

Lahontan Regional Water Quality Control Board

September 14, 2015

Ron Johnstone
Liberty Utilities, Calpeco Electric, LLC
701 National Ave.
Tahoe Vista, CA 96148

BOARD ORDER NO. R6T-2015-0054, CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND BASIN PLAN PROHIBITION EXEMPTION FOR MEEKS CREEK POLE REPLACEMENT PROJECT, EL DORADO COUNTY, WDID 6A091507002

The California Regional Water Quality Control Board, Lahontan Region (Water Board), received a complete Clean Water Act Section 401 Water Quality Certification (WQC) application and application filing fee from Liberty Utilities, Calpeco Electric (Applicant) for the Meeks Creek Pole Replacement Project (Project). The Applicant also provided information to support granting an exemption to waste discharge prohibitions in the Water Board's Water Quality Control Plan for the Lahontan Region (Basin Plan). The application received on July 9, 2015 was deemed complete on August 4, 2015. This Order for WQC hereby assigns this Project the following reference number: Waste Discharge Identification (WDID) No. 6A091507002. 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, 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	6A091507002
Applicant	Ron Johnstone Liberty Utilities, Calpeco Electric 701 National Ave. Tahoe Vista, CA 96148
Agent	None
Project Name	Meeks Creek Pole Replacement Project

Table of Project Information continued:

Project Purpose and Description	The Project purpose is to replace three deteriorating utility poles located in wetlands adjacent to Meeks Creek to maintain safe electrical distribution. The new holes for the new poles will be in new locations on the existing alignment, hand dug and soils will be placed on erosion control fabric surrounded by fiber rolls prior to use in filling and restoring the former pole holes. New and old poles will be installed and removed, respectively, by helicopter and disturbed areas around each will be restored. Permanent impacts of the new poles will be mitigated with the removal of the old poles followed by restoring the wetlands in the areas of the old poles.									
Project Type	Utilities - Support Facilities									
Project County	El Dorado									
Project Address or other Locating Information	The Project is located adjacent to Meeks Creek, west of Highway 89 (across highway from the Meeks Bay Fire Protection District).									
Location Latitude/Longitude	Latitude: 39.037282 , Longitude: -120.126850 (center)									
Hydrologic Unit(s)	Lake Tahoe Hydrologic Unit, 634.00									
Overall Project Area	0.33 acres									
Receiving Water(s) Name	Wetlands adjacent to Meeks Creek, tributary to Lake Tahoe									
Water Body Type(s)	River, Wetlands									
Designated Beneficial Uses	MUN, AGR, GWR, REC-1, REC-2, COLD, WILD, WQE, FLD									
Potential Water Quality Impacts	Potential for discharge of sediment into the creek and wetland due to Project implementation.									
Area of Water(s) within the Overall Project Area	0.15 acres, 6,675 square feet, 445 linear feet									
Impacts of Fill and Excavation to Waters of the State, including Waters of the U.S.	Water-body Type	Temporary			Permanent					
					Physical Loss of Area			Degradation of Ecological Condition		
		Acre s	Linea r Feet	Cubic Yards	Acre s	Linea r Feet	Cubic Yards	Acres	Linea r Feet	Cubi c Yard s
	<i>Lake</i>									
	<i>Riparian</i>									
<i>Stream</i>										
<i>Wetland</i>	0.00027			0.00022						
Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACE) authorization to proceed under Nationwide Permit No. 12, pursuant to CWA section 404.									

Table of Project Information continued:

Non-compensatory Mitigation (for Dredge and Fill Discharge to Waters of the State)	Best Management Practices (BMPs) will be employed on the site at all times and throughout construction. The temporarily impacted sites will be restored and returned to pre-Project conditions within one year of Project implementation.			
Compensatory Mitigation	Temporary impacts will be restored within six months. Permanent impacts will be mitigated by restoring the replaced pole sites after removal of the old poles.			
	Total Ecological Restoration and Enhancement Quantity for Temporary Impacts (CIWQS mitigation/restoration table side B)			
	Aquatic Resource Type	Unit	Enhanced	Restored
	Wetland	Acres		0.00022
Application Fee	\$200			
Estimated Annual Active Discharge Fee ¹	\$0 (Low Impact Discharge)			
Estimated Post-Discharge Monitoring Fee ¹	\$0 (Low Impact Discharge.)			
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 Water Board has determined that this Project is exempt from the California Environmental Quality Act (Public Resources Code section 21000 et seq.). In accordance with section 15302, the basis for CEQA exemption is "Replacement and Reconstruction." A Notice of Exemption will be filed with the State Clearinghouse concurrently with issuing this Order.

BASIN PLAN DISCHARGE PROHIBITIONS

The Basin Plan specifies the following waste discharge prohibitions applicable to surface waters, 100-year floodplains, and Stream Environment Zones (SEZs) in the Lake Tahoe basin:

1. *The discharge attributable to human activities of any waste or deleterious materials to surface waters of the Lake Tahoe Hydrologic Unit is prohibited.*
2. *The discharge attributable to human activities of any waste or deleterious material to land below the highwater rim of Lake Tahoe or within the 100-year floodplain of any tributary to Lake Tahoe is prohibited.*

3. *The discharge attributable to human activities of any waste or deleterious material to SEZs in the Lake Tahoe Hydrologic Unit is prohibited.*

BASIN PLAN DISCHARGE PROHIBITION EXEMPTION CRITERIA AND FINDINGS

1. The Water Board may grant an exemption to Prohibition 1, above, when the Water Board finds all of the following criteria are satisfied:
 - a. The discharge of waste will not individually or collectively, directly or indirectly, adversely affect beneficial uses, and
 - b. There is no reasonable alternative to the waste discharge, and
 - c. All applicable and practicable control and mitigation measures have been incorporated to minimize potential adverse impacts to water quality and beneficial uses.

The Project involves installing three new utility poles to replace three decaying utility poles in wetlands adjacent to Meeks Creek to maintain safe electrical distribution. The three new poles will be in new holes on the existing utility alignment. The old poles will be removed, and the old holes will be filled with soil and sod from the new holes to restore surface vegetation. The Water Board has permitted a number of such utility pole replacement projects in recent years and these have not individually or collectively affected wetlands or their beneficial uses adversely. There is no reasonable alternative to the discharge of waste associated with hand-digging three holes where the new poles will be placed. This short-term disturbance will not adversely affect beneficial uses of waters of the Lake Tahoe Hydrologic Unit. The Project incorporates applicable control measures intended to contain and minimize waste discharges and the impacts of such discharges. Erosion control fabric will be spread in the area of the new poles and twelve-inch fiber rolls will be installed around the perimeter of the work area. Where the hole will be dug, sod will be cut and placed in a nearby moist area surrounded by wet burlap for preservation. The spoils from the hole will be placed on the erosion control fabric. If groundwater is encountered, a dewatering basin will be created using filter fabric and fiber rolls. After pipe is placed in the hole, a helicopter will fly in the new pole and washed rock for pole placement. The old pole will then be removed with a helicopter and the areas disturbed around both the old and new poles will be restored using the preserved sod.

2. The Water Board may grant exemptions to Prohibitions 2 and 3, above, for repair or replacement of existing structures, provided the repair or replacement does not involve the loss of additional lake habitat, or SEZ or floodplain function. Prior to granting an exemption, the Water Board shall require that all applicable and practicable control and mitigation measures have been incorporated into the Project to minimize any discharges of wastes to surface waters during or following construction. The Project will not result in the loss of additional lake habitat, or SEZ or floodplain function, as the area affected by the new poles will be no different from the area affected area by the old poles. The Project will incorporate appropriate temporary BMPs. As described above, these measures will adequately protect water quality and beneficial uses, and are applicable and practicable control measures that will minimize any discharges of wastes to the wetlands adjacent to Meeks Creek during and following Project construction activities.

The proposed Project meets the criteria for granting an exemption, as noted above.

DELEGATION OF AUTHORITY FOR GRANTING AN EXEMPTION

The Water Board has delegated authority to the Executive Officer pursuant to Resolution No. R6T-2015-0038 to grant exemptions to the Water Quality Control Plan for the Lahontan Region (Basin Plan) discharge prohibitions in the Lake Tahoe Hydrologic Unit for specific discharges where the proposed Project meets the conditions in the Basin Plan.

Based on the information, above, and contained in the application materials provided, the Project meets the above-referenced Basin Plan criteria.

PROHIBITION EXEMPTION GRANTED

As demonstrated above, the Project meets the conditions and criteria for exemptions to the above-cited waste discharge prohibitions. A draft 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. The Project is hereby granted an exemption to the above-cited waste discharge prohibitions.

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 United States, 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. 12 pursuant to CWA section 404.

California Code of Regulations (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 California Water Code section 13330 and CCR title 23, section 3867.
2. This certification action is not intended and must not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license unless the pertinent certification application was

filed pursuant to CCR title 23, section 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

3. The validity of any non-denial certification action must be conditioned upon total payment of the full fee required under CCR title 23, section 3833, unless otherwise stated in writing by the certifying agency.
4. Neither Project construction activities nor operation of the Project may cause a violation of the Water Quality Control Plan for the Lahontan Region (Basin Plan), may cause a condition or threatened condition of pollution or nuisance, or cause any other violation of the California 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 Clean Water Act, 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 Clean Water Act.
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 sections 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. Full restoration of temporary disturbances to waters of the state must be achieved **within 12 months** of completing work in the area of the temporary impact. Initial restoration must include implementing measures to fully restore conditions to support all beneficial uses for the waterbody temporarily impacted in the shortest feasible time. The Applicant must implement BMPs to control erosion and runoff from areas associated with temporary fills.
2. A final report on mitigation for temporary impacts, acceptable to the Executive Officer, must be provided at the end of one year on **November 15, 2016**, indicating whether performance standards have been met and the status of compliance with restoration requirements. Additional requirements may be instated at that time if success standards have not been met to the satisfaction of the Executive Officer.
3. Construction equipment (hand tools in this case) must be clean and free from oil, grease and loose metal material and must be removed from service if necessary to protect water quality.
4. Rock used to surround the pole must be washed and free from fine material.
5. An emergency spill kit must be at the Project site at all times.
6. Debris, cement, concrete (or wash water therefrom), oil or petroleum products must not 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.
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 CWC 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 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.

9. Wetland areas near Project area and staging area that will be avoided must be protected by colored construction fencing or equivalent barriers.
10. The Applicant must ensure that Contractors employ necessary measures to prevent the introduction or spread of noxious/invasive weeds within the Project and staging area. These measures may include the treatment of onsite infestations, the cleaning of 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.

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 Clean Water Act 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 this Order certifying that any discharge from the referenced Project will comply with the applicable provisions of Clean Water Act 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.

If you have any questions or comments regarding this permit, please contact Tobi Tyler, Water Resources Control Engineer, at tobi.tyler@waterboards.ca.gov (530-542-5435) or Alan Miller, Chief, North Basin Regulatory Unit, at alan.miller@waterboards.ca.gov (530-542-5430).

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. and Facility Name in the Subject Line.



PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

cc (via email): Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9
Bill Orme, State Water Resources Control Board, Division of Water Quality
Aaron Park, U.S. Army Corps of Engineers, Reno District
Bob Hosea, California Department of Fish and Game