



**California Regional Water Quality Control Board**  
**Lahontan Region**



**Matthew Rodriguez**  
*Secretary for  
Environmental Protection*

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150  
(530) 542-5400 • Fax (530) 544-2271  
[www.waterboards.ca.gov/lahontan](http://www.waterboards.ca.gov/lahontan)

**Edmund G. Brown Jr.**  
*Governor*

**MEMORANDUM**

**TO:** Water Board Members

*Harold*

**FROM:** HAROLD J. SINGER  
EXECUTIVE OFFICER  
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

**DATE:** SEP 13 2011

**SUBJECT:** EXEMPTION TO DISCHARGE PROHIBITION CONTAINED IN THE  
WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION –  
KEARNS SHOREZONE PROTECTION PROJECT, 8429 MEEKS BAY  
AVENUE, EL DORADO COUNTY

In ten days, I intend to sign the enclosed draft Order granting an exemption to the discharge prohibition specified in the *Water Quality Control Plan for the Lahontan Region* for the Kearns Shorezone Protection Project (Project) in El Dorado County. The exemption will allow the Project proponent to place granite boulders below the ordinary high water line of Lake Tahoe to stabilize the shoreline. The Project would entail placing approximately seven cubic yards of rock in 150 square feet below ordinary high water.

The Project is located in Meeks Bay at 8429 Meeks Bay Avenue. The Project meets requirements for an exemption to the discharge prohibition as necessary to control existing erosion.

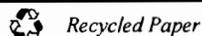
A public notice soliciting comments on the proposed Project will be posted on the Water Board's website for 10 days.

If you have any questions or comments regarding this matter, please contact Tobi Tyler at (530) 542-5435.

**Enclosure:** Draft Water Quality Certification Order and Stream Environment Zone Exemption

TT/clhT: Kearns Shorezone Protection Memo 8\_29\_11 TT.doc  
[File: 6A091107002 / Kearns Shorezone Protection Project/ El Dorado County]

**California Environmental Protection Agency**





# California Regional Water Quality Control Board

## Lahontan Region



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**Edmund G. Brown Jr.**  
Governor

Sharon Kearns  
76 South La Senda  
Laguna Beach, CA 92651

### ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND PROHIBITION EXEMPTION FOR THE KEARNS SHOREZONE PROTECTION PROJECT, EL DORADO COUNTY, WDID 6A091107002

The California Regional Water Quality Control Board, Lahontan Region (Water Board) has received a complete Clean Water Act (CWQ) Section 401 Water Quality Certification (WQC) application and application filing fee for the Kearns Shorezone Protection Project (Project) in El Dorado County. 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. 6A091107002. 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](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

#### PROJECT DESCRIPTION

##### Table of Project Information:

WDID Number	6A091107002
Applicant	Sharon Kearns 76 South La Senda Laguna Beach, CA 92651
Agent	David Shelton P.O. Box 4 Tahoe City, CA 96145
Project Name	Kearns Shorezone Protection Project

*California Environmental Protection Agency*

**Table of Project Information continued:**

Project Purpose and Description	The Applicant proposes to place granite boulder revetment along the shoreline to stabilize the slope. The majority of the placement will be above ordinary high water.
Location (closest City & County)	8429 Meeks Bay Avenue, Rubicon, El Dorado County
Location Latitude/Longitude	Latitude: 39.028583; Longitude: 120.11857
Hydrologic Unit(s)	Lake Tahoe Hydrologic Unit, 634.00
Project Area	700 square feet (0.02 acre)
Receiving Water(s) Name	Lake Tahoe
Water Body Type(s)	Lake
Area of Water(s) of the U.S. (WOUS) within the project area	300 square feet (0.007 acre)
Area of Permanent Impacts to WOUS	150 square feet (<0.01 acre)
Linear feet of Permanent Impact in WOUS	50 linear feet
Volume of Permanent Fill	7 cubic yards
Federal Permit(s)	The applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Nationwide Permit 13, pursuant to Clean Water Act section 404.
Non-Compensatory Mitigation	A temporary turbidity curtain will be in place during construction to prevent the discharge of fine particulate materials to Lake Tahoe. No existing boulders below high water will be disturbed and the placement of boulders on the slope will be done by hand or individually by machine. Other site-specific Best Management Practices (BMPs), silt fences and vegetation protection fencing, will be used throughout the construction period and for winterization to control erosion if necessary.
Compensatory Mitigation	None required.
Applicable Fees	<b>\$640.00</b> (\$640.00 application fee + \$0.00 for low-impact discharges).
Fees Received	\$640.00

**CEQA COMPLIANCE**

Water Board staff have 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.

## **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.*

### **Activity Below the Highwater Rim**

The proposed Project includes placement of a granite boulders along the shoreline to stabilize the hill slope between the lake and the residence.

### **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:

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's primary purpose is to reduce, control, or mitigate existing sources of erosion or water pollution.*

The primary purpose of the Kearns Shorezone Protection Project is to reduce and mitigate existing sources of pollution by stabilizing the shorezone and to maintain existing water quality by preventing sedimentation and erosion.

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 hill slope lakeward of a residence and prevent the discharge of sediment and pollutants to Lake Tahoe. The proposed rock placement below the high water line of Lake Tahoe consists of approximately 150 square feet of rock slope protection along 50 linear feet of

shoreline. The proposed Project is necessary for environmental protection as it is designed to reduce erosion and 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 rock have been discussed and developed by the Applicant in consultation with staff at the Tahoe Regional Planning Agency (TRPA) since March 2009. Several potential solutions were considered including vertical and battered walls and traditional rip rap stabilization. Because of the existence of large granite boulders on the site, TRPA staff encouraged the use of more granite boulders to stabilize the hill slope. The proposed Project includes a granite boulder revetment at the shore of the lake and separate micro-pile anchor system (using an all-thread steel rod) further up the slope to provide stability for the structures. The amount of disturbance below the highwater rim is limited to that needed to address concerns regarding stabilization of the residence/shoreline. There is no reasonable alternative to reduce encroachment to the area below the highwater rim.

**(c) Impacts are fully mitigated:**

Double layer filter fabric fencing will be used above lake level during installation and a turbidity curtain will be used in the water to prevent the discharge of fine particulate materials to Lake Tahoe. Work will be done mostly by hand labor. 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 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 his 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 \$640.00 application filing fee required for WQC under Section 401 for the Kearns Shorezone Protection Project. The Applicant has applied for U.S. Army Corps of Engineers (ACOE) authorization to proceed under Nationwide Permit No. 13 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 Kearns Shorezone Protection 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 Water Quality Control Plan for the Lahontan Region (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 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 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. To minimize or avoid impacts to water quality, 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.

2. A survey for Tahoe Yellow Cress on site must be performed by a qualified biologist prior to Project commencement. Any Tahoe Yellow Cress present on site must be protected at all times during construction of the Project.
3. All rock placed into the Project site must be clean, washed and free of adhered soil material.
4. 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.
5. 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. 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.
6. 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.
7. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
8. An emergency spill kit must be at the Project site at all times.
9. A copy of this Order must be maintained at the Project site so as to be available at all reasonable times to site operating personnel and Water Board staff.

### **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 Lahontan 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 Lahontan 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 Tobi Tyler, Water Resources Control Engineer, at (530) 542-5435 or Alan Miller, P.E., Chief, North Basin Regulatory Unit, at (530) 542-5430.

HAROLD J. SINGER  
EXECUTIVE OFFICER

cc: David Shelton  
Lief Larson / Tahoe Regional Planning Agency  
Amy Kennedy / California Department of Fish and Game, Rancho Cordova  
Mary Hays / California State Lands Commission  
Dave Smith / Wetlands Regulatory Office (WTR-8), US EPA, Region 9  
(via email at [R9-WTR8-Mailbox@epa.gov](mailto:R9-WTR8-Mailbox@epa.gov))  
Lynette Blanchard / U.S. Army Corps of Engineers, Reno Office  
Bill Orme / State Water Resources Control Board, Division of Water Quality  
(via email at [Stateboard401@waterboards.ca.gov](mailto:Stateboard401@waterboards.ca.gov))

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[File: WDID 6A091107002 / Kearns Shorezone Protection Project / El Dorado County]

**DRAFT**

# Notice of Exemption

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**To:** Office of Planning and Research  
PO Box 3044  
1400 Tenth Street, Room 222  
Sacramento, CA 95812-3044

**From:** California Regional Water Quality  
Control Board, Lahontan Region  
2501 Lake Tahoe Blvd.  
South lake Tahoe, California 96150

**Project Title:** Kearns Shorezone Protection Project

**Project Location – Specific:**

El Dorado County; Latitude: 39.028583; Longitude: 120.11857

**Project Location – City:** South Lake Tahoe

**Project Location - County:** El Dorado

**Description of Project:** The Project would place granite boulders in an area approximately 150 square feet below ordinary high water to stabilize the shorezone and hill slope.

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

**Name of Person or Agency Carrying Out Project:** Sharon Kearns, 76 South La Senda, Laguna Beach, CA 92651

**Exempt Status:** (check one)

- Ministerial (Sec. 21080(b)(l); 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: 15304, Minor Alterations to Land.
- Statutory Exemptions. State code number:

**Reasons why project is exempt:**

The RWQCB, Lahontan Region finds that this project, as permitted, will not have a significant effect on the environment and shall, therefore, be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15304.

**Responsible Agency Contact Person:** Tobi Tyler

**Area Code/Telephone/Extension:** (530) 542-5435

**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:** \_\_\_\_\_ **Date:** \_\_\_\_\_ **Title:** Executive Officer, Lahontan Region

- Signed by Responsible Agency
- Signed by Applicant

Date received for filing at  
OPR: \_\_\_\_\_