

Lahontan Regional Water Quality Control Board

August 26, 2015

Joanne Roubique, District Ranger
USFS – Tahoe National Forest
10811 Stockrest Springs
Truckee, CA 96161

BOARD ORDER NO. R6T-2015-0049, CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND BASIN PLAN PROHIBITION EXEMPTIONS FOR THE DRY CREEK WATERSHED SITES 1 AND 4 RESTORATION PROJECT, NEVADA COUNTY, WDID NO. 6A291407004

The California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) received a complete Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) application and application filing fee from the Truckee River Watershed Council and the U.S. Forest Service – Tahoe National Forest (Applicant) for the Dry Creek Watershed Sites 1 and 4 Restoration Project (Project) in Nevada County. The Applicant also provided 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). The application received on June 17, 2015, was deemed complete on July 31, 2015. This Order for WQC and waste discharge prohibition exemption hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A291407004. Please use this reference number in all future correspondence regarding this Project.

Any person aggrieved by this action of the Lahontan 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	6A291407004
Applicant	Joanne Roubique USFS – Tahoe National Forest 10811 Stockrest Springs Truckee, CA 96161
Agent	Beth Christman Truckee River Watershed Council PO Box 8568 Truckee, CA 96162

Table of Project Information Continued:

Project Name	Dry Creek Watershed Sites 1 and 4 Restoration						
Project Purpose and Description	The purpose of the Project is to restore meadow hydrologic function, reduce erosion, and improve habitat on two intermittent tributaries to Dry Creek. Land disturbances from historic logging, railroad construction, utility corridors, and off-highway vehicle use led to degradation of hydrologic function and watershed health. The Project entails road decommissioning and relocation, headcut stabilization, filling incised channels, and re-grading to connect floodplain channels. The Project will expand the acreage of riparian meadow vegetation, improve groundwater recharge, and reduce erosion.						
Project Type	Ecological Restoration						
Project County	Nevada						
Project Address or other Locating Information	9 miles north of the Town of Truckee on the east side of Hwy 89. Part of the Little Truckee River watershed. Also known as Russel Valley. Nevada County Assessor Parcel Nos. 48-010-10, 48-010-12, 48-010-16.						
Location Latitude/Longitude	Latitude: 39.42097		Longitude: 120.12444 (center)				
	39.41790		120.12898				
	39.42566		120.11959				
	39.44026		120.11959				
	39.43801		120.12205				
	39.44509		120.11921				
Hydrologic Unit	636.00						
Overall Project Area	4.4 acres (Site 1 = 2.9 acres, Site 4 = 1.5 acres)						
Receiving Water(s) Name	Dry Creek						
Water Body Type(s)	Surface Water						
Designated Beneficial Uses	MUN, AGR, GWR, FRSH, REC-1, REC-2, COMM, COLD, WILD, RARE, MIGR, & SPWN, WQE, FLD						
Potential Water Quality Impacts	Discharge of sediments and suspended solids during grading and fill activities related to filling of incised channels, headcut stabilization and decommissioning of road crossings.						
Area of Water(s) within the Overall Project Area	1.97 acres; 8904 linear feet (Site 1: 0.73 acres of riparian wetlands, 0.45 acres floodplain channel; Site 4: 0.79 acres floodplain channel)						
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>Other Stream</i>						
	<i>Wetland</i>	0.73	3393	1921			
	<i>Riparian</i>	1.24	5608	4686			

Table of Project Information Continued:

Impacts of Dredging (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>				0.32		310
	<i>Stream</i>						
	<i>Wetland</i>						
Impacts of Fill to Waters of the State, including WOUS.	Total Ecological Restoration and Enhancement Quantity for Temporary Impacts (CIWQS mitigation/restoration table side B)						
	Aquatic Resource Type	Unit	Establishment	Re-establishment	Rehabilitation	Enhancement	Preservation
	Stream Channel	Acres					
		Linear Feet					
	Wetland	Acres		0.96			
	Riparian Zone	Acres		1.47			
Linear Feet			6668				
Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACE) authorization to proceed under a Nationwide Permit 27, pursuant to CWA section 404.						
Non-Compensatory Mitigation	Implementation of sediment and erosion control best management practices, and revegetation upon Project completion.						
Compensatory Mitigation	None required. The Project purpose is meadow and riparian area restoration.						
Application Fee	\$200						
Estimated Annual Active Discharge Fee ¹	\$200 (An annual active discharge fee of \$200 will be assessed each fiscal year beginning July 1 st until Applicant receives a Notice of Completion of Discharges Letter from the Lahontan Water Board.)						
Estimated Post-Discharge Monitoring Fee ¹	\$100 (An annual fee of \$100 will be assessed each fiscal year beginning July 1 during the Post-Discharge Monitoring Period until the Water Board issues a Notice of Project Complete Letter to the discharger.)						
Fees Received	\$200						

¹The actual Annual Active Discharge Fee and Post-Discharge Monitoring Fee will be calculated using the fee schedule in effect at the time the annual fee is assessed per California Code of Regulations, title 23, section 2200(a)(3).

CEQA COMPLIANCE

The Lahontan 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.” A Notice of Exemption will be filed with the State Clearinghouse concurrently with issuing this Order.

BASIN PLAN DISCHARGE PROHIBITIONS

The following discharge prohibitions and exemption criteria apply to this Project due to its location within intermittent stream channels and floodplains in the Little Truckee River Hydrologic Unit (HU).

1. Prohibition 1 states:

- a) *“The discharge, attributable to human activities, of any waste or deleterious material to surface waters of the Truckee River HU or Little Truckee River HU is prohibited.”*

The Water Board may grant an exemption to this prohibition when the Water Board finds that all of the following criteria are met:

- b) *The discharge of waste will not, individually or collectively, directly or indirectly, adversely affect beneficial uses.*

The purpose of the Project is to improve riparian and meadow habitat and floodplain connectivity. The Project involves placing earthen materials within intermittent channels to restore headcuts and fill incised channel areas. These activities are expected to improve groundwater recharge and reduce erosion, which will result in expanded acreage of wetland and riparian vegetation. The Project is intended to have a net gain in beneficial uses; and therefore, will not individually or collectively, directly or indirectly, adversely affect beneficial uses.

The Beneficial Uses that could be impacted by the Project include Groundwater Recharge (GWR), Freshwater Replenishment (FRSH), Water Quality Enhancement (WQE) and Flood Peak Attenuation/Flood Water Storage (FLD). GWR and FLD beneficial uses will be improved by filling the incised gullies running through Sites 1 and 4 which act as drains to the meadow system. Filling the incised channels and relocating flow to the channels on the meadow surface will restore the connection between the intermittent channels and the meadow and floodplain area. This will allow for flood waters to spread across the meadow surface, reducing peak flows and increasing groundwater recharge as water will be retained for longer periods in the meadow system. The Project will also have long term positive impacts to FRSH and WQE beneficial uses through decreased channel erosion, improving retention of fine sediments on the meadow surface, and stabilizing stream banks.

- c) *There is no reasonable alternative to the waste discharge.*

The Project includes placing materials in the floodplain channels to stop erosion, prevent headcut migration, and reconnect the surface flow to the floodplain. There is no alternative to placing materials in the intermittent channels that would accomplish the Project’s habitat restoration and floodplain enhancement goals.

- d) *All applicable and practicable control and mitigation measures have been incorporated to minimize potential adverse impacts to water quality and beneficial uses.*

The Project incorporates both temporary and permanent best management practices (BMPs) to minimize potential adverse impacts. Temporary BMPs include timing construction during no flow months, construction phasing, appropriate access route location, stockpile management, limiting staging of materials and equipment access, and erosion and sediment control. Post construction BMPs include actively re-vegetating disturbed riparian

areas, staging area de-compaction and mulching, and controlling road runoff. The Project will harvest meadow sod and existing riparian vegetation prior to filling channels and replant the materials to stabilize the fill and improve the rate of revegetation. The Project will also be regulated under the terms and conditions of the Statewide General Waste Discharge Requirements and NPDES General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit).

2. Prohibition 2 states:

a) *“The discharge or threatened discharge, attributable to human activities, of waste to lands within the 100-year floodplain of the Truckee River, Little Truckee River and their tributaries is prohibited.”*

The Project will occur on two tributaries to Dry Creek, which flows into the Little Truckee River via Boca Reservoir. Implementation of the Project has the potential to discharge or threaten to discharge earthen materials to the 100-year floodplain of a tributary to the Little Truckee River. The Water Board may grant exemptions to the above-cited prohibition for the certain categories of new projects within the 100-year floodplain, including:

b) *Projects intended to reduce or mitigate existing sources of erosion or water pollution, or to restore or improve the floodplain function.*

The primary purpose of the Project is to reduce erosion and restore hydrologic connectivity to the floodplain which will improve riparian and meadow habitat. The Project will also remove and relocate some roads away from sensitive riparian areas. The Project meets the above-referenced Project type, as it is intended to restore hydrologic floodplain areas.

3. An exemption to prohibition 2, above, may be allowed for specific new projects only when the Water Board makes all of the following findings:

a) *There is no reasonable alternative that avoids or reduces the extent of encroachment by the Project within the 100-year floodplain.*

The purpose of the Project is to improve riparian and meadow habitat and floodplain connectivity, through stabilizing headcuts and filling incised channel segments. There is no alternative to placing materials in the 100-year floodplain that would accomplish the Project meadow and riparian restoration goals.

b) *All applicable and practicable control and mitigation measures have been incorporated such that potential adverse impacts to water quality are the minimum necessary to complete the Project and beneficial uses are protected.*

The Project incorporates appropriate best management practices as described in 1) c) above to ensure that any erosion and surface runoff problems are minimized. The Project will not result in any long-term adverse impacts to water quality or beneficial use.

c) *The Project will not reduce or adversely affect the existing floodplain function. This shall be ensured by restoration of previously-disturbed floodplain within the Project site, or by improvement of floodplain function within or as close as practical to the Project site. The restored or improved 100-year floodplain function must more than offset the floodplain function lost by construction of the Project.*

The Project area has been previously disturbed by historic logging, railroad construction, and utility development and recent unauthorized off highway vehicle use. A primary Project goal is to improve floodplain function and connectivity within the site, resulting in increased wetland, riparian, and floodplain area.

DELEGATION AUTHORITY FOR GRANTING AN EXEMPTION

The Water Board has delegated authority to the Water Board Executive Officer to grant exemptions to the discharge prohibitions in the Truckee River Hydrologic Unit for restoration projects.

EXEMPTION GRANTED

Water Board staff has notified the Applicant and interested parties of its intent to adopt this prohibition exemption by posting a notice of the Project on its website and sending notices through its email notification system (Iyris list). Water Board staff has determined that the Project satisfies the exemption criteria listed above. An exemption to the Basin Plan prohibitions cited above is hereby granted.

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 USACE authorization to proceed under 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 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 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 (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. Construction equipment must be clean and free from oil, grease and loose metal material and must be removed from service if necessary to protect water quality.
2. An emergency spill kit must be at the Project site at all times.
3. Water Board staff must be notified 48 hours prior to commencement of ground disturbance.

4. Water Board staff must be permitted to enter the Project site and sample any discharge.
5. No debris, cement, concrete (or wash water therefrom), oil or petroleum products are 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.
6. Wetland areas near the Project area and staging area that, according to the application, will be avoided must be protected by colored construction fencing or equivalent barriers.
7. The Applicant must immediately 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. Pursuant to Water Code section 13267(b), 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.
8. The Applicant must prevent the introduction or spread of noxious/invasive organisms within the Project and staging area. The control measures may include activities such as cleaning all equipment and gear that has been in an infested site, the use of weed-free erosion control materials (including straw), and the use of weed-free seeds and plant material for revegetation of disturbed areas.
9. All surface waters, including ponded waters, must be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water in accordance with the Application for CWA Section 401 WQC.
10. By **December 31, 2015**, submit to this office documentation that demonstrates the Project has been constructed pursuant to the plans reviewed by this office. This report must also:
 - a) Provide baseline vegetative monitoring data of all revegetated and wetland restoration areas.
 - b) Identify vegetative monitoring data that will be used to evaluate revegetation and habitat restoration areas.
 - c) Identify transects, photo points, or other methods that will be used to evaluate revegetation and floodplain habitat restoration success efforts.
11. By **December 31, 2016**, submit to this office the results of the Year 1 revegetation and restoration monitoring.
12. By **December 31, 2017**, submit to this office the results of the Year 2 revegetation and restoration monitoring.
13. By **December 31, 2018**, submit to this office the results of the Year 3 revegetation and restoration monitoring.

Enforcement

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall 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.

In response to a suspected violation of any condition of this certification, the State Water Board or 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 shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

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.

CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION GRANTED

I hereby issue this Order certifying that any discharge from the referenced Project will comply with the applicable provisions of 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) of the CWA, 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.

Except insofar as may be modified by any preceding conditions, all 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. The Water Board will consider requests to cease required annual reporting once all revegetated and restored sites satisfy the success criteria for at least one year.

If you have any questions or comments regarding this permit, please contact Laurie Scribe, Environmental Scientist, at laurie.scribe@waterboards.ca.gov (530-542-5465), or Doug Cushman, Chief, Non-Point Source Unit, at douglas.cushman@waterboards.ca.gov (530-542-5417). **Electronic document submittal is required. Please send your comments or documents to the Water Board's email address at Lahontan@waterboards.ca.gov and include your WDID No. or Facility Name in the Subject Line.**



PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

cc: Beth Christman, Truckee River Watershed Council
(via email bchristman@truckeeriverwc.org)
Melissa France, U.S. Army Corps of Engineers, Sacramento District
(via email melissa.m.france@usace.army.mil)
Tanya Sheya, California Dept. of Fish and Wildlife
(via email tanya.sheya@wildlife.ca.gov)
Bill Orme/State Water Resources Control Board, Division of Water Quality
(via email Stateboard401@waterboards.ca.gov)
Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9
(via email R9-WTR8-Mailbox@epa.gov)