

Lahontan Regional Water Quality Control Board

September 30, 2013

Neil Kaufman
Truckee Donner Public Utility District
P.O. Box 309
Truckee, CA 96160

ORDER NO. R6T-2013-0083, CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND 100-YEAR FLOODPLAIN WASTE DISCHARGE PROHIBITION EXEMPTION FOR THE DONNER LAKE SUBSTATION PROJECT, NEVADA COUNTY, WDID 6A291304002

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, 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) and application filing fee for the Donner Lake Substation Project (Project) in Nevada County. This Order for WQC hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A291304002. 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 (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

Table of Project Information:

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| WDID Number | 6A291304002 |
| Applicant | Neil Kaufman Truckee Donner Public Utility District P.O. Box 309 Truckee, CA 96160 |
| Agent | None |
| Project Name | Donner Lake Substation Project |

Table of Project Information continued:

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| Project Purpose and Description | The Applicant, who needs to upgrade the capacity of an existing electric substation, proposes to place fill material to redirect water flows in an existing channel adjacent to the substation to a new channel to be built fifteen feet to the east. Removing flow from the 107-foot section of channel will incur the permanent loss of approximately 392 square feet of waters of the US (WOUS). These changes also involve replacing an existing 24-inch diameter culvert under the access driveway to the substation with a new 24-inch culvert, which will direct stream flow into a rock-lined infiltration basin before overflowing into the relocated channel. This will entail approximately 100 square feet of permanent fill along 19 linear feet of channel. The new channel will be reconnected to the old channel at the southern boundary of the substation, which will entail 100 square feet of land disturbance. | | | | | | |
| Project County | Nevada | | | | | | |
| Project Type | Drainage relocation for electrical substation upgrade project | | | | | | |
| Project Address or other Locating Information | 10600 Donner Lake Road and 15434 Cedar Point Drive, Truckee, Nevada County | | | | | | |
| Location Latitude/Longitude | Latitude: 39.329 Longitude: 120.285 | | | | | | |
| Hydrologic Unit(s) | Truckee River Hydrologic Unit and Area 635.20 | | | | | | |
| Project Area | 0.86 acres | | | | | | |
| Receiving Water(s) Name | Unnamed tributary to Donner Lake, a tributary to the Truckee River | | | | | | |
| Water Body Type(s) | Intermittent stream | | | | | | |
| Designated Beneficial Uses | MUN, AGR, GWR, FRSH, REC-1, REC-2, COMM, COLD, WILD, RARE, SPWN | | | | | | |
| Potential Water Quality Impacts | Discharge of materials in the stream from the construction project | | | | | | |
| Area of WOUS within the Project area | 425 square feet of stream channel | | | | | | |
| Project Impacts (Fill) to waters of the state, including WOUS. | Waterbody Type | Permanent | | | Temporary | | |
| | | Sq. Ft. | Linear Feet | Cubic Yards | Sq. Ft. | Linear Feet | Cubic Yards |
| | <i>Lake</i> | | | | | | |
| | <i>Riparian</i> | | | | | | |
| | <i>Stream</i> | 392 | 126 | | | | |
| | <i>Wetland</i> | | | | | | |
| Federal Permit(s) | The Applicant has obtained U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Nationwide Permit No. 18 (Minor Discharges), pursuant to Clean Water Act section 404. | | | | | | |
| Non-Compensatory Mitigation | The channel work will be restricted to late summer and/or fall when the channel is dry or has minimal water flow. Site-specific Best Management Practices (BMPs) will be employed on the site at all times, and throughout construction, including BMPs for stormwater treatment, source control and post-construction. | | | | | | |

Table of Project Information continued:

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| Compensatory Mitigation | To mitigate impacts to the perennial stream, the Applicant will use mitigation credits from the Greenpoint Springs Mitigation Site (referenced in Resolution No. R6T-2004-0032) where the Applicant created wetland habitat by decommissioning an access road. A bankable excess of 6,099 square feet was created as part of the Greenpoint Springs project. The impacts of 592 square feet of impacted stream channel will be offset by a 2:1 mitigation ratio totaling 1,184 square feet of wetland created at Greenpoint Springs, which leaves a remaining bankable excess of 4,915 square feet. |
| Applicable Fees | \$2,133.44 (\$944 application fee plus \$1,189.44 for 126 linear feet of permanent channel impacts at \$9.44 per linear feet of impact). |
| Fees Received | \$2,133.44 |

CEQA COMPLIANCE

On January 2, 2008, the Applicant approved a Mitigated Negative Declaration (MND) for the Project and a Notice of Determination was filed on February 7, 2008 in accordance with the California Environmental Quality Act (CEQA) (Public Resources Code 21000, et seq.), State Clearinghouse No. 2007122022. The Water Board, acting as a CEQA Responsible Agency in compliance with CCR, title 14, section 15096, has considered the Applicant's MND for the Project and mitigation measures incorporated into the MND to reduce potentially significant water quality impacts to less than significant with mitigation. As a result of the analysis, the Water Board finds, with the conditions required herein, the mitigation measures in the MND are adequate to reduce potentially significant water quality impacts to less than significant. This Order includes mitigation monitoring requirements for impacts to waters of the state, including WOUS.

WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITION

The Water Board has adopted a Basin Plan, which specifies the following discharge prohibition:

"4.(c) The discharge or threatened discharge, attributable to human activities, of solid or liquid waste materials including soil, silt, clay, sand, and other organic or earthen materials to lands within the 100-year floodplain of the Truckee River or any tributary to the Truckee River is prohibited."

The proposed Project would violate the prohibition as it involves disturbance within the 100-year floodplain of the Truckee River. The Water Board may grant an exception to the above-cited prohibition under certain conditions.

PROHIBITION EXEMPTION

The Basin Plan allows exemptions to the above-cited discharge prohibition for projects that meet the exemption criteria in the Basin Plan, as follows:

1. *The Project involves the repair and replacement of existing structures, and does not involve the loss of additional floodplain area or volume.*

The Project involves upgrading an existing substation, which was constructed adjacent to the drainage channel approximately 35 years ago. The substation must be rebuilt and the channel must be compatible with the safe operation of the rebuilt substation. The Applicant conducted an alternatives analysis that assessed multiple system designs and infrastructure locations and routing. The steep topography (greater than fifty percent above Donner Lake Road and below the substation) constrains any alternative engineering design that would be mechanically functional as a safe substation and also avoid the drainage impacts. The surrounding land is unavailable because it is either privately owned or federally owned. The Applicant purchased the property adjacent to the existing substation as the most reasonable and logical engineering solution to rebuild the substation. It is necessary to re-route the channel to the east to ensure that surface water runoff is diverted to prevent flooding of the high-voltage electrical infrastructure. There is no reasonable alternative that will maintain public safety and services with the needed repairs.

The new channel will not reduce available floodplain areas or volume. It will be of the same approximate size as the existing channel and will contain three infiltration basins to reduce water flow velocity, allowing greater infiltration of surface water runoff. Thus, there will be no net fill or reduction in the flood flow attenuation capacity, or loss of floodplain area or volume from existing conditions. Instead, there will be a slight increase in the above. Mitigation has also been provided for temporary and permanent losses at the Applicant's Greenpoint Springs mitigation site, as discussed in the Table of Project Information.

2. *The proposed discharger must demonstrate that all applicable BMPs and mitigation measures have been incorporated into the project to minimize any potential soil erosion and/or surface runoff problems.*

The Applicant's BMPs and erosion control measures are designed to eliminate the discharge of pollutants during construction activities, such as sediment, that could impact water quality. BMPs include: construction fencing, covering and containing all stockpiled materials, construction staging, construction site tracking measures in place. The Project incorporates BMPs to ensure that erosion and surface runoff problems are minimized.

DELEGATION AUTHORITY FOR GRANTING AN EXEMPTION

The Water Board has delegated authority to the Water Board Executive Officer pursuant to Resolution No. R6T-2008-0031 to grant exceptions to the 100-year floodplain discharge prohibition in the Truckee River Hydrologic Unit for specific discharges where the proposed Project meets the conditions required by the Basin Plan for an exemption, and will be regulated under waste discharge requirements or WQC. The Project will be regulated under the terms and conditions of this CWA Section 401 WQC Order, which includes coverage under general waste discharge requirements in State Water Resources Control Board Order No. 2003-0017-DWQ.

PROHIBITION EXEMPTION GRANTED

The Water Board has notified the Project proponent and interested agencies and persons of its intent to adopt this prohibition exemption through a public notice (internet publication). The Water Board has considered all comments and determined that the Project satisfies the exemption criteria listed above. The Water Board has delegated authority to the Executive Officer to grant exemptions to the prohibition against discharge to lands in the 100-year floodplain for projects whose primary purpose is for repair and replacement of existing facilities. As described in the previous section above, the Project meets the exemption criteria listed in the Basin Plan. I hereby grant an exemption to the above-stated Basin Plan prohibition 4.c. for the Project.

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 WOUS, 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 obtained USACOE authorization to proceed under a Nationwide Permit No. 18 pursuant to CWA section 404.

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 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 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 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 certification and/or 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 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 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 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 (California Fish and Wildlife 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. A qualified professional with experience in hydrology must monitor the implementation and compliance monitoring of the new channel construction. Any additional work or variation from the described work, which may result in additional or increased impacts to waters of the state (including quantity or quality of water or habitat) or reduce the amount of wetland created, is not authorized unless approved in writing by the Executive Officer prior to implementation.
2. The Water Quality Monitoring Plan dated August 2013 must be implemented.
3. Fueling, lubrication, maintenance, operation, and storage of vehicles and equipment must not result in a discharge or a threatened discharge to waters of the state. The Applicant must not use any vehicle or equipment which leaks any substance that may impact water quality. Staging, maintenance and storage areas for vehicles and equipment must be located outside of waters of the state. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
4. The introduction or spread of invasive and noxious weeds during implementation of the Project must be minimized by using weed-free products to contain sediments, weed-free seed stocks, and washing vehicles that transit through areas where there are known populations of invasive plants.
5. 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.

6. The Applicant must immediately (within two hours) 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 one week of occurrence. The written notification must identify the adverse condition, describe the actions taken or necessary to remedy the condition, and specify a timetable, subject to any modifications by Water Board staff, for the remedial actions.
7. The Applicant must permit Water Board staff or its authorized representative upon presentation of credentials:
 - a) Entry onto Project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
 - b) Access to copy any records required to be kept under the terms and conditions of this Order.
 - c) Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Order.
 - d) Sampling of any discharge or surface water covered by this Order.

Enforcement

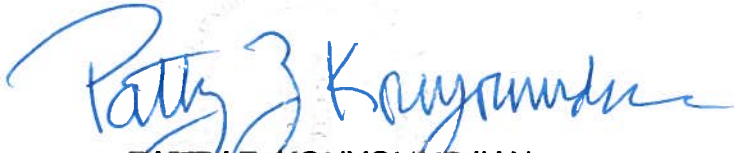
1. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation must be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of Clean Water Act section 401(d), the applicability of 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 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 Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State WQC" 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.



PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

cc: Nancy Kang, JBR Environmental Consultant, Inc.
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