



# California Regional Water Quality Control Board

## Lahontan Region



Linda S. Adams  
Acting Secretary for  
Environmental Protection

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Edmund G. Brown Jr.  
Governor

Marieta Fulton  
c/o David Stiefel  
1000 Second Avenue, 34<sup>th</sup> floor  
Seattle, WA 98104-1022

### ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND PROHIBITION EXEMPTION FOR THE STIEFEL SHORELINE STABILIZATION PROJECT, PLACER COUNTY, WDID 6A311103002

The California Regional Water Quality Control Board, Lahontan Region (Water Board) has received a complete Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) application and application filing fee for the Stiefel Shoreline Stabilization Project (Project) in Placer 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. 6A311103002. 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 | 6A311103002   |
| Applicant   | Marieta Fulton<br>c/o David Stiefel<br>1000 Second Avenue, 34 <sup>th</sup> floor<br>Seattle, WA 98104-1022 |
| Agent       | Leah Kaufman, Kaufman Planning<br>P.O. Box 253<br>Carnelian Bay, CA 96140                                   |

**Table of Project Information continued:**

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| Project Name  | Stiefel Shoreline Stabilization Project  |
| Project Purpose and Description                             | The Applicant would construct a sloping rock revetment, with willow planting in front, to provide slope stabilization and erosion control on a slope next to Lake Tahoe to prevent sedimentation and to protect a lateral sewer line from further erosion. Most of the rock placement will be above the ordinary high water line. Approximately six square feet of rock fill below OHW is proposed involving a sloping rock revetment and sewer lateral protection. Willows will be planted in front of the revetment below ordinary high water. |
| Location (closest City & County)                            | Tahoe City, Placer County  |
| Location Latitude/Longitude                                 | Latitude: 39.1829; Longitude: 120.0978   |
| Hydrologic Unit(s)  | North Tahoe Hydrologic Area 634.20 in the Lake Tahoe Hydrologic Unit, 634.00   |
| Project Area  | 1.6 acres  |
| Receiving Water(s) Name                                     | Lake Tahoe   |
| Water Body Type(s)  | Lake   |
| Area of Water(s) of the U.S. (WOUS) within the project area | 850 square feet (0.02 acre)  |
| Permanent Impacts to WOUS                                   | 6 square feet  |
| Linear feet of Temporary Impact in WOUS                     | 2 linear feet  |
| 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(s) and/or silt fences and vegetation protection fencing will be in place during construction to prevent the discharge of 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) 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 only as the project qualifies for a low impact discharge).   |
| Fees Received   | \$640.00   |
| <b>Fees Due</b>   | <b>\$0.00</b>  |

## **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 15303(d), the basis for CEQA exemption is "New Construction or Conversion of Small Structures." 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 sloping rock revetment along the shoreline and partially within the highwater rim of Lake Tahoe (six square feet below high water rim of Lake Tahoe) for rock slope protection and sewer lateral protection.

### **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 Stiefel Shoreline Stabilization Project is to reduce and mitigate existing sources of pollution and to improve water quality by reducing sedimentation and erosion from a steep unprotected slope next to the lake.

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 an existing steep poorly protected slope and prevent the discharge of to Lake Tahoe from shoreline erosion. The existing slope has been continually eroding over time and vegetation is failing to thrive due to the steepness of the slope. The sloping rock revetment will also help maintain the integrity of recently constructed on-site Best Management Practices (BMPs) for erosion protection above the slope and to protect the trees on site. The proposed revetment located below the high water line of Lake Tahoe consists of four square feet for the rock slope protection and approximately two square feet of rock for the sewer lateral protection. The proposed 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 sloping rock revetment were considered; however, due to an existing sewer line located along the lakeshore, the disturbance must remain below the high water line of Lake Tahoe to protect the sewer lateral on site. The current design is a result of guidance from Tahoe Regional Planning Agency staff in conjunction with the Project Applicant's Engineer based on site conditions and littoral processes to maximize effectiveness and to minimize the disturbance to existing tree roots. The Project includes measures to stabilize the slope and protect the sewer lateral. The amount of disturbance below the highwater rim is limited to that needed to address these concerns. There is no reasonable alternative to reduce encroachment to the area below the highwater rim.

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

Silt fences and/ turbidity curtains and coir logs will be placed around the construction area. The Project will not occur if lake level exceeds 6226 feet above Lake Tahoe Datum. Temporary erosion control BMPs include tree and vegetation protection fencing. Post-construction BMPs include revegetation. 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 100-year floodplain 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 or exception subject to this Resolution at least ten (10) days before the exemption or exception 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 City of South Lake Tahoe (David Stiefel) submitted a complete application and the \$640.00 application filing fee required for WQC under Section 401 for the Stiefel Shoreline Stabilization 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 Stiefel Shoreline Stabilization 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 Lahontan Region (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 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 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. Lake levels must be below 6226 feet Lake Tahoe Datum for commencement of Project implementation.
2. The known populations of Tahoe Yellow Cress on the site must be protected at all times during construction.
3. No debris, cement, concrete (or wash water therefrom), oil or petroleum products must enter into or be placed where it may be washed from the Project site by rainfall or runoff into waters of the State. When operations are completed, any excess material must be removed from the Project work area, and from any areas adjacent to the work area where such material may be transported into waters of the State.
4. The Applicant must immediately notify Water Board staff by telephone whenever an adverse condition occurs as a result of this discharge. Such a condition includes, but is not limited to, a violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. A written notification of the adverse condition must be provided to the Water Board within two weeks of occurrence. The written notification must identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to any modifications by Water Board staff, for the remedial actions.
5. Prior to initiating construction of the Project, the Applicant must affirmatively document whether there are any subsurface utilities, other than the sewer line to be protected, in the area of construction and submit such documentation to the Water Board. This can be accomplished by: (1) contacting all utilities (both public and private) that provide service in the area, documenting these contacts and submitting such documentation to the Water Board; (2) contacting Underground Service Alert, documenting this contact and submitting such documentation to the Lahontan Water Board; or, (3) some other equivalent affirmative action to determine whether or not there are any subsurface utilities in the area of construction and submitting the results of such action to the Water Board. The area of construction is defined as any area within the project boundaries where there will be excavation and/or rock placement. If subsurface utilities are located in the construction area, the Applicant must provide a utility avoidance plan that will be followed during construction.
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 at (530) 542-5430.

HAROLD J. SINGER  
EXECUTIVE OFFICER

cc: Lief Larson / Tahoe Regional Planning Agency  
Robert Hosea / 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  
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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))  
Leah Kaufman / Kaufman Planning

TT/clhT/ Stiefel revetment 401 and FPE 6-18-11 TT.doc  
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