

Lahontan Regional Water Quality Control Board

June 3, 2015

Joanne Roubique
U.S. Forest Service – Tahoe National Forest
10811 Stockrest Springs
Truckee, CA 96161

BOARD ORDER NO. R6T-2015-0020, CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND BASIN PLAN PROHIBITION EXEMPTION FOR U.S. FOREST SERVICE-TAHOE NATIONAL FOREST'S PROSSER CREEK FISH HABITAT IMPROVEMENT PROJECT, NEVADA COUNTY, WDID 6A291503002

The California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) received a complete Clean Water Act Section 401 Water Quality Certification (WQC) application and application filing fee from the U.S. Forest Service – Tahoe National Forest (Applicant) for the Prosser Creek Fish Habitat Improvement Project (Project) in Nevada County. 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). The application received on March 6, 2015 was deemed complete on April 6, 2015. This Order for WQC and 100-year floodplain prohibition exemption hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A291503002. 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, 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	6A291503002
Applicant	Joanne Roubique U.S. Forest Service – Tahoe National Forest 10811 Stockrest Springs Truckee, CA 96161
Agent	Beth Christman Truckee River Watershed Council P.O. Box 8568 Truckee, CA 96162
Project Name	Prosser Creek Fish Habitat Improvement Project
Project Purpose and Description	The purpose of the Project is to enhance and improve fish habitat within Prosser Creek below Prosser Dam. Placement of the dam eliminated stream bed materials from the upper watershed, leading to degradation of aquatic habitat below the dam. The Project is designed to improve in-stream habitat in five sections of Prosser Creek below Prosser Creek Dam. Project elements include installing boulder fields and log structures and re-seeding/planting all disturbed areas.
Project Type	Dredge/Fill
Project County	Nevada
Project Address or other Locating Information	Prosser Creek, below Prosser Creek Dam. Nevada County Assessor Parcel No's. 48-080-01, -84, and -85.
Location Latitude/Longitude	Latitude: 39.37388, Longitude: 120.13201 39.37598 120.13371 39.37198 120.12937
Hydrologic Unit	635.20
Overall Project Area	4 acres
Receiving Water(s) Name	Prosser Creek
Water Body Type(s)	Surface Water
Designated Beneficial Uses	MUN, AGR, GWR, REC-1, REC-2, COMM, COLD, WILD, RARE, MIGR, & SPWN
Potential Water Quality Impacts	Discharge of sediments and suspended solids during dredge and fill activities related to the installation of boulder fields and log structures.

Table of Project Information (cont.):

Area of Water(s) within the Overall Project Area	3.3 Acres			
Impacts of Fill to Waters of the State, including Waters of the U.S.	Total Ecological Restoration and Enhancement Quantity for Temporary Impacts (CIWQS mitigation/restoration table side B)			
	Aquatic Resource Type	Unit	Enhancement	Preservation
	Stream	Acres	0.52	
	Channel	Linear Feet	1,660	
	Wetland	Acres		0.1
Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Nationwide Permit 27, pursuant to Clean Water Act section 404.			
Non-Compensatory Mitigation	Implementation of sediment and erosion control best management practices, and revegetation upon project completion.			
Compensatory Mitigation	None. The Project purpose is habitat enhancement.			
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 the 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 st during the Post-Discharge Monitoring Period until the Lahontan Water Board issues a Notice of Project Complete Letter to the Applicant.)			
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 (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

In 2014, Lahontan Water Board made revisions to amend the Basin Plan for the purpose of clarification. The following discharge prohibitions and exemption criteria apply to this Project due to discharges within the active channel and 100-year floodplain of Prosser Creek.

Prohibition 1 states:

“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:

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

The purpose of the Project is to improve fish habitat. The Project involves placing boulders and log structures to mimic the natural recruitment process for these materials that have been lost due to the construction of Prosser Creek Dam. 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.

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

The purpose of the Project is to create in-stream habitat complexity to improve fish habitat along the reach of Prosser Creek that has been impacted by the construction of Prosser Creek Dam. The Project includes placing habitat boulders in the creek channel, and building log structures in the creek that are tied into the creek banks. There is no alternative to placing these materials in Prosser Creek that would accomplish the Project’s creek/fish habitat restoration and enhancement goals.

- 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 incorporates appropriate best management practices to ensure that any erosion and surface runoff problems are mitigated to levels of insignificance.

Prohibition 2 states:

“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.”

Installing the proposed boulders and log structures as a part of the Project may discharge or threaten to discharge earthen materials to the 100-year floodplain of Prosser Creek, a tributary to the Truckee River. The Water Board may grant exemptions to the above-cited prohibition for certain categories of new projects within the 100-year floodplain, including:

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 create in-stream habitat complexity within and adjacent to a reach of Prosser Creek that has been impacted by the construction of Prosser Creek Dam. The Project area currently supports a recreational fishery and is a heavily used recreational area. The creek reach has been modified through historic dam construction. In-stream habitat currently lacks complexity and the presence of Prosser Creek Dam limits transport of woody materials and boulders from the upper watershed. The Project will restore and enhance in-stream habitat, in part, through placement of logs and boulders adjacent to the creek. The Project meets the above project type, as it is intended to restore the function of previously disturbed floodplain areas.

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 create in-stream habitat complexity within and adjacent to a reach of Prosser Creek that has been impacted by the construction of Prosser Creek Dam. The Project includes placing habitat boulders in the creek channel, and building log structures in the creek that are anchored into the creek banks. There is no alternative to placing materials in the 100-year floodplain that would accomplish the Project's creek/fish habitat restoration and enhancement 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 to ensure that any erosion and surface runoff problems are mitigated to levels of insignificance. Procedures will be implemented to prevent the discharge of waste earthen materials within the creek. All in-stream work areas will be isolated, and turbid water will not be allowed to enter Prosser Creek. The Project includes installing boulders and log structures. The Project will not result in any long-term water quality impacts. The Project will be conducted during periods when flows will be at low levels.

- 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 will allow the creek to more readily flow across its 100-year floodplain habitat, increasing flood attenuation capacity and connectivity between floodplain and creek channel. Therefore, the Project will not reduce or adversely affect the existing floodplain function.

DELEGATION AUTHORITY FOR GRANTING AN EXEMPTION

The Water Board has delegated authority to the Lahontan Water Board Executive Officer to grant exemptions to the 100-year floodplain discharge prohibition in the Truckee River Hydrologic Unit for specific discharges where the proposed Project meets the conditions required for a waiver of waste discharge requirements or for approval under general waste discharge requirements or a general National Pollutant Discharge Elimination System permit (NPDES). The Project will 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).

The other criteria that the Project must satisfy for delegation authority to be granted to the Water Board Executive Officer are as follows:

1. *The project is within the following size limitations:*

*less than 1000 square feet of new impervious coverage, or
less than 2000 square feet of new ground disturbance, or
less than 100 cubic yards of fill or excavation; **or***

2. *The project's primary purpose is to reduce, control, or mitigate existing sources of erosion or water pollution; **and***
3. *The project meets the exemption criteria set forth in the Basin Plan.*

The Project's primary purpose is to reduce, control, and mitigate existing sources of erosion and water pollution, and meets the exemption criteria set forth in the Basin Plan.

EXEMPTION GRANTED

Lahontan 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 (lyris list). Water Board staff has determined that the Project satisfies the exemption criteria listed above. Therefore, 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 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 U.S.

Army Corps of Engineers (ACOE) authorization to proceed under Nationwide Permit No. 27 pursuant to CWA section 404.

California Code of Regulations (CCR) title 23, section 3831(e) grants the Lahontan 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 Lahontan 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 Water Quality Certification 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 Lahontan 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 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. Lahontan Water Board staff must be notified 48 hours prior to commencement of ground disturbance.
4. Lahontan 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 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 adjacent to the work area where such material may be transported into waters of the state.
6. Wetland areas near 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 Lahontan 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 Lahontan 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 “additional information” provided to the February 27, 2015 Application for Clean Water Act Section 401 Water Quality Certification.
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 stream channel 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

1. 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.
2. 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.
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.

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 Clean Water Act, 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.

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. or Facility Name in the Subject Line.



PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

cc: Beth Christman, Truckee River Watershed Council
(by email bchristman@truckeeriverwc.org)
John Dvorsky, Waterways Consulting
(by email johnd@watways.com)
Leah Fisher, U.S. Army Corps of Engineers, Sacramento District
(by email leah.m.fisher@usace.army.mil)
Bill Orme / State Water Resources Control Board, Division of Water Quality
(by email Stateboard401@waterboards.ca.gov)
Jennifer Garcia, California Dept. of Fish and Game, Region 2
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