

Lahontan Regional Water Quality Control Board

August 2, 2013

Darrell E. Wood
P.O. Box 94
Vina, CA 96092

ORDER NO. R6T-2013-0065, CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION FOR THE UPPER PETE'S CREEK HABITAT RESTORATION PROJECT, LASSEN COUNTY, WDID 6A181306001

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 Upper Pete's Creek Habitat Restoration Project (Project) in Lassen County. This Order for WQC hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A181306001. 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:

WDID Number	6A181306001
Applicant	Darrell E. Wood P.O. Box 94 Vina, CA 96092
Agent	Susan Abele U.S. Fish and Wildlife Service 1340 Financial Blvd., Suite 234 Reno, NV 89502
Project Name	Upper Pete's Creek Habitat Restoration Project

Table of Project Information continued:

Project Purpose and Description	Remove ten check dam structures and numerous culverts constructed by a previous land owner and restore and improve rangeland hydrology by reconnecting the channel to its floodplain. All ten check dams have been breached by high flows, which have resulted in culvert displacement, channel incision, erosion, and habitat degradation. The Applicant proposes to fill the incised gullies by using excavated material from the check dams and return the flow to the meadow surface by using either remnant historic channel sections or repairing the existing channel to mimic historic stable dimensions through riffle augmentation (raising the bed elevation and placing native rock to stabilize the channel). The upper reach of the Project would be graded to enhance the form and function of the inset floodplain to create a wide inset floodplain that slopes gently toward the active channel, with previously-salvaged vegetation transplanted on the banks. Work will be performed starting from the upper most reach and flows will remain in existing channels until each segment is restored.						
Project County	Lassen						
Project Type	Creek restoration						
Project Address or other Locating Information	Pete's Valley, approximately 16 miles northeast of Susanville and 14 miles directly north of Standish. Access to the Pete's Valley Ranch Project site is via Belfast Road.						
Location Latitude/Longitude	Latitude: 40.5803 Longitude: -120.4293						
Hydrologic Unit(s)	Susanville Hydrologic Unit, 637.00; Snowstorm Mountain Hydrologic Area, 637.40						
Project Area	34 acres						
Receiving Water(s) Name	Pete's Creek, tributary to Willow Creek, which is tributary to the Susan River.						
Water Body Type(s)	Spring-fed perennial creek and associated wetlands						
Designated Beneficial Uses	MUN, AGR, GWR, FRSH, REC-1, REC-2, COMM, WARM, COLD, WILD, SPWN						
Potential Water Quality Impacts	Discharge of sediment from construction Project.						
Area of Water(s) of the U.S. (WOUS) within the Project area	Approximately 14,500 square feet and 6,000 linear feet of creek and surrounding wetland.						
Project Impacts (Fill) to Waters of the State, including WOUS.	Waterbody Type	Permanent			Temporary		
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
	<i>Lake</i>						
	<i>Riparian</i>						
	<i>Stream</i>	0.6	1500	1200			
	<i>Wetland</i>						
Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under Nationwide Permit No. 27, pursuant to Clean Water Act section 404.						

Table of Project Information continued:

Non-Compensatory Mitigation	Best Management Practices (BMPs) will be employed on the site at all times, and throughout construction. Project work will take place during the summer low flows and postponed if inclement weather occurs. Equipment access will be via an established route. Monitoring and revegetation plans have been proposed to promote the establishment of native plant species and deter increase or establishment of non-native place species.
Compensatory Mitigation	This is a restoration Project, so no compensatory mitigation is required.
Applicable Fees	\$944
Fees Received	\$944

CEQA COMPLIANCE

The Water Board has determined that this Project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.). In accordance with Section 15333, the basis for CEQA exemption is "small habitat restoration projects," where the Project does not exceed five acres in size, there are no significant adverse impacts on special status species, there are no hazardous materials at or around the Project site, and the Project will not result in cumulative impacts. The Water Board will file a Notice of Exemption with the State Clearinghouse concurrently with this Order.

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 applied for USACOE authorization to proceed under a Nationwide Permit No. 27 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 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 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. The Applicant must implement the *Upper Pete's Creek Habitat Restoration Project Monitoring Plan*, dated July 23, 2013, and the *Revegetation Plan*, dated July 26, 2013, for the Project.
2. During a three-year revegetation monitoring period, the Applicant must provide annual monitoring reports to the Water Board by **December 15** of each year beginning in **2013**, summarizing monitoring findings, including evaluations of success in establishing new wetlands and enhancing existing wetlands. The Final Annual Report, to be provided by **December 15, 2015**, must describe the results of the monitoring program described in the Revegetation Monitoring Program. Monitoring and reporting requirements may be extended as required until success criteria are met for the Project, as determined by the Executive Officer.
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 that 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. An emergency spill kit must be at the Project site at all times.
5. The Applicant must maintain a copy of this Order at the Project site so as to be available at all times to site operating personnel and agencies.
6. The Applicant must prevent water quality degradation to state waters during and following construction, and must ensure that all pollutant source controls and soil erosion stabilization procedures are in place and effective prior to rainfall events and/or prior to winter shutdown, that will remain effective through the events or winter shutdown period.

7. 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.

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 CWA 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.



LAURI KEMPER, P.E.
ACTING EXECUTIVE OFFICER

cc: Susan Abele, US Fish and Wildlife Service
Rick Poore, StreamWise
Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9
(via email at R9-WTR8-Mailbox@epa.gov)
Matthew Kelley, U.S. Army Corps of Engineers, Redding Office
Bill Orme, State Water Resources Control Board, Division of Water Quality
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