to repair and maintain an existing United States Forest Service owned, and permittee operated, public outdoor recreation facility and to protect public safety at the existing facility. The proposed Project is also necessary for environmental protection as it is designed to reduce erosion and prevent sediment from discharging to the lake.

(b) The Project, by its very nature, must be sited in a floodplain:

The repair location is within the marina facility and by its very nature must occur within the high water rim of Lake Tahoe.

(c) There is no feasible alternative which would reduce the extent of encroachment in a floodplain:

The amount of disturbance below the high-water rim is limited to that needed to address concerns regarding stabilization of the slope. The proposed rock placement below the high water rim of Lake Tahoe consists of approximately 100 square feet of rock slope protection along 13 linear feet of shoreline within the marina. There is no reasonable alternative to reduce encroachment to the area below the high-water rim and achieve the Project goals.

(d) Impacts to the floodplain are fully minimized:

The impacts of stabilizing the slope are mitigated by minimizing the fill area and using materials that are immediately stable and will remain stable. Project work will occur from land during seasonal low lake levels which will reduce disturbance to the Lake. Any equipment used will be clean and non-leaking. The Project includes measures that will 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 waters of the United States, 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. 3 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 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 Basin Plan, may cause a condition or threatened condition of pollution or nuisance, or cause any other violation of the California 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 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 Clean Water Act, 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 Clean Water Act.
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. The Applicant must notify Water Board staff within 48 hours prior to commencement of the Project.
2. The Applicant must review the forecasted local weather prior to implementation 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/>.
3. Rock proposed for placement 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. If the Project occurs when the elevation of Lake Tahoe is above 6226 feet additional precautions must be taken prevent the discharge of earthen materials to Lake Tahoe. If the elevation of Lake Tahoe is above 6226 feet, caissons, sleeves, or turbidity curtains must be used during Project implementation to prevent re-suspension and discharge of lakebed sediments. The turbidity curtains must be inspected on a daily basis and maintained as necessary to prevent discharge of suspended sediment outside the containment area.
5. No debris, cement, concrete (or wash water therefrom), sand, rock, soil, earthen materials 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 adjacent to the work area where such material may be transported into waters of the state.
6. Construction equipment must be clean and free from oil, grease and loose metal material and must be removed from service if necessary to protect water quality.
7. An emergency spill kit must be at the Project site at all times.
8. The Applicant must maintain a copy of this Order at the Project site so as to be available at all times to site operating personnel and agencies.

9. The Applicant must permit 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.

10. The Applicant must immediately (within two hours) notify Water Board staff by telephone whenever an adverse condition occurs as a result of this Project. 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.

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 Clean Water Act 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 Resources Control Board (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 Clean Water Act 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 staff member Laurie Scribe at (530) 542-5465 or Doug Cushman, Chief, Non-Point Source Unit, at (530) 542-5417.


PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

- cc:** Jay Kniep, Agent
Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9
(via email at R9-WTR8-Mailbox@epa.gov)
Lynette Blanchard, U.S. Army Corps of Engineers, Sacramento District, Reno Office
(via email at Lynette.Blanchard@usace.army.mil)
Bill Orme, State Water Resources Control Board, Division of Water Quality
(via email at Stateboard401@waterboards.ca.gov)
Patrick Moeszinger, California Department of Fish and Game

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

From: (Public Agency): CA RWQCB, Region 6 Lahontan
2501 Lake Tahoe Blvd
South Lake Tahoe, CA 96150

County Clerk

County of: _____

(Address)

Project Title: Meeks Bay Marina Wall Repair

Project Applicant: U.S. Forest Service - Lake Tahoe Basin Management Unit

Project Location - Specific:

Meeks Bay Marina, 7901 West Lake Blvd (SR 89), Tahoma, CA

Project Location - City: Tahoma, CA

Project Location - County: EI Dorado

Description of Nature, Purpose and Beneficiaries of Project:

The project will stabilize and reconstruct a failed slope at the edge of the marina facility. The failure is in a high traffic location so repairs are necessary to protect public safety. The proposed repair, totaling approx. 7 cubic yards of fill, will include placing rock boulders and rip rap overlain by geotextile fabric, base rock, and sand.

Name of Public Agency Approving Project: CA Regional Water Quality Control Board, Lahontan Region

Name of Person or Agency Carrying Out Project: U.S. Forest Service - Lake Tahoe Basin Management Unit

Exempt Status: (check one):

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: 15301, Existing Facilities
- Statutory Exemptions. State code number: _____

Reasons why project is exempt:

This project is a repair to an existing marina facility. The repair will not alter the size or nature of the facility.

Lead Agency

Contact Person: Laurie Scribe

Area Code/Telephone/Extension: 530-542-5465

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: *Laurie Scribe* Date: 3-7-13 Title: Executive Officer

Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____