



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Lahontan Regional Water Quality Control Board

November 1, 2016

WDID 6A311609006

Water Board Members,

EXEMPTION TO PROHIBITION WITHIN THE LAKE TAHOE HYDROLOGIC UNIT FOR THE TAHOE RESOURCE CONSERVATION DISTRICT'S TAHOE VISTA AQUATIC INVASIVE PLANT SPECIES CONTROL PROJECT, PLACER COUNTY

In ten days, I intend to sign the enclosed Order granting an exemption to the above-cited discharge prohibition specified in the Water Quality Control Plan for the Lahontan Region (Basin Plan). The exemption will allow the project proponent to minimize the potential for AIS plants to spread throughout Lake Tahoe.

The project meets requirements for an exemption to the discharge prohibition. A public notice soliciting comments on the proposed Project will be posted on the Water Board's website for ten days.

If you have any questions, you may reach me at (530) 542-5412
(patty.kouyoumdjian@waterboards.ca.gov).

PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

Enclosure: Draft Prohibition Exemption: TRCD Tahoe Vista AIS Plant Control Project

MFW/ma/T: TahoeVista_AIS Plant Control_TRCD_Exemption Bd Notice_10.2016
File Under: ECM / WDID 6A311609006

Lahontan Regional Water Quality Control Board

WDID 6A311609006

Kim Boyd
Tahoe Resource Conservation District
870 Emerald Bay Road
South Lake Tahoe, CA 96150

BOARD ORDER NO. R6T-2016-XXXX, CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND BASIN PLAN PROHIBITION EXEMPTION FOR TAHOE RESOURCE CONSERVATION DISTRICT – LAKEWIDE AQUATIC INVASIVE SPECIES PLANT CONTROL PROJECT, PLACER COUNTY

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 the Tahoe Resource Conservation District (Applicant), for the Tahoe Vista Aquatic Invasive Species Plant Control 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 was received on September 30, 2016 and was deemed complete on October 19, 2016. This Order for WQC hereby assigns this Project the following reference number: Waste Discharge Identification (WDID) No. 6A311609006. 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.

Table of Project Information Continued:

Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACE) authorization to proceed under a Nationwide 27 General Permit, pursuant to CWA section 404.
Non-compensatory Mitigation	A full list of mitigation measures are incorporated into the Project as a condition of approval for the Mitigated Negative Declaration (SCH No: 2014042043) prepared for this Project. Mitigation measures may vary as appropriate for the specific treatment area being targeted within the overall project area.
Compensatory Mitigation	No compensatory mitigation is required.
Application Fee	\$200
Fees Received	\$200
Estimated Annual Active Discharge Fee ¹	\$200 (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	\$100 (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 Applicant prepared a Mitigated Negative Declaration (MND) for the Project pursuant to the provisions of the California Environmental Quality Act. The project area analyzed under the MND included all suitable habitat areas of Lake Tahoe and portions of the lower Truckee River between the Tahoe City dam to River Ranch at Alpine Meadows Road. Since the lake bottom within the Tahoe Vista Boat Launch area provides suitable habitat for AIS plants, the MND is applicable to the control efforts being proposed at the Tahoe Vista Boat Launch.

A Notice of Determination has been issued stating that lake wide efforts to control AIS will not have a significant effect on the environment. This documentation can be found on the California State Clearinghouse, item number: 2014042043.

BASIN PLAN DISCHARGE PROHIBITIONS

Chapter 5.2 of the Basin Plan specifies prohibition no. 2 below that is applicable in the Lake Tahoe basin:

5.2 (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.

BASIN PLAN DISCHARGE PROHIBITION EXEMPTION CRITERIA AND FINDINGS

1. The Water Board may grant an exemption to Prohibition 5.2 (2) for projects intended to provide erosion control, habitat restoration, wetland rehabilitation, stream environment zone restoration, and similar projects if the following findings can be made:

- a. There is no reasonable alternative, including relocation, which avoids or reduces the extent of encroachment below the highwater rim of Lake Tahoe, within the 100-year floodplain, or within the SEZ.

The purpose of the Project is to remove AIS plant species that have established below the highwater rim of Lake Tahoe, which will minimize the potential for AIS plants to spread throughout the lake. The Project is intended to restore habitat by removing aquatic invasive weeds that have impacted ecological integrity. There are no reasonable alternatives that would reduce the extent of encroachment below the highwater rim of Lake Tahoe because the Project, by its very nature, must be located in these wet environments since these are the targeted clean-up areas that have become infested. The populations of AIS plants present within Tahoe Vista marina are susceptible to spread if left in place.

- b. Impacts are fully mitigated.

The TRCD is implementing the Project to eliminate or minimize the area of an existing AIS infestation and to minimize the potential for the AIS to spread throughout the Lake.

Impacts associated with the Project have been evaluated and summarized in the [Lakewide Aquatic Invasive Plant Control Project Initial Study-Mitigated Negative Declaration](#). The Project will have no significant effect on the environment with the mitigation measures included as a condition of the approval of the project. A full list of mitigation measures can be viewed on page 14 of the MND, Mitigation Monitoring and Reporting Program.

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-2016-0038 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 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 U.S. Army Corps of Engineers (USACE) authorization to proceed under a Nationwide Permit No. 27.

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 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 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 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. Prior to initiating the Project, the Applicant must affirmatively document whether there are any subsurface utilities in the area of construction and submit such documentation to the Lahontan 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 Lahontan 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 (i.e., bottom barrier placement) and submitting the results of such action to the Lahontan Water Board. The area of construction is defined as any area within the project boundaries where bottom barriers will be placed and anchored by the driving of material (e.g., rebar). If subsurface utilities are located in the Project area, the Applicant must implement protective measures during construction to avoid utilities.

2. All mitigation measures, including the requirement to monitor turbidity, identified in the Final MND under the heading: Mitigation Measures Hydro-1: Water Quality Monitoring shall be implemented throughout the duration of the Project.
3. 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, or a significant spill of petroleum products or toxic chemicals. 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.
4. The boat and equipment used for transporting, deploying, and retrieving the bottom barriers and any motorized support vessels must be monitored for leaks, and removed from service if necessary to protect water quality.
5. 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 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 am issuing this 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.

As a reminder, I would ask that your application be submitted electronically. Please send all correspondence to the Water Board's email address at Lahontan@waterboards.ca.gov and include your Facility Name in the Subject Line.

If you have any questions or comments regarding this permit, please contact me at (530) 542-5412 (patty.kouyoumdjian@waterboards.ca.gov), Mary Fiore-Wagner, Environmental Scientist, at (530) 542-5425 (mary.fiore-wagner@waterboards.ca.gov), or Dan Sussman, Chief, TMDL and Basin Planning Unit, at (530) 542-5466 (daniel.sussman@waterboards.ca.gov).

PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

cc: Nicole Cartwright, Tahoe Resource Conservation District
Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9
Bill Orme, State Water Board, Division of Water Quality
Aaron Park, U.S. Army Corps of Engineers, Reno District
Bob Hosea, California Department of Fish and Game