

Lahontan Regional Water Quality Control Board

July 16, 2014

WDID No. 6B361406001
401 WQC

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ORDER NO. R6V-2014-0057, FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION, CALNEV PIPELINE REPAIR, MOUNTAIN PASS PROJECT, SAN BERNARDINO COUNTY, WDID NO. 6B361406001

The California Regional Water Quality Control Board, Lahontan Region (Water Board) has received project information from Kinder Morgan Energy Partners (Applicant) and an application filing fee to complete an application for Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) for the CalNev Pipeline Repair Mountain Pass 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	6B361406001
Applicant	Kinder Morgan Energy Partners 1100 Town & Country Road Orange, CA 92868
Agent	Nick Ricono, AMEC
Project Name	CalNev Pipeline Repair Mountain Pass
Project Purpose and Description	The purpose of the Project is to cover and protect in place two sections of pipeline that have been exposed at two locations where

Table of Project Information:

	It crosses an ephemeral stream. The exposed pipeline will be covered with clean soil. To protect the pipeline from future erosion, at Site No. 1 a concrete mat structure will be placed overtop the pipeline and a riprap revetment wall will be constructed, and at Site No. 2 a riprap revetment wall will be constructed.						
Project Type	Utilities, Underground						
Project Address or other Locating Information	North side of Interstate 15 approximately 2.5 miles west of Mountain Pass, San Bernardino County						
Latitude/Longitude	Latitude: 35.47517 Longitude: -115.59083 (Site No. 1) Latitude: 35.47433 Longitude: -115.59317 (Site No. 2)						
Hydrologic Unit(s)	Amargosa Hydrologic Unit 609.00, Silurian Hills Hydrologic Area 609.20, Shadow Hydrologic Subarea 609.24						
Project Area	0.79 acres						
Receiving Water(s) Name	Unnamed ephemeral stream						
Water Body Type(s)	Minor surface waters						
Designated Beneficial Uses	MUN, AGR, GWR, REC-1, REC-2, WARM, WILD, RARE						
Potential Water Quality Impacts to Waters of the United States (WOUS)	Permanent 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>	0.028	154	326	0.761	2,310	0
Federal Permit(s)	The U.S. Army Corps of Engineers (USACOE) will regulate the Project under Nationwide Permit 3 (Maintenance) pursuant to section 404 of the CWA.						
Non-Compensatory Mitigation	During construction, the Applicant will follow Best Management Practices (BMPs) including construction storm water controls designed to minimize the short-term degradation of water quality.						
Compensatory Mitigation	All temporary impact areas will be recontoured to pre-Project conditions.						
Applicable Fees	\$5,282 (\$1,097 base fee + [\$4,717 per acre x 0.79 acres permanent and temporary impact discharge fee] + \$458 ambient surcharge) ¹ ; fees are calculated based on area of discharge to federal waters						
Fees Received	\$ 5,282						

¹The ambient surcharge is 9.5% of the sum of the base fee plus the discharge fee.

CEQA COMPLIANCE

The Water Board finds that the Project is categorically exempt from the California Environmental Quality Act (CEQA), pursuant to CCR, title 14, section 15031, Existing Facilities, for the maintenance of an existing structure. The Water Board will file a Notice of Exemption with the State Clearinghouse concurrently with this Order.

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 3 (Maintenance) 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 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. All temporary impact areas will be recontoured to match pre-Project conditions.
2. To document the completion of the Project, the Applicant must submit a **Project Completion Report** to the Water Board within 60 days following completion of the Project, but no later than **December 31, 2014**. 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.
3. Work within the stream channel is authorized only during dry weather conditions. Should inclement weather occur, all work within the channel must stop and all equipment and materials must be removed from the channel.

4. 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.
5. 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.
6. An emergency spill kit must be at the Project site at all times during Project construction.
7. 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.
8. 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.
9. 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 this 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 (Enclosure).

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 jan.zimmerman@waterboards.ca.gov, or Patrice Copeland, Senior Engineering Geologist, at (760) 241-7404 patrice.copeland@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: Nick Ricono, AMEC
(via email nick.ricono@amec.com)
Bonnie Rogers, U.S. Army Corps of Engineers
(via email Bonnie.L.Rogers@usace.army.mil)
Paul Amato, Wetlands Regulatory Office (WTR-8), USEPA, Region 9
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