

## Lahontan Regional Water Quality Control Board

September 8, 2014

Rick Madrid, Senior Utility Design Administrator  
Liberty Utilities LLC  
P.O. Box 107  
Tahoe Vista, Ca 96148

### **BOARD ORDER NO. R6T-2014-0077, FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND BASIN PLAN STREAM ENVIRONMENT ZONE PROHIBITION EXEMPTION FOR 7300 LINE PHASE 2 PROJECT, EL DORADO COUNTY, WDID 6A091407001**

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 Liberty Utilities (CalPeco Electric) LLC (Applicant) for the 7300 Line Phase 2 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 hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A091407001. 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](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

### **PROJECT DESCRIPTION**

#### **Table of Project Information:**

WDID Number	6A091407001
Applicant	Liberty Utility (CalPeco Electric) LLC Rick Madrid, Sr. Utility Design Administrator P.O. Box 107 Tahoe Vista, Ca 96148
Agent	Kelly Biological Consulting Micki Kelly P.O. Box 1625, Truckee, Ca 96161
Project Name	7300 Line Phase 2

**Table of Project Information continued:**

Project Purpose and Description	Eight new 50-foot poles will be installed immediately adjacent to the existing poles in the wetlands, all within current alignment. All of the new poles will be placed outside of active waterways. Work will be conducted by hand crews to minimize impacts. The total disturbance to the wetlands is limited to excavation of the holes for new poles, stub guys, and anchors. Less than 2 square feet will be disturbed at each pole that will be replaced in the wetlands. A total of 40 square feet (0.0009 acres) of wetlands will be disturbed by the project.					
Project Type	Fill/Excavation- Utilities/Overhead					
Project County	El Dorado					
Project Address or other Locating Information	Starting just north of 4 Ring Road and going south to southern part of D.L. Bliss State Park.					
Location Latitude/Longitude	North: Latitude:39'00'34"N, Longitude:120'06'56"W South: Latitude:38'58'10"N, Longitude:120'05'52"W					
Hydrologic Unit(s)	Hydrologic Unit, 634.30					
Overall Project Area	Approximately 3.1 miles in length, 40 feet wide corridor = 15.030 acres					
Receiving Water(s) Name	Rubicon Creek, Lake Tahoe					
Water Body Type(s)	Wet Meadow					
Designated Beneficial Uses	Lake Tahoe: MUN, AGR, IND, FRSH, NAV, REC-1, REC-2, COMM, COLD, WILD, BIOL, MIGR, SPWN Wetland: WQE, FLD					
Potential Water Quality Impacts	Discharge of earthen materials to wetlands, waters of the state and waters of the U.S. (WOUS)					
Area of Water(s) within the Overall Project Area	Jurisdictional Wetlands- 1.70 acres "Other Waters"- 0.03 acres Total- 1.73 acres					
Impacts of Dredging (Excavation) to Waters of the state, including WOUS [if latter clause is not true, take out]	<b>Waterbody Type</b>	<b>Permanent</b>			<b>Temporary</b>	
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet
	Lake				0.0009	27
	Riparian					
	Stream					
	Wetland					
Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Nationwide Permit 12, pursuant to CWA section 404.					
Non-Compensatory Mitigation	All pole replacement in wetlands will be conducted via foot with hand tools rather than access roads. A helicopter will bring the poles on site. To reduce impacts, the new poles are going to be placed immediately adjacent to the existing poles. There will be no side casting of surplus soils in the wetlands. Any spoil material not used locally to backfill the holes left by the pole removal will be loaded in barrels and flown from the Project site. Erosion control fabric will be placed in the work areas and 12-inch diameter straw fiber rolls will surround the fabric.					
Compensatory Mitigation	The Applicant has proposed a restoration of approximately 40 square feet of wetland where the old utility poles will be removed. The plugs of removed soil and vegetation that will be excavated from the new poles will be placed in the holes of the removed old poles. Revegetation of the restored area to 70% revegetation cover is a mitigation monitoring goal.					

	The remaining 20 square feet of required 1.5:1 mitigation ratio will be achieved by buying into a Stream Environmental Zone (SEZ) restoration credit program held by the California Tahoe Conservancy (CTC).
Applicable Fees	\$1206
Fees Received	\$1206

**Table of Information Continued:****CEQA COMPLIANCE**

The 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 per Title 14 CCR, Chapter 6, section 15301(b) and 15302(c), the basis for CEQA exemption is "Existing Facilities" and "Replacement and Reconstruction." A Notice of Exemption will be filed with the State Clearinghouse concurrently with issuing this Order.

**WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITION**

The Water Board specifies the following discharge prohibition in the Basin Plan in Section 5.2- *Waste Discharge Prohibitions* subsection- *Discharge Prohibitions for the Lake Tahoe Hydrologic Unit*:

*"(13) The discharge or the threatened discharge, attributable to new development in Stream Environment Zones, of solid or liquid waste materials including soil, silt, clay, sand, and other organic or earthen materials to Stream Environment Zones in the Lake Tahoe Basin is prohibited."*

**STREAM ENVIRONMENT ZONE PROPOSED DISCHARGES**

The proposed Project is located with a SEZ within the Lake Tahoe Hydrologic Unit. The Project entails the installation of eight new 50-foot poles within the wetland areas for overhead utility maintenance and replacement. The Project will impact SEZ areas of Lake Tahoe with proposed new permanent structures, and threatens to potentially discharge waste during construction. The Water Board may grant an exemption to the above cited prohibition under certain conditions.

**EXEMPTION GRANTED**

An exemption to the Basin Plan SEZs prohibition within the Lake Tahoe Hydrological Unit is hereby granted for the Project pursuant to the Basin Plan exemption criteria stated below:

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

The Project is necessary for public health because the replacement of the eight old, unsafe utility poles is needed to ensure safety, and continued public utility service. The entire stretch of line has been inspected multiple times for maintenance and it has been deemed that eight new poles are needed.

***b) There is no reasonable alternative, including spans, which avoids or reduces the extent of encroachment.***

The Applicant has inspected the entire stretch of utility line and only proposes replacing existing poles when maintenance is not possible. Even though the utility can place new poles at any location within its easement, they have decided to place the poles immediately adjacent to the existing poles to limit impacts.

***c) Impacts are fully mitigated.***

The Applicant has submitted a list of Best Management Practices (BMPs) and Project procedures that will be implemented during construction to avoid construction-related impacts to the surround wetlands and SEZs. The Applicant has proposed a work plan including hand crew usage in wetland areas. A helicopter will bring in the poles and the hand crews will prepare the new pole holes by hand. The helicopter will then remove any excess earth material that is not used to fill the holes left by the removed poles. The impacts will be fully mitigated with post-construction restoration.

***d) SEZ lands are restored in an amount of 1.5 times the area of SEZ disturbed or developed by the project.***

SEZ lands are restored to the amount of 1.0 times the area of the SEZ developed or disturbed by the Project. The remaining required 0.5 times the area of the SEZ impacted will be addressed by purchase into the CTC mitigation credit program for SEZs.

## **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 USACOE authorization to proceed under Nationwide Permit No. 12 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. 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 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 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. Verification of the CTC SEZ Restoration Credits program buy-in is required. Once payment has been made, a receipt from the CTC that the transaction is completed is required before the Project's start date.
2. 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.
3. 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.
4. The Applicant must ensure that contractor employs 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 on-site 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.
5. A minimum of 0.0014 acres of wetland (wet meadow) must be created for the loss of 0.0009 acres of wetland (wet meadow).
6. A qualified professional with experience in hydrology and wetland restoration must monitor the construction of the mitigation. Any additional work or variation from the described work, which may result in additional or increased impacts to waters of the state (including quantity or quality of water or habitat) or reduce the amount of

wetland created, is not authorized unless approved in writing by the Executive Officer prior to implementation.

7. The mitigation site must be monitored annually for a period of three years or as necessary thereafter to achieve a success criterion of at least 70%. Mitigation must be implemented in accordance with the USACOE Mitigation and Monitoring Guidelines, dated December 30, 2004.
8. Mitigation monitoring reports acceptable to the Executive Officer must be provided annually for three years, starting on **December 31, 2014**. The reports must describe the results of monitoring performed during the previous year and progress towards achieving the performance standards and Project objectives in the application. The reports must also describe any problem(s) encountered during the year, and explain actions taken or proposed to address the problem(s), and a schedule for completion. Reports must be provided to the Executive Officer under cover letter signed by the Applicant committing to implementation of appropriate action to address any problems.
9. A final mitigation report, acceptable to the Executive Officer, must be provided at the end of three years (by **December 31, 2017**) indicating whether performance standards have been met and the status of compliance with mitigation requirements. Additional requirements may be instated at that time if success standards have not been met to the satisfaction of the Executive Officer.

### **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 this Order certifying that any discharge from the referenced Project will comply with the applicable provisions of CWA sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards), and with other applicable requirements of state law. This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this WQC.

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 Kelsi Buts, Scientific Aid, at (530) 542-5446 or Alan Miller, Chief, North Basin Regulatory Unit, at (530) 542-5430.



PATTY Z. KOUYOUMDJIAN  
EXECUTIVE OFFICER

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