

Lahontan Regional Water Quality Control Board

December 12, 2013

WDID No. 6B261308005
401 WQC

Wendy Longley
Federal Highway Administration
Central Federal Lands Highway Division
12300 West Dakota Avenue, Suite 280
Lakewood, CO 80228
email: wendy.longley@dot.gov

ORDER NO. R6V-2013-0102, FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION, ROCK CREEK ROAD IMPROVEMENT PROJECT, MONO COUNTY, WDID NO. 6B261308005

The California Regional Water Quality Control Board, Lahontan Region (Water Board) staff has received project information from the Federal Highway Administration (Applicant) and an application filing fee to complete an application for Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) for the Rock Creek Road Improvement Project (Project). This Order for WQC is based upon the information provided in the application and subsequent correspondence received in support of the application.

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 California Water Code (CWC), section 13320, and California Code of Regulations (CCR), 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

Project details, as presented in the application and subsequent correspondence, are summarized in the following table.

Table of Project Information:

WDID Number	6B261308005
Applicant	Wendy Longley Federal Highway Administration Central Federal Lands Highway Division email: wendy.longley@dot.gov
Agent	Michael Butters, Jacobs Engineering Group, Inc. email: michael.butters@jacobs.com
Project Name	Rock Creek Road Improvement Project

Table of Project Information:

Project Purpose and Description	The purpose of the Project is to widen and resurface 9.2 miles of Rock Creek Road (Federal Highway 89) from Highway 395 south towards Rock Creek Lake. Project components include: widening the roadway to accommodate two 11-foot wide travel lanes, a 4-foot wide bike path adjacent to the uphill travel lane, and a 1-foot wide paved shoulder for each travel lane; rehabilitate or remove existing unpaved pullouts; replace and extend existing culverts to accommodate the wider roadway; and install new roadway signage.						
Project Type	Transportation, Roads and Highways						
Project Address or other Locating Information	9.2 miles of Rock Creek Road (Federal Highway 89) from Highway 395 south towards Rock Creek Lake, Toms Place, Inyo County						
Latitude/Longitude	Latitude and longitude: 37.4977, -118.7164 (center of Project); 37.4522, -118.7419 (south end of Project); 37.5611, -118.6778 (north end of Project)						
Hydrologic Unit(s)	Owens Unit 603., Upper Owens Hydrologic Area 603.20						
Project Area	81 acres						
Receiving Water(s) Name	Rock Creek						
Water Body Type(s)	Perennial stream and minor wetlands						
Designated Beneficial Uses	MUN, AGR, GWR, FRSH, REC-1, REC-2, COMM, WARM, COLD, WILD, WQE, FLD						
Potential Water Quality Impacts to Waters of the United States (WOUS)	Hydrogeomorphic changes in the flow regime on the Project site may result in downstream erosion, sedimentation, and/or siltation.						
Project Impacts (Fill) to WOUS	Waterbody Type	Permanent			Temporary		
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
	<i>Stream</i>	0.093	1,070	87.77	0.103	1,703	0
	<i>Wetland</i>	0.0016	70	1.28	0.009	123	0
	Total	0.0946	1,140	89.05	0.112	1,826	0
Federal Permit(s)	The Applicant has applied for coverage under a U.S. Army Corps of Engineers (USACOE) Nationwide Permit 23 (Approved Categorical Exclusion) pursuant to section 404 of the CWA.						
Non-Compensatory Mitigation	During construction, the Applicant will follow Best Management Practices (BMPs) including construction stormwater controls designed to minimize the short-term degradation of water quality.						
Compensatory Mitigation	All temporary impact areas will be restored (recontoured and revegetated) to pre-Project conditions. To compensate for Project impacts, the Applicant proposes to enhance and restore wetland habitat (willow shrubland) onsite in accordance with the Mitigation and Monitoring Plan, dated October 2013. The Applicant proposes this compensatory mitigation at a mitigation to impact ratio of 2 to 1. Annual monitoring of the mitigation site will occur for a minimum of three years or until the performance criteria have been met. Annual reports documenting the success of the mitigation will be submitted to the Water Board by December 31 until the performance criteria have been met; the						

Table of Project Information:

	first annual report is due <u>December 31, 2015</u> . Implementation of the mitigation will be concurrent with the Project.
Applicable Fees	None required; federal agencies are exempt from paying application and dredge/fill fees
Fees Received	None required

CEQA COMPLIANCE

The Mono County Community Development Department prepared an Initial Study and Mitigated Negative Declaration (IS/MND) for the Project. The IS/MND was prepared pursuant to the California Environmental Quality Act (CEQA Public Resources Code 21000, et seq.) and circulated under State Clearinghouse No. 2013082067. The IS/MND was certified on October 8, 2013, following public review.

The Water Board, acting as a CEQA Responsible Agency in compliance with CCR, title 14, section 15096, has considered the IS/MND for the Project and the potential water quality impacts. As a result of the analysis, the Water Board finds that, along with the conditions required in this 401 WQC Order, potential water quality impacts are less than significant.

SECTION 401 WATER QUALITY CERTIFICATION**Authority**

CWA, section 401 (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 WOUS, shall 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 of the CWA for the Project. The USACOE will regulate the Project under Nationwide Permit 23 (Approved Categorical Exclusion) pursuant to section 404 of the CWA.

CCR, title 23, section 3831(e) grants the Executive Officer the authority to grant or deny WQC for projects in accordance with CWA section 401. The proposed 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 CWC, 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 CWC.
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 WQC 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 (CWC) or section 303 of the CWA, 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 to 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 CWC or section 303 of the CWA.
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 Wildlife Code, section 2050 et seq.) or the federal Endangered Species Act (16 USC, section 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 requirements of the applicable Endangered Species Act for the Project authorized under this certification.

Additional Conditions

Pursuant to CCR, title 23, section 3859, subdivision (a), the following additional conditions are required with this certification:

1. To compensate for Project impacts, the Applicant proposes to enhance and restore of wetland habitat (willow shrubland) onsite in accordance with the Mitigation and Monitoring Plan, dated October 2013. The Applicant will provide this compensatory mitigation at a mitigation to impact ratio of 2 to 1. Annual monitoring of the mitigation site will occur for a minimum of three years or until the performance criteria have been met. Annual reports documenting the success of the mitigation will be submitted to the Water Board by December 31 until the performance criteria have been met; the first annual report is due **December 31, 2015**. Implementation of the mitigation will be concurrent with the Project.
2. All temporary impact areas will be restored (recontoured and revegetated) to pre-Project conditions.
3. All surface waters must be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other similar construction activity. If surface water diversions are anticipated, the Applicant must develop and implement a **Surface Water Diversion Plan**. The plan must include the proposed method and duration of diversion activities, erosion and sediment controls, and a map or drawing indicating the locations of diversion and discharge points. Diversion activities must not result in the degradation of beneficial uses or exceedance of water quality objectives for the receiving waters as defined and described in the Basin Plan. The Basin Plan can be accessed at http://www.waterboards.ca.gov/lahtontan/water_issues/programs/basin_plan/index.shtml. **A copy of the Surface Water Diversion Plan must be submitted to the Water Board prior to any water diversion activities.**
4. To document the completion of the Project, the Applicant must submit a **Project Completion Report** to the Water Board by **February 1, 2016**. The Project Completion Report should include the following, at minimum: a summary of the Project activities, including the date(s) those activities were performed, the total volume of material excavated and replaced, and the total area of permanent and temporary disturbance; a summary of the activities related to water diversion, including dates, methods used, and BMPs used; photo documentation of the completed Project; and a summary of any activities that deviated from those described in the original application and supporting documents.
5. Work within a surface water (stream channel or wetland) is authorized only during dry weather conditions. Should inclement weather occur, all work within the surface water must stop and all equipment and materials must be removed to upland areas.
6. No debris, cement, concrete (or wash water there from), oil, 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 surface waters. When operations are completed, any excess material and/or soil must be removed from the Project work area and any areas adjacent to the work area where such material may be transported into surface waters.
7. Construction vehicles and equipment must be monitored for leaks and proper BMPs must be implemented should leaks be detected or the vehicles/equipment must be removed from service, if necessary, to protect water quality.

8. An emergency spill kit must be at the Project site at all times during Project construction.
9. The Applicant must permit Water Board staff or their authorized representative(s) upon presentation of credentials:
 - a. Entry onto Project premises, including all areas on which fill, excavation or 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 WQC;
 - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this WQC; and
 - d. Sampling of any discharge or surface water covered by this WQC.
10. The Applicant must maintain at the Project site a copy of this Order and a copy of the complete WQC application provided to the Water Board so as to be available at all times to site operating personnel and agencies.
11. The Applicant is responsible for informing any contractors of the specific conditions contained in this WQC Order.

Enforcement

1. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation will be subject to any remedies, penalties, processes or sanctions, as provided for under state law. For purposes of CWA, section 401(d), the applicability of any state law authorizing remedies, penalties, processes 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 WQC.
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 WQC to furnish, under penalty of perjury, any technical or monitoring report that the State Water Board or Water Board deems appropriate, provided that the burden, including costs, of the reports must be in 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 CWA, 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 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. A copy of State Water Board Order No. 2003-0017-DWQ is enclosed for your reference.

Except insofar as may be modified by any preceding conditions, all WQC 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 Jan Zimmerman, Engineering Geologist, at (760) 241-7376 jjzimmerman@waterboards.ca.gov, or Patrice Copeland, Senior Engineering Geologist, at (760) 241-7404 pcopeland@waterboards.ca.gov. Please use the WDID referenced in the subject line of this WQC for future correspondence regarding this Project.



PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

Enclosure: SWRCB Order No. 2003-0017-DWQ

cc: Thomas Parker, Federal Highway Administration
(via email, thomas.w.parker@dot.gov)
Michael Butters, Jacobs Engineering Group, Inc.
(via email, michael.butters@jacobs.com)
Bruce Henderson, U.S. Army Corps of Engineers
(via email, Bruce.A.Henderson@usace.army.mil)
Robert Leidy, Wetlands Regulatory Office (WTR-8), USEPA, Region 9
(via email, Leidy.Robert@epamail.epa.gov)
SWRCB, Division of Water Quality
(via email, stateboard401@waterboards.ca.gov)

STATE WATER RESOURCES CONTROL BOARD

WATER QUALITY ORDER NO. 2003 - 0017 - DWQ

**STATEWIDE GENERAL WASTE DISCHARGE REQUIREMENTS FOR
DREDGED OR FILL DISCHARGES THAT HAVE RECEIVED
STATE WATER QUALITY CERTIFICATION (GENERAL WDRs)**

The State Water Resources Control Board (SWRCB) finds that:

1. Discharges eligible for coverage under these General WDRs are discharges of dredged or fill material that have received State Water Quality Certification (Certification) pursuant to federal Clean Water Act (CWA) section 401.
2. Discharges of dredged or fill material are commonly associated with port development, stream channelization, utility crossing land development, transportation water resource, and flood control projects. Other activities, such as land clearing, may also involve discharges of dredged or fill materials (e.g., soil) into waters of the United States.
3. CWA section 404 establishes a permit program under which the U.S. Army Corps of Engineers (ACOE) regulates the discharge of dredged or fill material into waters of the United States.
4. CWA section 401 requires every applicant for a federal permit or license for an activity that may result in a discharge of pollutants to a water of the United States (including permits under section 404) to obtain Certification that the proposed activity will comply with State water quality standards. In California, Certifications are issued by the Regional Water Quality Control Boards (RWQCB) or for multi-Region discharges, the SWRCB, in accordance with the requirements of California Code of Regulations (CCR) section 3830 et seq. The SWRCB's water quality regulations do not authorize the SWRCB or RWQCBs to waive certification, and therefore, these General WDRs do not apply to any discharge authorized by federal license or permit that was issued based on a determination by the issuing agency that certification has been waived. Certifications are issued by the RWQCB or SWRCB before the ACOE may issue CWA section 404 permits. Any conditions set forth in a Certification become conditions of the federal permit or license if and when it is ultimately issued.
5. Article 4, of Chapter 4 of Division 7 of the California Water Code (CWC), commencing with section 13260(a), requires that any person discharging or proposing to discharge waste, other than to a community sewer system, that could affect the quality of the waters of the State,¹ file a report of waste discharge (ROWD). Pursuant to Article 4, the RWQCBs are required to prescribe waste discharge requirements (WDRs) for any proposed or existing discharge unless WDRs are waived pursuant to CWC section 13269. These General WDRs fulfill the requirements of Article 4 for proposed dredge or fill discharges to waters of the United States that are regulated under the State's CWA section 401 authority.

¹ "Waters of the State" as defined in CWC Section 13050(e)

6. These General WDRs require compliance with all conditions of Certification orders to ensure that water quality standards are met.
7. The U.S. Supreme Court decision of *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (the *SWANCC* decision) called into question the extent to which certain “isolated” waters are subject to federal jurisdiction. The SWRCB believes that a Certification is a valid and enforceable order of the SWRCB or RWQCBs irrespective of whether the water body in question is subsequently determined not to be federally jurisdictional. Nonetheless, it is the intent of the SWRCB that all Certification conditions be incorporated into these General WDRs and enforceable hereunder even if the federal permit is subsequently deemed invalid because the water is not deemed subject to federal jurisdiction.
8. The beneficial uses for the waters of the State include, but are not limited to, domestic and municipal supply, agricultural and industrial supply, power generation, recreation, aesthetic enjoyment, navigation, and preservation and enhancement of fish, wildlife, and other aquatic resources.
9. Projects covered by these General WDRs shall be assessed a fee pursuant to Title 23, CCR section 3833.
10. These General WDRs are exempt from the California Environmental Quality Act (CEQA) because (a) they are not a “project” within the meaning of CEQA, since a “project” results in a direct or indirect physical change in the environment (Title 14, CCR section 15378); and (b) the term “project” does not mean each separate governmental approval (Title 14, CCR section 15378(c)). These WDRs do not authorize any specific project. They recognize that dredge and fill discharges that need a federal license or permit must be regulated under CWA section 401 Certification, pursuant to CWA section 401 and Title 23, CCR section 3855, et seq. Certification and issuance of waste discharge requirements are overlapping regulatory processes, which are both administered by the SWRCB and RWQCBs. Each project subject to Certification requires independent compliance with CEQA and is regulated through the Certification process in the context of its specific characteristics. Any effects on the environment will therefore be as a result of the certification process, not from these General WDRs. (Title 14, CCR section 15061(b)(3)).
11. Potential dischargers and other known interested parties have been notified of the intent to adopt these General WDRs by public hearing notice.
12. All comments pertaining to the proposed discharges have been heard and considered at the November 4, 2003 SWRCB Workshop Session.
13. The RWQCBs retain discretion to impose individual or General WDRs or waivers of WDRs in lieu of these General WDRs whenever they deem it appropriate. Furthermore, these General WDRs are not intended to supersede any existing WDRs or waivers of WDRs issued by a RWQCB.

IT IS HEREBY ORDERED that WDRs are issued to all persons proposing to discharge dredged or fill material to waters of the United States where such discharge is also subject to the water quality certification requirements of CWA section 401 of the federal Clean Water Act (Title 33 United States Code section 1341), and such certification has been issued by the applicable RWQCB or the SWRCB, unless the applicable RWQCB notifies the applicant that its discharge will be regulated through WDRs or waivers of WDRs issued by the RWQCB. In order to meet the provisions contained in Division 7 of CWC and regulations adopted thereunder, dischargers shall comply with the following:

1. Dischargers shall implement all the terms and conditions of the applicable CWA section 401 Certification issued for the discharge. This provision shall apply irrespective of whether the federal license or permit for which the Certification was obtained is subsequently deemed invalid because the water body subject to the discharge has been deemed outside of federal jurisdiction.
2. Dischargers are prohibited from discharging dredged or fill material to waters of the United States without first obtaining Certification from the applicable RWQCB or SWRCB.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 19, 2003.

AYE: Arthur G. Baggett, Jr.
Peter S. Silva
Richard Katz
Gary M. Carlton
Nancy H. Sutley

NO: None.

ABSENT: None.

ABSTAIN: None.


Debbie Irvin
Clerk to the Board