



California Regional Water Quality Control Board

Lahontan Region



Linda S. Adams
Secretary for
Environmental Protection

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OCT 21 2008

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Donner Lake POA
P.O. Box 8387
Truckee, CA 96162

APPLICATION FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION, DONNER LAKE PROPERTY OWNER'S ASSOCIATION SHORELINE PROJECT - NEVADA COUNTY

State law assigns responsibility for protection of water quality within the Lahontan watershed basin to the California Regional Water Quality Control Board, Lahontan Region (Water Board). The *Water Quality Control Plan for the Lahontan Region* (Basin Plan) contains policies that the Water Board uses with other laws and regulations to protect water quality within the region.

Based on complaints, follow-up inspections by Water Board staff, and information provided by the Donner Lake Property Owners' Association (DLPOA), Water Board staff has confirmed that DLPOA completed work along the Donner Lake shoreline (project) that involved placing fill into waters of the state and of the U.S. This activity could affect the quality of such waters and constitutes a discharge of waste as defined in California Water Code (Water Code) section 13050.

AUTHORITY

Pursuant to Water Code section 13160, DLPOA is required to file with the Water Board a complete application for Clean Water Act section 401 water quality certification (401 Certification) for the discharge of fill materials to waters of the U.S. DLPOA should have submitted this application and obtained 401 Certification prior to placing the rock-slope protection within surface waters. DLPOA must now submit an application so that the Water Board can issue DLPOA an after-the-fact 401 Certification authorizing the discharge of fill to waters of the U.S. The 401 Certification application must fully describe the project that was completed by the DLPOA during October of 2007.

California Environmental Protection Agency



ORDINARY HIGH WATER MARK

According to correspondence with United States Army Corps of Engineers (Corps) staff on July 29, 2008, and field verification by Corps staff on October 10, 2008 the ordinary high water mark for Donner Lake is at elevation 5936.9 feet above sea level. The Ordinary High Water Mark, or OHWM, is a jurisdictional benchmark for administering the Corps' regulatory program in navigable waterways under section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act (CWA).

Under federal CWA section 401, every applicant for a section 404 permit for any activity which may result in a discharge to a water body must obtain a 401 Certification that the proposed activity will comply with state water quality standards. Most 401 Certifications are issued in connection with Corps' CWA section 404 permits for dredge and fill discharges. As such, the Water Board defers to the ordinary high water marks that the Corps applies when administering its jurisdiction in navigable waters.

INFORMATION NEEDED

Complete the enclosed 401 Certification application using the enclosed guidance document and submit it to this office along with an application fee of \$500 plus any additional fee that corresponds to the discharge size (linear feet of shoreline). (Based on staff observations during an inspection of the site and information supplied in DLPOA's August 19, 2008 submittal, the project affected approximately 400 linear feet of shoreline.)

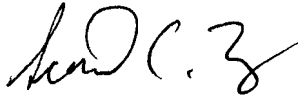
Fees should be made payable to Lahontan Regional Water Quality Control Board. Current fees may be viewed and fees calculated at http://www.waterboards.ca.gov/water_issues/programs/cwa401/docs/dredgefillfeecalculator.xls.

Please note that the fees applicable to the DLPOA shoreline project should be based on discharge size (i.e., linear feet of disturbance to shoreline) related to the project. Fees based on flat fee categories (e.g., low impact discharges, restoration projects) do not apply for the project. The project is not considered a low impact discharge because the discharge affected more than 200 linear feet of shoreline. Additionally, the project does not qualify as a restoration project because the project was not undertaken solely to restore or enhance beneficial uses of water. Instead your project involved a non-restorative component undertaken largely for purposes of property protection.

Submit your completed application including any environmental documents, technical reports, plans, diagrams, maps, mitigation and monitoring proposals, and other documents that characterize the discharge by October 24, 2008. Failure to do so may result in the Water Board taking additional enforcement action, including imposing an administrative civil liability of up to **\$333,200** for the unauthorized discharge of fill to waters of the U.S.

In the future, contact Water Board and Corps' staff before discharging to waters of the state and of the U.S.

If you have any questions, please contact Mary Fiore-Wagner at (530) 542-5425 or mfwagner@waterboards.ca.gov.



Scott C. Ferguson
Chief, Enforcement and Special Projects Unit

Enclosure: Clean Water Act Section 401 Water Quality Certification Application and Instructions

cc: Mary Hays/California State Lands Commission
Erin Hess/U.S. Army Corps of Engineers
Deb DeVenio/Town of Truckee

MFW/chT: DonnerLake POA - 13160
File Under: Nevada County - Pending File-Donner Lake Property Owner's Association