

Lahontan Regional Water Quality Control Board

August 5, 2014

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BOARD ORDER NO. R6T-2014-0071 FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND BASIN PLAN PROHIBITION EXEMPTION FOR THE ANGORA CREEK LARGE WOOD RESTORATION PROJECT, EL DORADO COUNTY, WDID 6A091405005

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 Angora Creek Large Wood Restoration Project (Project) in El Dorado County. This Order for WQC hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A091405005. 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 will be provided upon request or may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality.

PROJECT DESCRIPTION

Table of Project Information:

WDID Number	6A091405005
Applicant	Nancy Gibson, U.S. Forest Service-Lake Tahoe Basin Management Unit (LTBMU), 35 College Drive, SLT CA 96150
Agent	Craig Oehrli, same address
Project Name	Angora Creek Large Wood Restoration Project

Table of Project Information continued:

Project Purpose and Description	This aquatic restoration and stream habitat enhancement project is part of an effort to address restoration needs in response to past land uses and the effects of the 2007 Angora Fire. Angora Fire burn intensities were moderate to high along all three tributaries of Angora Creek. The project will improve in-stream large wood function through the placement of locally available dead wood as debris jams within the channel. The wood structures will function to induce fine sediment deposition, control grade, and increase the complexity of aquatic pool and cover habitat. All work will be implemented using hand labor only. Project related fill impacts are entirely related to placement of wood material, no other material will be used as fill.						
Project Type	Aquatic restoration and habitat enhancement						
Project County	El Dorado						
Project Address or other Locating Information	USFS lands west of the City of South Lake Tahoe; North, South, and Middle Forks of Angora Creek upstream their confluences and upstream of the bridge at Lake Tahoe Blvd.						
Location Latitude/Longitude	Latitude:38.908 N, Longitude: 120.119 W						
Hydrologic Unit(s)	Hydrologic Unit, 634.10						
Overall Project Area	6.1 acres						
Receiving Water(s) Name	Angora Creek (tributary to Upper Truckee River and Lake Tahoe)						
Water Body Type(s)	Stream						
Designated Beneficial Uses	MUN, AGR, GWR, REC-1, REC-2, COMM, COLD, WILD, SPWN						
Potential Water Quality Impacts	Sediment, turbidity						
Area of Water(s) within the Overall Project Area	Approximately 264,000 square feet (6.1 acres), approx. 2 miles of stream channel (average 5-feet wide plus 10-ft wide strip of adjacent floodplain along both banks)						
Impacts of Fill to Waters of the State, including Waters of the U.S. (WOUS)	Waterbody Type	Permanent			Temporary		
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
	<i>Lake</i>						
	<i>Riparian</i>						
	<i>Stream</i>	0.16		394			
	<i>Wetland</i>						
Impacts of Dredging (Excavation) to Waters of the State, including WOUS	Waterbody Type	Permanent			Temporary		
		Acres or Sq. Ft.	Linear Feet	Cubic Yards	Acres or Sq. Ft.	Linear Feet	Cubic Yards
	<i>Lake</i>						
	<i>Riparian</i>						
	<i>Stream</i>						
	<i>Wetland</i>						
	Total	0	0	0			

Table of Project Information Continued:

Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Nationwide Permit 27, pursuant to CWA section 404.
Non-Compensatory Mitigation	The Project will implement Best Management Practices (BMPs) identified in the application to minimize impacts to water quality. Work will only occur during very low to no flow stream conditions.
Compensatory Mitigation	None required
Applicable Fees	\$1201
Fees Received	\$944

CEQA COMPLIANCE

On April 11, 2013 the Water Board provided notice of intent to adopt a Mitigated Negative Declaration for the Angora Fire Trails and Stream Environment Zone Restoration Project (MND), State Clearinghouse No. 2013042027. The proposed Project was analyzed in the MND. The MND reflects the Water Board's independent judgment and analysis. After considering the document and the comments during the public review process, the Water Board adopted the MND on June 19, 2013 and filed a Notice of Determination on July 1, 2013, pursuant to the California Environmental Quality Act, (CEQA Public Resources Code 21000, et seq.). The Water Board determined that the Angora Fire Trails and Stream Environment Zone Restoration Project, which includes the proposed Project, with mitigation measures will not have a significant effect on the environment. Mitigation monitoring is described in the application prepared by the Applicant and will be enforced through issuance of this 401 WQC.

In July 2010 the Applicant signed a Decision Notice and completed an analysis of the Angora Fire Restoration Project pursuant to the National Environmental Policy Act (NEPA). This Project was included in that post-fire restoration NEPA document.

WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITION

To protect beneficial uses and achieve water quality objectives for the waters in the Lake Tahoe hydrologic unit, the Water Quality Control Plan for the Lahontan Region (Basin Plan) specifies the following discharge prohibitions:

- 1) *The discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand, and other organic and earthen materials to lands below the highwater rim of Lake Tahoe or within the 100-year floodplain of any tributary to Lake Tahoe is prohibited. (Chapter 5, Waste Discharge Prohibitions, page 5.2-3)*

- 2) *The discharge or threatened discharge, attributable to new development in Stream Environment Zones, of solid or liquid waste, including soil, silt, sand, clay, rock, metal, plastic, or other organic, mineral or earthen materials, to Stream Environment Zone in the Lake Tahoe Basin is prohibited. (Chapter 5, Waste Discharge Prohibitions, page 5.2-4)*

The Project will involve discharge of organic materials (wood structures) within a stream environment zone (SEZ) and within the 100-year floodplain of Angora Creek, a tributary of Lake Tahoe (Basin Plan page 5.8-7) but will result in overall enhancement of aquatic habitat and stream structure.

Prohibition Exemption Criteria

The Water Board may grant exceptions to the discharge prohibition stated in 1) above for erosion control, habitat restoration, and SEZ restoration projects provided that the project is necessary for environmental protection and there is no reasonable alternative which avoids or reduces the extent of encroachment in the floodplain. The Basin Plan contains a provision that the prohibition stated in 2) above shall not apply to any activity the Water Board approves as reasonably necessary for erosion control projects, habitat restoration projects, wetland rehabilitation projects, SEZ restoration projects, and similar projects, if all of the following findings can be made. The findings for the exemptions are as follows:

(a) The Project, program, or facility is necessary for environmental protection.

The 2007 Angora Fire had short and long term impacts to Large Wood Debris (LWD) functions in Angora Creek. Moderate to high burn intensities reduced the quantity of LWD within and adjacent to all three forks of Angora Creek. Natural wood recruitment into the creek system will not occur for many decades as trees slowly mature within the burn area. In some Project areas in-stream wood is now absent at points where it would have been an important component of the system; and in other areas downed wood has fallen across the channel but is perched above the active channel so that it does not contribute to stream stability or aquatic habitat function. The Applicant's 2010 NEPA analysis identifies the need to improve in-stream large wood function along the three Angora Creek headwater tributaries. LWD structures serve to trap and store fine sediment, contribute to pool development, increase pool depth and frequency, increase the longitudinal profile, and increase aquatic habitat variability. Placement of LWD structures within the channel is necessary to enhance aquatic habitat function and improve the structure of Angora Creek in the aftermath of the Angora Fire.

(b) There is no reasonable alternative, including relocation, which avoids or reduces the extent of encroachment in the SEZ.

Given the nature of the Project and the desire to improve in-stream aquatic habitat, avoidance of all SEZ or 100-year floodplain is not possible. However, the extent of encroachment has been reduced since the Project was conceptualized in the 2010 NEPA document. During NEPA the Project was proposed with implementation using heavy equipment to move and place logs, and additional excavation of bank materials. Through refinement of the Project, the Applicant realized that it could meet the Project goals using only hand crews to move and place the logs. Using only hand crews significantly reduces disturbance areas in comparison to using mechanized equipment. Crews will access the Project area using existing roads and trails and have minimal impact on the creek banks. In addition, no excavation of bank material will be required as the logs will be strategically placed so as to utilize existing boulders, stumps, and wood to provide anchoring and stability to the structures.

(c) Impacts are fully mitigated.

Several mitigation measures are proposed for the project in addition to completing the implementation with hand crews. To mitigate any potential for elevated turbidity within the creeks, work will only be performed during the late summer and early fall when many of the channels will be dry and free of flowing water. If flowing water is present, a small sand bag coffer dam will be placed across the channel downstream of the work area to collect any turbid water, and the turbid water will be pumped to upland locations for percolation.

The local weather forecasts by the National Oceanic and Atmospheric Administration will be monitored daily, and an action plan implemented if the chance of precipitation exceeds 30%. The plan will identify what work can occur, conditions for shutting down operations, and ensure that soil disturbing activities can be completed within 30 minutes should rain occur.

Fuel to operate chain saws and other hand equipment will be kept in spill proof cans and all refueling will take place outside of the SEZ and 100-year floodplain. Absorbent pads will be kept with the fuel cans and used to clean up any spillage. Fuel will be transported out of the Project area at the end of each work day.

Monitoring of Project effectiveness includes photo point and visual observations for a minimum of two years post Project. The Applicant will conduct and document inspections following peak spring runoff in 2015 and 2016.

Exemption Granted

As demonstrated above, the Project meets the conditions and criteria for an exemption to the above-cited SEZ and 100-year floodplain discharge prohibitions. The Applicant has incorporated appropriate BMPs into the Project to ensure that erosion and surface runoff problems caused by the Project are minimized to levels of insignificance. The Project is hereby granted an exemption to the above-cited waste discharge prohibition. Except in emergency situations, the Executive Officer shall notify the Board and

interested members of the public of the intent to issue an exemption at least ten (10) days before the exemption is issued. A notice of exemption was posted on the Water Board website and distributed through an interested persons mailing list allowing at least ten (10) days to submit comments.

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 waters of the US (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 Nationwide Permit No. 27 pursuant to CWA section 404.

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. This 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 description 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 or CWA Section 303, 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 WQC, 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 CWA Section 303.
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 Game 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 maintain a copy of this Order at the Project site so as to be available at all times to site operating personnel and agencies.
2. The Applicant must notify Water Board staff within 48 hours prior to commencement of the Project.

3. The Applicant must immediately (within two hours) notify Water Board staff by telephone whenever an adverse condition occurs as a result of this Project. 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 two weeks of occurrence. The written notification must identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to any modifications by Water Board staff, for the remedial actions.
4. Construction equipment shall be clean and free from oil, grease and loose metal material, and monitored for leaks. Equipment shall be removed from service if necessary to protect water quality.
5. An emergency spill kit shall be at the Project site at all times.
6. All temporary BMPs shall be inspected and maintained daily during Project construction. The Applicant shall keep inspection logs during Project construction and provide a copy of inspection logs to Water Board staff upon request.
7. Trees proposed for placement must be washed and/or free of all adhered soil particles prior to placement. Wash water from washing must be directed to non-wetland, upland areas a minimum of 100 feet from the SEZ where the water is infiltrated into the soil.
8. Except as described in the Project application, no debris, cement, concrete (or wash water therefrom), sand, rock, soil, earthen materials 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 waters of the state. When operations are completed, any excess material must be removed from the Project work area and any areas adjacent to the work area where such material may be transported into waters of the state.
9. The Applicant must permit 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 record 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.

10. The Applicant must prevent the introduction or spread of noxious and invasive weeds within the Project and staging area. Control measures may include removing existing invasive vegetation, cleaning all equipment and gear prior to use on the Project site, using weed-free erosion control materials (if necessary for the Project).
11. The Applicant has prepared and submitted a detailed application as part of the WQC approval process required for this Project. The application describes detailed temporary BMPs, dewatering methods, construction methods and monitoring plans. The Applicant must complete the Project as described in the submitted application.

Enforcement

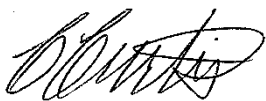
1. In the event of any violation or threatened violation of the conditions of this WQC, the violation or threatened violation must be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of CWA section 401(d), the applicability of any state law authorizing 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 WQC, 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 WQC, 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 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 staff person Laurie Scribe at (530) 542-5465.



for

PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

ecc: Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9
(via email at R9-WTR8-Mailbox@epa.gov)
Bill Orme, State Water Resources Control Board, Division of Water Quality
(via email at Stateboard401@waterboards.ca.gov)
Kristine Hansen, U.S. Army Corps of Engineers, Sacramento District, Reno Field Office
(via email at Kristine.S.Hansen@usace.army.mil)
Patrick Moeszinger, California Department of Fish and Wildlife
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LS/dk/T: R6T-2014-0071_Angora Large Wood 401_8-05-14

File: (new file) WDID 6A091405005 US Forest Service- LTBMU, Angora Creek Large Wood Restoration Project