



Lahontan Regional Water Quality Control Board

August 29, 2014

Richard Solbrig, General Manager
South Tahoe Public Utility District
1275 Meadow Crest Drive
South Lake Tahoe, CA 96150

BOARD ORDER NO. R6T-2014-0076, FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND BASIN PLAN PROHIBITION EXEMPTION FOR THE UPPER TRUCKEE MARSH SEWER FACILITIES PROTECTION PROJECT, EL DORADO COUNTY, WDID 6A091404003

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 from South Tahoe Public Utility District (Applicant) for the Upper Truckee Marsh Sewer Facilities Protection Project (Project) in El Dorado County. The Water Board also received information to support granting an exemption to a waste discharge prohibition in the Water Board’s Water Quality Control Plan for the Lahontan Region (Basin Plan). This Order for WQC and waste discharge prohibition exemption hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A091404003. 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	6A091404003
Applicant	Richard Solbrig South Tahoe Public Utility District 1275 Meadow Crest Drive South Lake Tahoe, CA 96150
Project Name	Upper Truckee Marsh Sewer Facilities Protection Project

Table of Project Information continued:

Project Purpose and Description	<p>The purpose of the Project is to redirect Trout Creek flow that has overbanked onto the Applicant's sewer easement after the record snowmelt in 2011. Over a period of three to five years, and through implementing an Adaptive Management Plan (AMP), the Applicant will protect its sewer infrastructure from flooding through a set of measures designed to encourage channel formation in a more favorable location toward the center of the marsh, raise the easement area slightly, and increase the easement area's hydraulic roughness to make it more resistant to future channel avulsions. The set of measures includes (1) constructing pilot channels to divert low flows to away from the easement, (2) opening the left bank overflow paths to convey higher flow levels away from the easement, (3) planting vegetation along preferred channel alignments, (4) removing debris and fill at the entrance to the pre-1968 channel alignment, (5) widening and deepening desirable alternative flow paths to increase capacity, (6) installing vegetative hydraulic roughness elements spanning the utility easement and adjacent low areas to break up flow lines and reduce local velocities in order to prevent channel incision and encourage sedimentation, (7) placing vegetatively-stabilized hummocks over portions of the easement and adjacent low areas, (8) placing a thin layer of soil over portions of the floodplain using existing vegetation and biodegradable perimeter stabilization (coir logs), (9) installing overbank flow plugs to reduce flow passing over or adjacent to the easement, (10) planting vegetation in channels that currently contribute, or have the potential to contribute to inundation on the easement, (11) removing abandoned road fill that has become a floodplain constriction and replacing with existing sod to the adjacent meadow grade, and (12) placing fill and vegetation in the depressions upstream of the abandoned road fill to bring up to the grade. Year 1 Plan (2014) includes opening alternate flow paths using pilot channels and left overbank openings; increasing resistance to flows in the right overbank using constructed hummocks and plugging of right overbank flow paths; removing road fill and plugging erosional depression upstream of the fill; widening and deepening on favorable flow paths; and willow plantings on secondary flow paths and remnant channel to encourage favorable flow paths and discourage unfavorable paths. The plan for years 2-5 include removing debris and fill at the pre-1968 avulsion site in center of marsh and a constructing a pilot channel at that site in addition to further willow plantings, hummock or other flow plugs, and widening or deepening within preferred flow plugs as needed based on AMP.</p>
Project County	El Dorado
Project Type	Bank and Channel modification, restoration bank stabilization.
Project Address or other Locating Information	End of Bellevue Ave in South Lake Tahoe, CA, APN 026-200-011
Location Latitude/Longitude	Latitude: 38.936801 Longitude: -119.989503
Hydrologic Unit(s)	Lake Tahoe Hydrologic Unit, 634.00
Project Area	96 acres
Receiving Water(s) Name	Lake Tahoe
Water Body Type(s)	Trout Creek and surrounding wetlands near mouth of Lake Tahoe

Table of Project Information continued:

Designated Beneficial Uses	MUN, AGR, GWR, REC-1, REC-2, COMM, COLD, WILD, MIGR, SPWN						
Potential Water Quality Impacts	Sediment from the construction of the Project, including temporary impacts from excavation and discharge of construction-related materials downstream.						
Area of Water(s) of the U.S. (WOUS) within the Project area	94.1 acres						
Impacts of Fill within 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>				0.014		15
	<i>Wetland</i>				1.18		264
	Total				1.32		279
Impacts of Excavation 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>						30
	<i>Wetland</i>						493
	Total						523
Federal Permit(s)	The Applicant has applied for and received U.S. Army Corps of Engineers (USACOE) authorization to proceed under Nationwide Permit No. 27, pursuant to CWA section 404, contingent upon the issuance of this WQC.						
Non-Compensatory Mitigation	Best Management Practices (BMPs) will be employed on the site at all times and throughout construction. Use of heavy equipment (excavator and dump trucks) for grading will be restricted to removing the abandoned road in the Project site. Otherwise either hand crews or low ground pressure equipment (less than 5 pounds per square inch loaded) will be used. Remnant water in the easement area will be pumped to a sediment basin and then to a flood or spray irrigated infiltration area on an unsaturated area of the marsh. Dewatering and diversion will be accomplished through construction of the pilot channels off the left bank of Trout Creek. The pilot channel features will be "seasoned" prior to activation by placing gravel bags upstream and downstream in the pilot channel and introducing small flows at the upper end that are captured at the lower end and pumped and treated as above. This will be repeated until the turbidity decreases to less than 10 NTU or not more than 110% of the upstream station. Monitoring designed to establish baseline conditions, protect water quality, assess annual performance, and guide adaptive management decisions include surveys, photo points, flow measurement, turbidity measurements, and vegetation establishment criteria. No structural stabilization (riprap) measures are proposed.						
Compensatory Mitigation	The temporary impacts at the Project site will be restored at the same location. The Project is designed to enhance aquatic resources, including wetland surrounding lower Trout Creek before its confluence with the Upper Truckee River, by improving Trout Creek hydrology and reestablishing a continuous connection to the Upper Truckee River.						
Applicable Fees	\$3,320 (\$1,097 base fee + \$1,934 for project impacts to Federal Jurisdictional waters + 9.5% surcharge).						
Fees Received	\$3,320						

CEQA COMPLIANCE

The Applicant adopted a Mitigated Negative Declaration (MND) for the Project (State Clearing House Number 2014042004) on May 1, 2014, and filed a Notice of Determination (NOD) on May 2, 2014, pursuant to the California Environmental Quality Act (CEQA, Public Resources Code Section 21000, et seq.) and the State CEQA Guidelines.

The Water Board, acting as a CEQA Responsible Agency in compliance with CCR, title 14, section 15096, evaluated the significant and potentially significant impacts to water quality identified in the MND for the Project. 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

To protect beneficial uses and achieve water quality objectives for the waters in the Lake Tahoe Hydrologic Unit, the Basin Plan specifies the following discharge prohibition:

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 Zones in the Lake Tahoe Basin is prohibited (Chapter 5, Waste Discharge Prohibitions, page 5.2-4).

The Project involves new soil disturbance and the discharge of earthen materials within stream environment zones (SEZ) in the Lake Tahoe Hydrologic Unit. The Project is considered necessary for public health, safety, or environment protection. The Project is also considered a stream and SEZ restoration project.

Prohibition Exemption Criteria For Restoration and Erosion Control

The Basin Plan allows exemptions to the above-cited discharge prohibition for activities in SEZs of the Lake Tahoe Hydrologic Unit for erosion control, habitat restoration, wetland rehabilitation, SEZ restoration and similar projects, such as this one, provided that findings are made to support the exemption criteria below (Basin Plan page 5.8-7).

(a) The project is necessary for public health, safety, or environmental protection.

Due to high flows and sediment transport in 2011, Trout Creek filled with bed material causing flows to go over the right bank and inundate the sewer easement. Under current conditions, the Applicant no longer has access to the easement, including manholes in the gravity sewer. Surface inundation of the easement persisted through the summer and fall month of 2013, prevention access for routine maintenance. Formation of a new channel in the easement area would directly threaten exposure of the pipelines and operation of the pump

station. An overflow due to inundation of the pump station, a plug in the gravity line, or a break in either of the lines could result in raw sewage discharge to Trout Creek, the Upper Truckee Marsh, and Lake Tahoe. Therefore, the Project is necessary to protect public health, safety, and environmental protection.

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

The Applicant evaluated five preliminary alternatives, including relocating the sewer facilities outside the SEZ, which was the only alternative that had less impacts than the proposed Project. Based on six criteria (ease of construction, public acceptance, effectiveness and reliability, permitting, environmental effects, and estimated cost), the Applicant rejected the relocation alternative because of its unreasonableness, both in terms of construction complexity and the extensive costs. No reasonable alternative, therefore, to the proposed Project would reduce the extent of encroachment in the SEZ and still meet the purpose of the Project.

(c) Impacts are fully mitigated.

The Project is designed to enhance aquatic resources by removing artificial fill, restoring a section of natural vegetated channel, increasing wetland diversity, and planting wetland vegetation consistent with the native plant community. The Project will not result in the loss of intermittent waters and will increase the function and value of abutting wetlands by diverting flow paths into the central Upper Truckee River/Trout Creek marsh system and away from the urban area adjacent to that system. Temporary impacts to SEZs will be mitigated by using erosion and sediment control BMPs, including staged activation of new flow paths, protecting access routes, minimizing ground disturbance through the use of hand crews and limited use of low-pressure ground equipment, minimizing the discharge of turbid water through construction and stabilization to prevent erosion. Construction will generally occur between the beginning of September and mid-October when creek flows are lowest and the meadow surface is driest. All excavation, with the exception of fill removal from the abandoned road, will be performed with hand crews. Sod excavated by hand crews will be salvaged and used elsewhere. During construction upstream and downstream turbidimeters will be set up to take turbidity measurements on a 15-minute interval and used to confirm that turbidity at the downstream station is controlled to less than 20 NTU as a 1-hour rolling average, or if the upstream station turbidity exceeds 20 NTU that the downstream turbidity is less than 110% of the upstream station. Impacts are fully mitigated.

Resolution No. R6T-2008-031, delegates authority to the Water Board Executive Officer to grant exemptions to the above-referenced discharge prohibition for projects that satisfy criteria specified in Resolution No. R6T-2008-031. The criteria that the Project must satisfy are:

1. *The Executive Officer has the authority to authorize the Project under an existing general permit, general waiver or individual water quality certification order, excluding projects that require a Board action; and*

2. *The Project meets the exemption or exception criteria set forth in the Basin Plan; and*
3. *The Project is necessary for public health, safety, or environmental protection.*

The primary purpose of the Project is to protect public health and safety through the prevention of a potential sewer overflow. The Project is also considered a SEZ restoration Project. The Project meets the criteria necessary for the Executive Officer to grant an exemption.

Exemption Granted

As demonstrated above, the Project meets the conditions and criteria for an exemption to the above-cited SEZ discharge prohibition. 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 days before the exemption is issued. A notice of exemption will also be posted on the Water Board website and distributed through an interested persons mailing list allowing at least ten 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 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 received USACOE authorization to proceed under a Nationwide Permit No. 27 pursuant to CWA section 404 contingent upon receiving this WQC.

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. The Applicant must implement the Upper Truckee Marsh Sewer Facilities AMP dated April 7, 2014, including the monitoring and reporting plan in Appendix E of the AMP.
2. The Applicant must provide monitoring reports no later than **July 31, 2015** and continuing annually for a total period of five years (**July 31, 2016, July 31, 2017, July 31, 2018, and July 31, 2019**).
3. A dewatering and/or diversion plan must be provided to the Water Board **15 days prior to commencement** of the Project or by **September 15, 2014**, whichever is earliest.
4. Coir logs that are intended to remain at the Project site must not consist of plastic netting. Also, placement of wood chips in the SEZ must be minimized and removed to the extent practicable without causing greater disturbance to SEZ.
5. The Applicant must provide Year 2 – 5 Plan sheets to the Water Board by **July 31, 2014**.
6. The Basin Plan contains the following numeric water quality objective for turbidity:

Increases in turbidity shall not exceed natural levels by more than 10 percent.
(Chapter 5, Water Quality objectives, page 5.1-9)

Unless otherwise approved by the Water Board, turbidity levels downstream of the Project are must not be increased by more than ten percent above background levels as measured upstream of the Project area.

7. A qualified professional with experience in hydrology and wetland restoration must monitor the implementation of the Project.
8. Water Board staff must be notified within **forty-eight hours** prior to commencing construction of the Project.
9. Any additional work or variation from the described work, which may result in additional or increased impacts to SEZ or waters of the state, including WOUS, is not authorized unless approved in writing by the Executive Officer prior to implementation.
10. The Applicant must prevent the introduction or spread of noxious/invasive weeds associated with the Project. 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, and using weed-free seeds and plant material for revegetation of disturbed areas.

11. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
12. All rock, gravel bags, or other construction-related materials imported to the Project site and placed at the Project site must be clean, washed, and free of any adhered soil material.
11. The Applicant must minimize and prevent water quality degradation to waters of the state during and following construction, and must ensure that all pollutant source controls and soil erosion prevention or stabilization procedures are in place and effective prior to and during rainfall events and/or prior to winter shutdown (between October 15 and May 1 of the following year).
12. No debris, cement, concrete (or wash water therefrom), 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 waters of the state. When operations are completed, any excess material must be removed from the Project work area and any areas where such material may erode into waters of the state.
13. 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.
14. 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 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.
17. An emergency spill kit must be at the Project site at all times.
18. The Applicant must maintain a copy of this Order at the Project site so as to be available during construction to site operating personnel and agencies.

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 Water Quality Certification" 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: Nick Tomera, AECOM
Bob Hosea, California Department of Fish and Wildlife
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