California Regional Water Quality Control Board
Lahontan Region

Matthew Rodriquez
Secretary for Environmental Protection

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150
(530) 542-5400 • Fax (530) 544-2271
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Edmund G. Brown Jr.
Governor

MEMORANDUM

TO: Water Board Members

Harold

FROM: Harold J. Singer
Executive Officer
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: AUG 3 1 2011

SUBJECT: EXEMPTION TO DISCHARGE PROHIBITIONS CONTAINED IN THE WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION – BLACKWOOD CREEK PHASE IIIB STREAM AND FLOODPLAIN RESTORATION PROJECT - 2011, PLACER COUNTY

In ten days, I intend to grant an exemption to the discharge prohibitions specified in the Water Quality Control Plan for the Lahontan Region for the above-referenced Project.

The Project proponent will restore stable geomorphic processes in portions of Blackwood Creek by (1) rebuilding and stabilizing portions of a historic channel with rock and log structures; and (2) enhancing floodplain connectivity and fluvial processes by filling, re-shaping, and installing structural control measures within the existing stream channel.

Public Notice regarding granting the prohibition exemption was published on the Water Board's internet site as required.

If you have any questions or comments regarding this matter, please contact me at (530) 542-5412, or Doug Smith, at (530) 542-5453.

Attachment: Draft Prohibition Exemption and Water Quality Certification Order

[File: WDID 6A311103004 Blackwood Creek Phase IIIB Stream and Floodplain Restoration Project 2011 / Placer County]

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Sue Norman
US Forest Service - LTBMU
35 College Drive
South Lake Tahoe, CA 96150

ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND PROHIBITION EXEMPTION FOR BLACKWOOD CREEK PHASE IIIB STREAM AND FLOODPLAIN RESTORATION PROJECT - 2011, PLACER COUNTY, WDID 6A311103004

The California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board) has received a complete Clean Water Act Section 401 Water Quality Certification (WQC) application and application filing fee from the United States Forest Service Lake Tahoe Basin Management Unit (Applicant) for the Blackwood Creek Phase IIIB Stream and Floodplain Restoration Project - 2011 (Project) in Placer County. The Water Board also received 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 waste discharge prohibition exemption hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A311103004. 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	6A311103004
Applicant	US Forest Service – Lake Tahoe Basin Management Unit 35 College Drive South Lake Tahoe, CA 96150

Table of Project Information continued:

Agent	Craig Oerhli - Hydrologist
Project Name	Blackwood Creek Phase IIIB Stream and Floodplain Restoration Project - 2011
Project Purpose and Description	The purpose of the proposed project is to restore stable geomorphic processes in portions of Blackwood Creek. The project will: 1. Rebuild and stabilize portions of a historic channel with rock and log stabilization measures (North channel) 2. Enhance floodplain connectivity and fluvial processes by filling, re-shaping, and installing structural control measures (South channel)
Location (closest City & County)	Tahoe Pines, Placer County
Location Latitude/Longitude	Latitude: 39.1; Longitude: -120.21
Hydrologic Unit(s)	North Tahoe Hydrologic Area, 634.20 in the Lake Tahoe Hydrologic Unit, 634.00
Project Area	42 acres
Receiving Water(s) Name	Blackwood Creek, tributary to Lake Tahoe
Water Body Type(s)	Perennial Stream and Floodplain
Area of the U.S. (WOUS) within the project area	3.15 acres
Area of Permanent Impacts to WOUS	0 acres
Linear Feet of Permanent Impact to WOUS	0 feet
Volume of Fill to WOUS	18,000 cubic yards
Federal Permit(s)	The applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Nationwide Permit Nos. 14 and 33, pursuant to Clean Water Act section 404.
Non-Compensatory Mitigation	The Project will be implemented during seasonal low water levels when Blackwood Creek flows through the project area have ceased. Sediment and erosion control Best Management Practices (BMPs) will be used throughout the construction period and for winterization to control erosion as well as other standard BMPs required under the Applicant's storm water program. If necessary, dewatering discharges will be directed to infiltration basins.
Compensatory Mitigation	As this is a restoration project, compensatory mitigation is not required
Applicable Fees	**$640.00**
Fees Received	$640.00

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CEQA COMPLIANCE

In July 2008, the LTBMU circulated an Environmental Assessment (EA) for the Blackwood Creek Phase III, Stream and Floodplain Restoration Project in accordance with the National Environmental Policy Act (NEPA) for public comment between May 23, 2008 and June 30, 2008. The EA encompassed proposed project work at both Sites IIIA (completed October 2009) and Site IIIB which included a CEQA-equivalent checklist indicating that the project would cause less-than significant impacts with mitigation. Design features discussing these mitigation measures were included in Section 2 of the EA, and LTBMU provided additional details on these mitigation measures in its Storm Water Pollution Prevention Plan (SWPPP) and construction plans.

The Water Board, acting as a CEQA Responsible Agency in compliance with California Code of Regulations, Title 14, section 15164, has considered LTBMU's Blackwood Creek Phase IIIB Stream and Floodplain Restoration Project, the mitigation measures incorporated into the EA and Project Storm Water Pollution Prevention Plan, Project Plans and Specifications, and Project Monitoring Plan to reduce potentially significant water quality impacts to less than significant with mitigation.

WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITION

The Water Board has adopted a *Water Quality Control Plan for the Lahontan Region* (Basin Plan), in which Chapter 5 specifies the following discharge prohibitions:

> *"8. 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 below the high water rim of Lake Tahoe or within the 100-year floodplain of any tributary to Lake Tahoe is prohibited." And*
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> *"13. The discharge or threatened discharge, attributable to new development in Stream Environment Zones (SEZs) of solid or liquid waste, including soil, silt, sand, clay, rock, metal, plastic, or other organic, mineral or earthen materials to Stream Environment Zones in the Lake Tahoe Basin is prohibited."*

The Project involves the placement of engineered rock and woody fill material within the 100-year floodplain or within SEZs to restore geomorphic processes and address historic disturbance.

100-YEAR FLOOD PLAIN WASTE DISCHARGE PROHIBITION EXEMPTION

Chapter 5 of the Basin Plan allows exemptions to the 100-year floodplain discharge prohibition (#8) for projects that meet the following exemption criteria:

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"For erosion control projects, habitat restoration projects, SEZ restoration projects and similar projects provided that the project is necessary for environmental protection and there is no reasonable alternative which avoids or reduces the extent of encroachment in the floodplain."

The Project is an SEZ restoration project that is needed to improve degraded portions of Blackwood Creek and restore floodplain connectivity. The project by its very nature must be constructed within the SEZ and floodplain. There is no reasonable alternative that would further avoid floodplain encroachment.

STREAM ENVIRONMENT ZONES WASTE DISCHARGE PROHIBITION EXEMPTION

Chapter 5 of the Basin Plan allows exemptions to the SEZ discharge prohibition (#13) for erosion control, habitat restoration, wetland rehabilitation, SEZ restoration, and similar projects, programs, and facilities if all the following findings can be made:

1. *The project, program, or facility is necessary for environmental protection.*

   The Applicant is constructing the Project to address historic disturbances in the Blackwood Creek watershed as part of a holistic watershed restoration effort intended to restore geomorphic and floodplain processes and enhance degraded aquatic and riparian habitat. The Project is necessary for environmental protection.

3. *There is no reasonable alternative, which avoids or reduces the extent of encroachment in the SEZ.*

   The purpose of the Project is to restore degraded stream channel and floodplain areas. There are no reasonable alternatives that would reduce the extent of encroachment in the SEZ because the Project, by its very nature, must be constructed within the SEZ.

4. *Impacts are fully mitigated.*

   The Applicant has proposed a list of Best Management Practices (BMPs) that will be in place during Project implementation, including scheduling the work when stream levels are low and installing temporary sediment control and stabilization BMPs during construction. The Project has been designed to replicate natural hydraulic and geomorphic processes and includes the strategic placement of boulders and woody material to facilitate natural sediment deposition and inhibit erosion. The Project design and associated temporary and permanent BMPs will ensure that erosion and stormwater runoff issues will be mitigated to levels of insignificance.

EXEMPTION GRANTED

The Project is an SEZ and habitat restoration project that will be regulated under a Clean Water Act (CWA) section 401 water quality certification. The Applicant has

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incorporated appropriate BMPs into the Project. The Project is hereby granted an exemption to the above-cited waste discharge prohibitions.

Except in emergency situations, the Executive Officer shall notify the Board and interested members of the public of his intent to issue an exemption at least ten (10) days before the exemption is issued. A notice of exemption will also be posted on the Water Board website and distributed through an interested person's 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 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 $723.00 fee 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 Nos. 14 and 33 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 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

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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 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 that 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. No debris, cement, concrete (or wash water therefrom), oil or petroleum products must 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 from any areas adjacent to the work area where such material may be transported into waters of the State.

2. 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. 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.

3. The Applicant must 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 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.

4. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.

5. An emergency spill kit must be at the Project site at all times.

6. A copy of this Order must be maintained at the Project site so as to be available at all reasonable times to site operating personnel and Water Board staff.

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

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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 Resources Control Board (State Water Board) or the Lahontan 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 Lahontan 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 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 Robert Larsen, Environmental Scientist at (530) 542-5439 or Doug Smith at (530) 542-5453.

HAROLD J. SINGER
EXECUTIVE OFFICER

cc: Julie Newman / California Department of Fish and Game, Rancho Cordova
Dave Smith / Wetlands Regulatory Office (WTR-8), US EPA, Region 9
(via email at R9-WTR8-Mailbox@epa.gov)
Will Ness / U.S. Army Corps of Engineers, Sacramento Office

Bill Orme / State Water Resources Control Board, Division of Water Quality
(via email at Stateboard401@waterboards.ca.gov)

[File: WDID 6A311103004 Blackwood Creek Phase IIIB Stream and Floodplain Restoration Project 2011 / Placer County]

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