

## Lahontan Regional Water Quality Control Board

August 26, 2014

Joan Goodwin, Chief Safety of Dams Branch  
U.S. Bureau of Reclamation  
2800 Cottage Way, MP-200  
Sacramento, CA 95825

**BOARD ORDER NO. R6T-2014-0075, FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND 100-YEAR FLOODPLAIN WASTE DISCHARGE PROHIBITION EXEMPTION FOR THE PROSSER CREEK DAM GEOTECHNICAL INVESTIGATION PROJECT, NEVADA COUNTY, WDID 6A291407002**

The California Regional Water Quality Control Board, Lahontan Region (Water Board), has received a complete Clean Water Act Section 401 Water Quality Certification (WQC) application and the required fee for the Prosser Creek Dam Geotechnical Investigation Project (Project) from the U.S. Department of Interior's Bureau of Reclamation (Applicant). The application 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). This Order for WQC and 100-year floodplain prohibition exemption hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A291407002. Please use this reference number in all future correspondence regarding this WQC.

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](http://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request.

### **PROJECT DESCRIPTION**

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

WDID Number	6A291407002
Applicant	Joan Goodwin, Chief of Safety of Dams Branch U.S. Bureau of Reclamation 2800 Cottage Way, MP-200 Sacramento, CA 95825
Project Name	Prosser Creek Dam Geotechnical Investigation Project

**Table of Project Information continued:**

Project Purpose and Description	The Project entails geotechnical boring and test pits to survey for the location, thickness, continuity, and liquefaction potential in the channel area of the Prosser Creek Dam foundation, and to test for liquefaction and engineering properties of the right abutment of the dam. Seven hollow-stem flight auger drill holes and six backhoe test pits and will be implemented in mid-August to November 2014. Further testing from March to August 2015 may be necessary if first tests were inconclusive. A total 129 linear feet of drainage ditch along the roads through the study area would be temporarily filled with approximately 257 cubic yards of backfill from the old waste pile to allow equipment to cross over from the road to a drill pad or test pit. A culvert will be placed to allow passage over the ditch. A check dam will also be placed downstream of the filled drainage ditch to slow runoff velocity and promote infiltration.						
Project Type	Other Dredge/Fill Site, Data Collection						
Project County	Nevada						
Project Address or other Locating Information	North of Interstate 80 and west of Stampede Meadows Road						
Location Latitude/Longitude	Latitude: 39.404 Longitude: -119.914						
Hydrologic Unit(s)	Little Truckee River Hydrologic Unit, 636.00						
Project Area	61 acre						
Receiving Water(s) Name	Little Truckee River						
Water Body Type(s)	Reservoir						
Designated Beneficial Uses	MUN, AGR, GWR, NAV, REC-1, REC-2, COMM, COLD, WILD, RARE, SPWN						
Potential Water Quality Impacts	None. No discharge of wastes to flowing waters is authorized.						
Area of Water(s) of the U.S. (WOUS) within the project area	29 acres						
Project Impacts (Fill) to Waters of the State, including WOUS	<b>Waterbody Type</b>	<b>Permanent</b>			<b>Temporary</b>		
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
	<i>Lake</i>				0.003		300
	<i>Riparian</i>						
	<i>Stream</i>					129	257
<i>Wetland</i>							

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
	Lake				0.002		300
	Riparian						
	Stream						
	Wetland						
	<b>Total</b>						
Federal Permit(s)	Pursuant to Clean Water Act section 404, the applicant obtained U.S. Army Corps of Engineers (USACOE) authorization to proceed under Nationwide Permit 6, pursuant to Clean Water Act section 404.						
Non-Compensatory Mitigation	Work will be conducted when the reservoir and stream water levels are low and testing areas exposed and dry. Test trenches will be backfilled the same day. Trenches will be backfilled the same day and will be recontoured to match pre-testing conditions.						
Compensatory Mitigation	Temporary impacts will be mitigated at a 1:1 ratio by restoration of the sites to resemble pre-project conditions. No further compensatory mitigation is required.						
Applicable Fees	\$1,253 (\$1,097 application fee + \$47 discharge fee + \$109 surcharge fee)						
Fees Received	\$1,253						

**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 15306, the basis for CEQA exemption is "Information Collection." 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 has adopted a *Water Quality Control Plan for the Lahontan Region* (Basin Plan), which specifies the following discharge prohibition:

"4(c) The discharge or threatened discharge, attributable to human activities, of solid or liquid waste materials including soil, silt, clay, sand, and other organic or earthen materials to lands within the 100-year floodplain of the Truckee River or any tributary to the Truckee River is prohibited."

The Project proposes excavation and backfill within the 100-year floodplain to perform geotechnical investigations on the Prosser Creek Dam. No new fill is proposed within the 100-year floodplain.

**PROHIBITION EXEMPTION**

The Basin Plan allows exemptions to the above-cited discharge prohibition for projects that meet the following exemption criteria:

1. *The Project purpose is included in one or more of the five categories listed in Section 4.1 of the Lahontan Basin Plan: “(1) projects solely intended to reduce or mitigate existing sources of erosion or water pollution, or to restore the functional value to previously disturbed floodplain areas; (2) bridge abutment, approaches, or other essential transportation facilities identified in an approved county general plan; (3) projects necessary to protect public health or safety or to provide essential public services; (4) projects necessary for public recreation; and (5) projects that will provide outdoor public recreation within portions of the 100-year floodplain that have been substantially altered by grading and/or filling activities which occurred prior to June 26, 1975.”*

The Project purpose satisfies the third criterion above, projects necessary to protect public health or safety or to provide essential public services. The Project is necessary to determine the structural stability of Prosser Creek Dam to protect public health and safety.

2. *There is no reasonable alternative to locating the project or portions of the project within the 100-year floodplain.*

There is no reasonable alternative to locating the excavation within the floodplain because the dam is located within the floodplain of Prosser Creek. The excavation at the toe of the dam is necessary to determine the dam's structural stability. Thus, there is no reasonable alternative to the Project, and locating portions of the Project in the 100-year floodplain.

3. *The project, by its very nature, must be located within the 100-year floodplain.*

The Project must be located in the floodplain because the upstream side of the dam is located in the floodplain. Therefore, the project, by its very nature, must be located within the 100-year floodplain.

4. *The project incorporates measures that will ensure any erosion and surface runoff problems caused by the project are mitigated to levels of insignificance.*

The Applicant has incorporated a list of Best Management Practices (BMPs) into the Project, including conducting work when the reservoir water levels and chance for storm events are low, limiting activities to not occur within 24 hours of a rain event, backfilling test pits the same day, and placing silt fences between the temporary fill and wetland or ditches to be avoided. The Project incorporates BMPs to ensure that erosion and surface runoff problems caused by the Project will be mitigated to levels of insignificance.

5. *The project will not individually or cumulatively with other projects, directly or indirectly, degrade water quality or impair beneficial uses of water.*

The Project will result in minor temporary impacts within the 100-year floodplain. The USACOE will restore the site to its original grade. The Project will not degrade water quality or impair beneficial uses of water.

6. *The project will not reduce the flood flow attenuation capacity, the surface flow treatment capacity, or the ground water flow treatment capacity from existing conditions. All 100-year floodplain areas and volumes lost as a result of the project must be completely mitigated by restoration of previously-disturbed floodplain within or as close as practical to the project site. The restored, new, or enlarged floodplain shall be sufficient area and volume to more than compensate for the flood flow attenuation capacity, surface flow treatment capacity, and ground water flow treatment capacity which are lost as a result of the project.*

The Project will result in temporary disturbances to the 100-year floodplain. The Project site will be returned as near as possible to its original slope by reusing all excavated materials. The Project, therefore, should not reduce the flood flow attenuation capacity, surface flow treatment capacity, or the ground water flow treatment capacity from existing conditions.

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 public health and safety. 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 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. 6 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 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/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 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 (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. Dewatering of the test pits must be distributed to upland areas in manner by which erosion does not occur.
2. The Applicant must prevent the introduction or spread of noxious/invasive weeds associated with the project. 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.
3. 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.

4. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
5. The Applicant must temporarily stabilize the site from erosion (winterize) prior to October 15 in a manner that will remain effective until May 1 of the following year.
6. 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.
7. 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.
8. An emergency spill kit must be at the Project site at all times.
9. 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 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 an 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.

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: Alexandra Aviles, US Bureau of Reclamation  
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