

Lahontan Regional Water Quality Control Board

June 18, 2015

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BOARD ORDER R6T-2015-0035 FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND BASIN PLAN PROHIBITION EXEMPTION FOR ANGORA CREEK STREAM RESTORATION PROJECT, EL DORADO COUNTY, WDID 6A091504007

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 United States Forest Service Lake Tahoe Basin Management Unit (Applicant) for the Angora Creek Stream Restoration Project (Project) in El Dorado County. This Order for WQC hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A091504007. 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 or will be provided upon request.

PROJECT DESCRIPTION

Table of Project Information:

WDID Number	6A091504007
Applicant	Jeff Marsolais, U.S. Forest Service-Lake Tahoe Basin Management Unit, 35 College Drive, South Lake Tahoe, CA 96150
Agent	Stephanie Heller, same address
Project Name	Angora Creek Stream Restoration

Table of Project Information continued:

Project Purpose and Description	The Project involves restoration of geomorphic function and aquatic habitat to approximately 1,200 feet of Angora Creek and restoration of 2 acres of wet meadow habitat associated with the decommissioning of Seneca Pond. The major impairments to stream channel function are limited woody debris and channel incision. Restoration will be achieved by installing woody debris structures, constructing a new section of river channel, decommissioning a section of existing channel, decommissioning man-made Seneca Pond, and restoring surface flows to historic conditions in the vicinity of the decommissioned Seneca Pond. Restoration actions will restore resiliency, stability, and habitat quality to Angora Creek and its floodplain, as well as restore natural floodplain processes which reduce peak flows and fine sediment and nutrient concentrations during over-bank flood events.
Project Type	Ecological Aquatic/Stream/Habitat Restoration
Project County	EI Dorado
Project Address or other Locating Information	USFS lands south of the City of South Lake Tahoe; North, South, and Middle Forks of Angora Creek upstream their confluences and upstream of the bridge at Lake Tahoe Blvd and USFS Road 12N20 off of Seneca Street.
Location Latitude/Longitude	Latitude: 38.52'48.50" N, Longitude: -120 02'29.79" W and Latitude: 38 51'50.21" N, Longitude: -120 03'05.09" W
Hydrologic Unit(s)	Hydrologic Unit, 634.00
Overall Project Area	Approximately 15 acres
Receiving Water(s) Name	Angora Creek (tributary to Upper Truckee River and Lake Tahoe)
Water Body Type(s)	Stream
Designated Beneficial Uses	MUN, AGR, GWR, REC-1, REC-2, COMM, COLD, WILD, SPWN
Potential Water Quality Impacts	Sediment, turbidity
Area of water(s) within the overall Project Area	Approximately 8.5 acres, approx. 1200 feet of stream channel.

Table of Project Information continued:

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	740		460		
	Wetland	Acres	2				
	Lake	Acres					
		Linear Feet					
	Riparian Zone	Acres					
		Linear Feet					
	Stream Channel	Acres					
Linear Feet							
Vernal Pool	Acres						
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 CWA section 404.						
Non-Compensatory Mitigation	The Project will implement Best Management Practices (BMPs) identified in the application to minimize impacts to water quality. Work will only occur during very low to no flow stream conditions.						
Compensatory Mitigation	None required						
Applicable Fees	\$200						
Fees Received	\$200						

CEQA COMPLIANCE

On April 11, 2013 the Water Board provided notice of intent to adopt a Mitigated Negative Declaration for the Angora Fire Trails and Stream Environment Zone Restoration Project (MND), State Clearinghouse No. 2013042027. The proposed Project was analyzed in the MND. The MND reflects the Water Board's independent judgment and analysis. After considering the document and the comments during the public review process, the Water Board adopted the MND on June 19, 2013 and filed a Notice of Determination on July 1, 2013, pursuant to the California Environmental Quality Act, (CEQA Public Resources Code 21000, et seq.). The Water Board

determined that the Angora Fire Trails and Stream Environment Zone Restoration Project, which includes the proposed Project, with mitigation measures will not have a significant effect on the environment. Mitigation monitoring is described in the application prepared by the Applicant and will be enforced through issuance of this 401 WQC.

In July 2010 the Applicant signed a Decision Notice and completed an analysis of the Angora Fire Restoration Project pursuant to the National Environmental Policy Act (NEPA). This Project was included in that post-fire restoration NEPA document.

WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITION

To protect beneficial uses and achieve water quality objectives for the waters of Lake Tahoe and its tributaries, the Basin Plan specifies the following discharge prohibition (Basin Plan section 5-2; page 5.2-4):

The discharge attributable to human activities of any waste or deleterious material to Stream Environment Zones (SEZs) in the Lake Tahoe HU is prohibited.

PROHIBITION EXEMPTION CRITERIA

Chapter 5 of the Basin Plan allows exemptions to the above-cited discharge prohibition for erosion control, habitat restoration, wetland restoration, SEZ restoration, and similar projects, programs, and facilities if all of the following findings can be made:

- a) *There is no reasonable alternative, including relocation, that avoids or reduces the extent of encroachment below the highwater rim of Lake Tahoe, within the 100-year floodplain, or within the SEZ; and*

Given the nature of the Project and the desire to improve in-stream aquatic habitat, avoidance of the SEZ or 100-year floodplain is not possible. The purpose of the Project is to improve aquatic habitat and reverse the stream incision within Angora Creek. There are no reasonable alternatives that would reduce the extent of encroachment in the SEZ because the Project, by its very nature, must be located in the SEZ.

Although the Project will involve encroachment and placement of earthen materials (fill and wood structures) within a SEZ and within the 100-year floodplain, implementation of the Project will result in overall enhancement of aquatic habitat and stream structure.

- b) *Impacts are fully mitigated.*

The Project will be implemented during seasonal low water levels. Sediment and erosion control BMPs will be used throughout the construction period and for seasonal winterization. A detailed dewatering and diversion plan will be prepared, and dewatering discharges will be directed to meadow and upland infiltration areas. The Project access and haul road will be designed and implemented in a manner that will minimize impacts to the meadow.

Specific mitigation measures to be implemented for the project have been documented in the Project's Storm Water Pollution Prevention Plan (SWPPP). To mitigate any potential for elevated turbidity, work will only be performed during the late summer and early fall when many of the channels will be dry and free of flowing water. However, there will be a potential for short term releases of water with elevated turbidity during several Project tasks. These tasks include installation and removal of the check dam associated with the clear water diversion, removal of beaver dams, installation of woody debris, and initiation of flows into the newly constructed channel. The Water Board understands that the Applicant has requested a variance to the Basin Plan in-stream turbidity standards during implementation of these tasks. The Applicant would like to use the following Project specific turbidity guidelines for the tasks describe above:

- Allow for discharge of water with up to 5 Nephelometric Turbidity Units (NTUs) for up to 2 hours after installation and removal of the check dam associated with the clear water diversion, removal of beaver dams, and installation of woody debris.
- Allow for discharge of water with up to 5 NTUs for up to 10 hours after new channel flow activation.
- Allow for discharge of water between 5 and 10 NTUs, and connection to the existing channel, after the USFS has "seasoned/flushed" the newly constructed channel for 3 full, 10-hour days. The Water Board understands that the USFS will continue to "season/flush" the newly constructed channel until the water to be discharged is 10 NTUs or less.

The Water Board understands that turbidity monitoring will be conducted in accordance with the Project SWPPP. The Water Board also understands that turbid water generated during "seasoning/flushing" will be pumped to appropriate meadow and upland locations for infiltration as described in the SWPPP.

Exemption Granted

As demonstrated above, the Project meets the conditions and criteria for an exemption to the above-cited SEZ and 100-year floodplain discharge prohibitions. The Applicant has incorporated appropriate BMPs into the Project to ensure that erosion and surface runoff issues 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 (10) days before the exemption is issued. A 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.

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. 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 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 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. The Applicant must maintain a copy of this Order at the Project site so as to be available at all times to site operating personnel and agencies.
2. The Applicant must notify Water Board staff within 48 hours prior to commencement of the Project.
3. The Applicant must immediately (within two hours) notify Water Board staff by telephone whenever an adverse condition occurs as a result of this Project. 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 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.
4. Construction equipment shall be clean and free from oil, grease and loose metal material, and monitored for leaks. Equipment shall be removed from service if necessary to protect water quality.
5. An emergency spill kit shall be at the Project site at all times.
6. All temporary BMPs shall be inspected and maintained daily during Project construction. The Applicant shall keep inspection logs during Project construction and provide a copy of inspection logs to Water Board staff upon request.
7. Trees proposed for placement must be washed and/or free of all adhered soil particles prior to placement. Wash water from washing must be directed to non-wetland, upland areas a minimum of 100 feet from the SEZ where the water is infiltrated into the soil.
8. Except as described in the Project application, no debris, cement, concrete (or wash water therefrom), sand, rock, soil, earthen materials 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.
9. 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.

10. The Applicant must prevent the introduction or spread of noxious and invasive weeds within the Project and staging area. Control measures may include removing existing invasive vegetation, cleaning all equipment and gear prior to use on the Project site, using weed-free erosion control materials (if necessary for the Project).

The Applicant has prepared and submitted a detailed application as part of the WQC approval process required for this Project. The application describes detailed temporary BMPs, dewatering methods, construction methods and monitoring plans. The Applicant must complete the Project as described in the submitted application.

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.

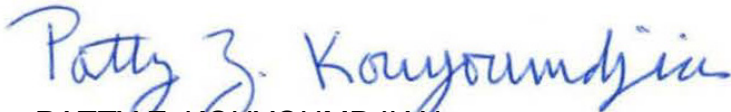
Section 401 Water Quality Certification Requirements Granted

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 staff person Jim Carolan at jim.carolan@waterboards.ca.gov or (530)542-5477.



PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

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(via email at R9-WTR8-Mailbox@epa.gov)
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