



California Regional Water Quality Control Board
Lahontan Region



Matthew Rodriguez
*Secretary for
Environmental Protection*

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Edmund G. Brown Jr.
Governor

M E M O R A N D U M

TO: Water Board Members
Harold J. Singer

FROM: HAROLD J. SINGER
EXECUTIVE OFFICER
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: SEP 12 2011

SUBJECT: EXEMPTION TO DISCHARGE PROHIBITION CONTAINED IN THE
WATER QUALITY CONTROL PLAN FOR THE LAHONTAN REGION –
CALPECO MEYERS 3400 REBUILD PROJECT, CALIFORNIA
PACIFIC ELECTRIC COMPANY, EL DORADO COUNTY

In ten days, I intend to sign the enclosed draft Order granting an exemption to the discharge prohibition specified in the *Water Quality Control Plan for the Lahontan Region* for the California Pacific Electric Company's Meyers 3400 Rebuild Project (Project) in El Dorado County. The exemption will allow the project proponent to replace power poles on its 14.4 kilovolt Meyers 3400 distribution line. The Project would replace 79 old, wooden power poles with 79 new wooden poles that meet standards for bird protection.

The Project is located between Camp Richardson and Emerald Bay just northwest of South Lake Tahoe and will continue in its current alignment through the Tallac Creek and Taylor Creek wetlands. The Project meets requirements for an exemption to the discharge prohibition as necessary to protect public safety.

A public notice soliciting comments on the proposed Project will be posted on the Water Board's website for 10 days.

If you have any questions or comments regarding this matter, please contact Tobi Tyler at (530) 542-5435.

Enclosure: Draft Water Quality Certification Order and Stream Environment Zone Exemption

TT/adwT: CalPECO Meyers 3400 Rebuild Memo 8_26_11 TT.doc
[File: 6A091107001 / CalPECO Meyers 3400 Rebuild Project/ El Dorado County]



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Jeff Matthews
California Pacific Electric Company
933 Eloise Ave.
South Lake Tahoe, CA 96150

**ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY
CERTIFICATION AND PROHIBITION EXEMPTION FOR THE CALPECO MEYERS
3400 REBUILD PROJECT, CALIFORNIA PACIFIC ELECTRIC COMPANY, EL
DORADO COUNTY, WDID 6A091107001**

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 for the CalPECO Meyers 3400 Rebuild Project (Project) from the California Pacific Electric Company (Applicant). The Project is located in El Dorado County between Camp Richardson and Emerald Bay. 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. 6A091107001. 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:

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|--------------|--|
| WDID Number | 6A091107001 |
| Applicant | California Pacific Electric Company 933 Eloise Ave. South Lake Tahoe, CA 96150 Attention: Jeff Matthews |
| Project Name | CalPECO Meyers 3400 Rebuild Project |

California Environmental Protection Agency

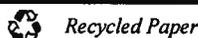


Table of Project Information continued:

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| Project Purpose and Description | This maintenance project of the 14.4 kilovolt Meyers distribution line replaces 79 wooden power poles that are 40 feet tall with 45-foot wooden poles that meet industry standards for avian protection. The distribution line will continue in its current alignment through the Tallac and Taylor Creek wetlands between Emerald Bay and Camp Richardson. Thirteen of the 79 poles are in wetlands. Approximately 88 cubic yards (cy) of material will be excavated (12 cy in the wetland areas) to install the 79 poles and 40 guy wire anchors within the entire project area. |
| Location (closest City & County) | South Lake Tahoe, El Dorado County |
| Location Latitude/Longitude | Taylor Creek access: Latitude: 38.935489, Longitude: 120.103092 Tallac Creek access: Latitude: 38.936447, Longitude: 120.064833 |
| Hydrologic Unit(s) | South Tahoe Hydrologic Area 634.10 in the Lake Tahoe Hydrologic Unit, 634.00 |
| Project Area | 47 acres (surface area disturbance equals 374 square feet) |
| Receiving Water(s) Name | Taylor Creek, tributary to Lake Tahoe, and associated wetlands Tallac Creek, tributary to Lake Tahoe, and associated wetlands |
| Water Body Type(s) | Wet meadows and seasonal wetlands |
| Area of Water(s) of the U.S. (WOUS) within the project area | 6.35 acre |
| Area of Permanent Fill in WOUS | 50.2 square feet (0.001 acre total) |
| Linear feet of Permanent Fill/Excavation in WOUS | N/A |
| Volume of fill in WOUS | 12.6 cubic yards |
| 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 Clean Water Act section 404. |
| Non-Compensatory Mitigation | Site-specific Best Management Practices (BMPs) will be used throughout the construction period and for winterization to control erosion. Surplus soil will be removed from the wetland areas. Impermeable liners will wrap the base of the new poles that are treated with pentachlorophenol (PCP). |
| Compensatory Mitigation | A minimum of 1.5:1 mitigation is required for permanent wetland impacts. To compensate for unavoidable impacts to 50.2 square feet of wetlands, the Applicant has provided an on-site wetland mitigation and monitoring plan that includes restoring 50 square feet around the old and new pole locations and monitoring for three years or until success criteria are met. For the remaining mitigation required to compensate for 25 square feet, the Applicant will provide off-site mitigation at the Applicant's maintenance yard by installing updated BMPs and installing woody material as check dam(s) to slow the flows in the seasonal drainage and reduce sediment loads. |
| Applicable Fees | \$640.00 (\$640.00 application fee) |
| Fees Received | \$640.00 |

| | |
|-----------------|---------------|
| Fees Due | \$0.00 |
|-----------------|---------------|

CEQA COMPLIANCE

Water Board staff have determined that this Project is exempt from the California Environmental Quality Act (Public Resources Code Section 21000 et seq.). In accordance with California Code of Regulations, title 14, section 15302(c), the basis for CEQA exemption is "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

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:

"The discharge or threatened discharge, attributable to new development or permanent disturbance in Stream Environment Zones, 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."

Stream Environment Zone Disturbance

The proposed Project is located within the Stream Environment Zone (SEZ) and wetland areas of tributary streams to Lake Tahoe. The project by its very nature will impact SEZ areas with proposed new permanent disturbance.

Prohibition Exemption

Resolution No. R6T-2008-031 delegates authority to the Water Board Executive Officer to grant exceptions 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 CalPECO Meyers 3400 Rebuild Project is for public health and safety by replacing an old power distribution line.

The Basin Plan allows exemptions to the above-cited discharge prohibition for projects within SEZs where all of the following findings can be made:

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

The Project is necessary for public health and safety. The distribution line is the only source of electricity in the area providing power for residences, campgrounds, traffic signals, water pumps and sewer lift pumps. The distribution line was initially installed in 1932 and many of the poles in the project area date to this age. Although some of the Meyers 3400 line has been rebuilt over the years, the line supports in the project area from Camp Richardson to Emerald Bay have not been replaced. The Project includes power pole changes for improved avian protection. The Project is necessary for public health and safety.

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

The Applicant evaluated several other alternatives to crossing the wetland within the existing easement. Spanning the wetlands would require a length of 1,300 feet across Taylor Creek and 1,900 feet across Tallac Creek. These span lengths would be infeasible considering the snow loads and wind impacts, which would likely result in frequent repairs of the structures where there is little access. Such a span would also probably not be allowed from an aesthetic or visual standpoint. The Applicant also evaluated the option to underground the distribution line within the road bed of Highway 89, which is a scenic road corridor where overhead construction is not allowed by the Tahoe Regional Planning Agency. This option was considered economically infeasible because of the additional costs, estimated to be \$1.1 million, that would have to be borne by the rate payers of the service territory. The Applicant has reduced the amount of encroachment upon the SEZ by using helicopters and hand crews. There is no reasonable alternative to further avoid or reduce SEZ encroachment.

c) *Impacts are fully mitigated.*

The Applicant has submitted a list of BMPs that will be implemented during construction to avoid construction related impacts to water quality. In the wetland areas and areas without access roads, the old poles will be removed (pulled out) and the new poles will be installed into hand-dug holes with the use of a helicopter. Where existing access roads are available, truck-mounted augers and line trucks will be used; no new roads, temporary or permanent, will be constructed. Hand crews will install temporary soil stockpiling areas next to the new pole location and use visqueen and fiber rolls to prevent sediment discharge to the surrounding wetlands. The new poles, treated with pentachlorophenol, will be wrapped at their base with an impermeable 4-layer laminate liner (Osmostic Field Line) to prevent the chemical from leaching to the surrounding soil. It will then be placed inside a sonatube in the

hole. Approximately 50% of the stockpiled material will be used to backfill, compact and create mounds around the new poles for drainage away from the pole. After the new poles are in place and connected, the old poles will be removed in their entirety and flown to the staging area. The remainder of the stockpile material will be used to backfill the old hole. Any remaining spoil material will either be loaded into wheel barrows (in the case of Taylor Creek where a walking path is available) or air-lifted out. If additional material is required, certified weed-free soil will be flown by helicopter to the wetland areas to finish back-filling. This soil in the old holes will not be compacted to facilitate revegetation. The Mitigation and Monitoring Plan submitted includes monitoring and annual reporting to the Water Board for a period of three years or until success criteria of 70% of original total vegetation cover is achieved. The impacts will be fully mitigated with these BMPs and with the mitigation required in this WQC.

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

The Project will disturb a total of 50 square feet within the SEZ. The required mitigation, at 1.5:1 for the Project, is 75 square feet of restored SEZ land. The Applicant will restore 50 square feet at both the old and new pole locations through restoration, with monitoring. An on-site mitigation and monitoring plan provided to the Water Board includes twice per year monitoring for a minimum of three years or until the success criteria is met. For the additional mitigation required to meet the on-site mitigation of 1.5:1 ratio, the Applicant provided the Water Board an off-site mitigation and monitoring plan for the seasonal drainage on the Applicant's property at 933 Eloise Avenue in South Lake Tahoe. This off-site mitigation will create a minimum of 25 square feet of additional SEZ and includes monitoring for three years.

EXEMPTION GRANTED

As demonstrated above, the Project meets the conditions and criteria for an exemption to the SEZ waste discharge prohibition. The applicant has incorporated appropriate BMPs into the Project to ensure that any 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 his intent to issue an exemption or exception subject to this Resolution at least ten (10) days before the exemption or exception 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 (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 California Pacific Electric Company (Applicant) submitted a complete application and the \$640.00 application filing fee required for WQC under Section 401 for the CalPECO Meyers 3400 Rebuild Project. The Applicant has applied for U.S. Army Corps of Engineers (ACOE) authorization to proceed under Nationwide Permit No. 16 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 CalPECO Meyers 3400 Rebuild 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 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 that results in the taking of a threatened or endangered species or any act that 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 on-site and off-site Mitigation and Monitoring Plans for the CalPECO Meyers 3440 Rebuild Project must be implemented. Annual reports must be submitted to the Water Board by December 31st of each year following implementation of the project, for three years starting with the initial report in 2011.

2. Excess soils and sod excavated from the wetland associated with the pole project that is not reused at the Project site must be stockpiled at 933 Eloise Avenue in the City of South Lake Tahoe and protected from erosion for reuse in wetland creation, enhancement and restoration.
3. The Applicant must utilize the services of a qualified professional with experience in hydrology and wetland restoration during all construction, restoration and mitigation activities. The professional must be available on site during construction activities to ensure that (a) all protected areas are marked properly, (b) no vegetation outside the specified areas is removed, and (c) appropriate control measures are used to prevent discharges of erosion products. The qualified professional must have the authority to stop the work, as necessary, to ensure instructions are followed and must be available upon request from this Water Board for consultation within 48 hours of request of consultation.
4. All temporary best management practices must be inspected (a) daily during project construction and (b) weekly during the October 15 to May 1 period(s) when not snow-covered to ensure they are functioning properly. The Applicant must maintain and keep daily inspection logs onsite during project construction and provide a copy of inspection logs and records of any corrective actions to Water Board staff. The Applicant must provide an annual report of the construction season inspections and corrective actions implemented to the Water Board by **October 15** of each year in which construction occurs.
5. The Applicant must stabilize from erosion all areas of temporary impacts to waters of the State and all other areas of temporary upland disturbance that could result in a discharge or a threatened discharge to waters of the State.
6. 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, until revegetation success criteria are met.
7. Prior to commencing construction, the Applicant must affirmatively document whether there are any subsurface utilities in the area of construction and **submit such documentation to the Water Board**. This can be accomplished by: (1) contacting all utilities (both public and private) that provide service in the area, documenting these contacts and submitting such documentation to the Water Board; (2) contacting Underground Service Alert, documenting this contact and providing such documentation to the Water Board; or, (3) some other equivalent affirmative action to determine whether or not there are any subsurface utilities in the area of construction and submitting the results of such action to the Water Board. The area of construction is defined as any area within the Project boundaries where there will be excavation, construction of borings or driving of piles. **If subsurface utilities are located in the construction area, the Applicant must provide to the Water Board a utility avoidance plan that will be followed during construction.**



8. Wetland areas that will be avoided near project and/or staging areas must be protected by colored construction fencing or equivalent barriers.
9. The Applicant must prevent the introduction or spread of noxious/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 site, using weed-free erosion control materials (including straw), and using weed-free seeds and plant material for revegetation of disturbed areas.
10. Water Board staff must be notified 48 hours prior to commencement of ground disturbance.
11. 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.
12. 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.
13. 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.
14. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
15. An emergency spill kit must be at the project site at all times.

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 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 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 at (530) 542-5430.

HAROLD J. SINGER
EXECUTIVE OFFICER

California Environmental Protection Agency

cc: Pat Dobbs / Tahoe Regional Planning Agency
Amy Kennedy / 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)
Lynette Blanchard / U.S. Army Corps of Engineers, Reno Office
Bill Orme / State Water Resources Control Board, Division of Water Quality
(via email at Stateboard401@waterboards.ca.gov)

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