California Regional Water Quality Control Board
Lahontan Region

Linda S. Adams
Acting Secretary for Environmental Protection

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Edmund G. Brown Jr.
Governor

Todd Landry, Senior Engineer
Engineering Department, Town of Truckee
10183 Truckee Airport Road
Truckee, CA 96161

ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND 100-YEAR FLOODPLAIN WASTE DISCHARGE PROHIBITION EXEMPTION FOR THE TROUT CREEK RESTORATION REACH 3 PROJECT, TOWN OF TRUCKEE, NEVADA COUNTY, WDID 6A291104003

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 Trout Creek Restoration Reach 3 Project (Project) in Truckee, 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). This Order for WQC and 100-year floodplain prohibition exemption hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A291104003. 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	6A291104003
Applicant	Town of Truckee 9646 Truckee Airport Road Truckee, CA 96161 Attention: Todd Landry

Table of Project Information continued:

Agent	John Dvorsky Waterways Consulting, Inc. 522 SW 5th Avenue, Ste 700 Portland, OR 97204
Project Name	Trout Creek Restoration Reach 3 Project
Project Purpose and Description	This phase of a multi-phase restoration project involves one of six reaches of Trout Creek from the Interstate 80 crossing to its confluence with the Truckee River. Improvements to Reach 2, upstream and downstream of Donner Pass Road crossing, were performed in 2006 when a bottomless arch culvert replaced an undersized culvert under the road. This Project involves primarily Reach 3, which extends approximately 550 feet downstream from the Donner Pass Road crossing, but also involves minor modifications to Reach 2 – lowering the rock lined channel by an average of one foot to create a continuous profile grade between Reaches 1 and 3 – and a portion of Reach 4, which begins at the Union Pacific Railroad's balloon track. The existing channel and floodplain (between Donner Pass Road and approximately 850 feet downstream) will be widened to approximately 70 feet, lengthened by 20 feet, and lowered approximately one foot before transitioning to the existing grade in Reach 4. This will be accomplished by removing and widening the levees on each side of the existing channel, relocating existing public parking with the Project area, and creating meanders in the new channel. The channel will be reconstructed to support a pool and riffle sequence. Boulder weirs will provide grade control in the upper half of the Project area. At the downstream end of the reach, fill will be excavated from the low area along the left (north) bank to expand the floodplain and allow for the establishment of an off-channel wetland area. Numerous log root wads will be placed throughout the Project area for increased habitat function.
Location (closest City & County)	Town of Truckee, Nevada County
Location Latitude/Longitude	Latitude: 38.329444, Longitude: 120.186667
Hydrologic Unit(s)	Truckee River Hydrologic Area, 635.20 in the Truckee River Hydrologic Unit, 635.00
Project Area	1.4 acres
Receiving Water(s) Name	Trout Creek, a tributary of the Truckee River
Water Body Type(s)	Perennial stream
Area and linear feet of Water(s) of the U.S. (WOUS) within the project area	0.25 acre 850 feet
Area of Permanent Fill/Excavation in WOUS	0.2 acre fill 0.4 acre excavation

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Table of Project Information continued:

Linear feet of Permanent Fill/Excavation in WOUS	850 feet
Volume of Excavated Material from WOUS	3,640 cubic yards
Volume of Fill Material to WOUS	1,645 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. 27 and 33, pursuant to Clean Water Act section 404.
Non-Compensatory Mitigation	Water Diversion plan consists of gravity flow diversion around the Project area with coffer dams established upstream and downstream to isolate the work area. Localized groundwater will be dewatered from the work area by pumping to a retention and treatment pond located adjacent to the stockpile and staging areas. Prior to channel dewatering, block nets will be installed at the upstream and downstream ends of the work area and all fish will be removed from the work area and temporarily relocated by a qualified biologist. Site-specific Best Management Practices (BMPs) will be used throughout the construction period and for winterization to control erosion, including mulching bare soil, silt fences, straw wattles and revegetation. Permanent BMPs include re-establishing floodplain connectivity, minimizing vegetation disturbance, and re-vegetating with native plants.
Compensatory Mitigation	This is a restoration project, therefore compensatory mitigation is not required.
Applicable Fees	$640.00 ($640.00 application fee for restoration)
Fees Received	$640.00
Fees Due	**$0.00**

CEQA COMPLIANCE

The Town of Truckee adopted a Mitigated Negative Declaration (State Clearinghouse No. 2010122026) and filed a Notice of Determination on January 25, 2011 for the Trout Creek Restoration Project, pursuant to the California Environmental Quality Act, (CEQA Public Resources Code 21000, et seq.).

The Water Board, acting as a CEQA Responsible Agency in compliance with California Code of Regulations, title 14, section 15096, has considered the Town of Truckee's Mitigated Negative Declaration (MND) for the Project and mitigation measures incorporated into the MND to reduce potentially significant water quality impacts to less than significant with mitigation. As a result of the analysis, the Water Board finds, with the conditions required herein, the mitigation measures in the MND are adequate to reduce potentially significant water quality impacts to less than significant. This Order includes mitigation monitoring requirements for impacts to waters of the State, including

waters of the U.S. The Water Board will file a Notice of Determination for the above-referenced MND with the State Clearinghouse concurrently with this WQC.

WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITION

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

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

The proposed Project would violate the prohibition as it involves alterations within the 100-year floodplain of Trout Creek, a tributary to the Truckee River. The Water Board may grant an exception to the above-cited prohibition under certain conditions.

PROHIBITION EXEMPTION

The Water Board encourages restoration projects that are intended to reduce or mitigate existing sources of erosion or water pollution, or to restore the functional value to previously disturbed floodplain areas. The Basin Plan allows exemptions to the above-cited discharge prohibition for projects that meet the following exemption criteria:

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

   The purpose of the Project is to restore the natural geomorphic function to previously-disturbed areas of lower Trout Creek. The previously-disturbed floodplain would be restored by transforming Reach 3 of Trout Creek from a straightened channel, confined by levees on either side, to a stream channel that meanders and exhibits a more functional morphology within an expanded floodplain. Existing functional floodplain (that which does not flood the surrounding developed areas) would be expanded from 0.6 acres to 1.3 acres within Reach 3 while reducing flood risks to adjacent properties. Flood control measures incorporated in the restoration design would reduce flooding in developed areas of the Town of Truckee. The level

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of flood protection would be increased from a 20-year to a 100-year storm event. The proposed Project will reduce existing sources of pollution by reducing flooding of developed areas (businesses, roads, and residences), will reduce the potential for future erosion, restore floodplain function, and improve and increase the riparian habitat within the area.

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

The Project is located entirely within the 100-year floodplain. Disturbing the existing vegetation and floodplain is necessary to establish a more functional floodplain, remove levee, reduce pollutant sources by eliminating flooding in disturbed and developed areas, and improve ecologic value by creating a functioning riparian corridor and enhancing aquatic habitat. There is no alternative to locating the Project within the 100-year floodplain.

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

The Project to improve stream, floodplain and riparian function, by its very nature, must be located within the 100-year floodplain.

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

Construction-related activities within the creek channel and floodplain include the following and other measures to avoid impacts to water quality. Construction will occur under low flow conditions between the months of August to October. Dewatering will consist of installing coffer dams at the upstream and downstream end of the Project area and diverting low flows around the Project area. Clean ground water will be discharged into the diversion pipe from wells in the creek area to lower ground water on project site, while sediment-laden water will be pumped to a temporary basin for treatment and/or upland disposal. Long-term site stabilization will be achieved through a comprehensive revegetation effort.

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

The Project, in conjunction with other watershed management projects being implemented by the Town of Truckee, will directly improve water quality in Trout Creek. The restored floodplain is expected to have improved capacity to trap and store sediment and nutrients because the Trout Creek floodplain will have improved functions and values (e.g., larger functional floodplain, increased riparian corridor) with respect to the current degraded condition. The Project will not degrade water quality or impair beneficial uses.

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f) *The project will not reduce the flood flow attenuation capacity, the surface flow treatment capacity, or the ground water flow treatment capacity from existing conditions. All 100-year floodplain areas and volumes lost as a result of the project must be completely mitigated by restoration of previously-disturbed floodplain within or as close as practical to the project site. The restored, new, or enlarged floodplain shall be sufficient area and volume to more than compensate for the flood flow attenuation capacity, surface flow treatment capacity, and ground water flow treatment capacity which are lost as a result of the project. This finding will not be required for: (1) essential public health or safety projects, (2) projects to provide essential public services for which the Regional Board finds such mitigation measures to be infeasible because the financial resources of the entity proposing the project are severely limited, or (3) projects for which the Regional Board finds (based on evidence presented by the proposed discharger) that the project will not reduce the flood flow attenuation capacity, the surface flow treatment capacity, or the ground water flow treatment capacity from existing conditions.*

To evaluate the Project's effects on flood flow attenuation capacity, surface flow treatment capacity and ground water flow treatment capacity, the existing and proposed conditions for the lower Trout Creek were modeled using the hydraulic model Hydrologic Engineering Centers River Analysis System (HEC-RAS). For the 100-year peak flow scenario, the modeling indicated that the proposed Project would increase the volume but decrease the surface area of floodplain. However, for the much more frequent 10-year peak flow scenario, the proposed Project would increase both the acreage and volume of floodplain. The primary reason why acreage decreases and volume increases under the 100-year flood scenario is because the larger area inundated to the south of Trout Creek consists of shallow water, on the order of a few inches deep, which flows over compacted, disturbed, and developed or semi-pervious floodplain. The proposed Project would lower the entire bed of the channel and expand the floodplain on the Project site, achieving a depth of 3-4 feet under 100-year peak flow conditions and resulting in a large increase in floodplain percolation and storage volume. Despite the loss of floodplain surface area, the Project will not reduce flood flow attenuation capacity (shown using HEC-RAS modeling) because the expanded floodplain will have a greater infiltration capacity than the existing compacted, disturbed area over which the current 100-year flood flows spread. The Water Board finds that the floodplain analysis of the proposed conditions will provide much more flood attenuation and ground water treatment capacity than existing conditions over a broader range of flow conditions. Over the 50+year hydrologic record that was used for modeling hydrologic responses, there would be an eight-fold increase in the surface water/floodplain interaction and six-fold increase in the volume of water that interacts with the floodplain.

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DELEGATION OF AUTHORITY FOR GRANTING AN EXEMPTION

The Water Board has delegated authority to the 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.

PROHIBITION EXEMPTION GRANTED

As demonstrated above, the Project meets the conditions and criteria for an exemption to the 100-year floodplain 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. A draft 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. The Project is hereby granted an exemption to the above-cited waste discharge prohibition.

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

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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 Town of Truckee (Applicant) submitted a complete application and the $640.00 application filing fee required for WQC under Section 401 for the Trout Creek Restoration Reach 3 Project. The Applicant has applied for U.S. Army Corps of Engineers (ACOE) authorization to proceed under Nationwide Permit Nos. 27 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 Trout Creek Restoration Reach 3 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 shall 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 shall be conditioned upon total payment of the full fee required under CCR Section 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 water quality certification 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 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 requirements of the applicable 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 stabilize from erosion all areas of temporary impacts to waters of the State and all other areas of temporary upland disturbance due to placement of dredge and/or fill material that could result in a discharge or a threatened discharge to waters of the State in accordance with control measures in the application.

2. The Applicant must temporarily stabilize the site from erosion (winterize) prior to October 15 in a manner which will remain effective until May 1 of the following year, until revegetation success criteria are met.

3. The Applicant must prevent the introduction or spread of noxious/invasive weeds within the project and staging area. Control measures may include removing

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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.

4. Water Board staff must be notified 48 hours prior to commencement of ground disturbance.

5. 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.

6. 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 from any areas adjacent to the work area where such material may be transported into waters of the State.

7. 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.

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

9. An emergency spill kit must be at the project site at all times.

10. The Applicant has adopted a CEQA Mitigation Monitoring and Reporting Program (MMRP) which is hereby incorporated into this Order as Attachment #1. The Applicant must provide a report by **October 15, 2011,** describing the actions taken to comply and the status of compliance with the following MMRP measures: MM-3c, MM-3e, MM-6a, MM-6b, MM-9a, MM-9b, and MM-16a.

11. A qualified professional with experience in hydrology and wetland restoration must monitor the construction of the Project. Any additional work or variation from the described work, which may result in additional or increased impacts to waters of the State (including quantity or quality of water or habitat) or reduce the amount of wetland or floodplain created, is not authorized unless approved in writing by the Executive Officer prior to implementation.

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12. By **November 15, 2011**, the Applicant must provide for acceptance by the Water Board a Restoration Monitoring Plan. The Restoration Monitoring Plan must include an as-built report, including topographic map with resolution at least to the nearest foot, and must describe any problems encountered or variances from the approved design. The report must also include photographs showing the sites before and after construction. The Restoration Monitoring Plan must be consistent with guidelines in the U.S Army Corps of Engineers – Sacramento District guidelines document, *MITIGATION AND MONITORING PROPOSAL GUIDELINES, December 30, 2004*. The monitoring and reporting schedule must also include a minimum of three (3) years of monitoring with annual reports due on **October 15 in 2012, 2013, and 2014**, that summarize monitoring findings and evaluates the success in restoring wetlands and floodplain relative to the Restoration Monitoring Plan, and indicating whether performance standards in the Restoration Monitoring Plan have been met. The monitoring period may be modified in writing by the Executive Officer.

13. A conservation easement, deed restriction, or other legal means to protect the wetland values of the restoration area in perpetuity on the area to be restored must be established. Any conservation easement must be executed in favor of a nonprofit or governmental agency qualified to hold conservation easements under California Civil Code section 815.3. The Applicant must submit the final conservation easement, deed restriction or other documentation that the restored area will be protected in perpetuity to the Executive Officer for approval by no later than **October 15, 2011**.

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.

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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, Chief, North Basin Regulatory Unit, at (530) 542-5435.

HAROLD J. SINGER
EXECUTIVE OFFICER

Attachment #1: Mitigation, Monitoring and Reporting Program

cc: John Dvorsky / Waterways Consulting
Dave Smith / Wetlands Regulatory Office (WTR-8), US EPA, Region 9
(via email at R9-WTR8-Mailbox@epa.gov)
Erin Hess / 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)

TT/clhT: Trout Creek Restoration 401 and FPE 6-9-11 TT-AEM.doc
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