

Lahontan Regional Water Quality Control Board

June 27, 2013

Becky Bucar
Town of Truckee
10183 Truckee Airport Road
Truckee, CA 96161

R6T-2013-0055, ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND 100-YEAR FLOODPLAIN PROHIBITION EXEMPTION FOR TRUCKEE RIVER LEGACY TRAIL PHASE 3B PROJECT, NEVADA COUNTY, WDID 6A291303001

The California Regional Water Quality Control Board, Lahontan Region (Water Board) has received a complete Clean Water Act Section 401 Water Quality Certification (WQC) application and application filing fee for the Truckee River Legacy Trail Phase 3B Project (Project) in Nevada County. This Order for WQC hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A291303001. Please use this reference number in all future communications 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	6A291303001
Applicant	Becky Bucar, Town of Truckee, 10183 Truckee Airport Road, Truckee, CA 96161
Agent	Joshua Boldt, ESA Biological Resources, 2600 Capitol Ave., Suite 200, Sacramento, CA 95816
Project Name	Truckee River Legacy Trail Phase 3B Project

Table of Project Information continued:

Project Purpose and Description	Continuation of Truckee River Legacy Trail, identified as a high priority trail in the Truckee Trails and Bikeways Master Plan, adopted by the Town of Truckee Town Council in April 2002. An essential transportation facility and recreation project, Phase 3B includes an approximately 11,155 foot long section of paved Class I bike and pedestrian trail. Trail alignment will include a span bridge crossing at Martis Creek, upstream from the confluence with the Truckee River.						
Project Type	Essential Transportation Facility and Recreation Project						
Project County	Nevada						
Project Location	Eastern edge of Town of Truckee, along south bank of the Truckee River, east of the Riverview Sports Park to Glenshire Drive.						
Location Latitude/Longitude	Latitude: 39.337842, Longitude: -120.129395						
Hydrologic Unit(s)	Truckee River Hydrologic Unit, 635.00						
Overall Project Area	42.9 acres						
Receiving Water(s) Name	Truckee River, Martis Creek						
Water Body Type(s)	River, Stream						
Designated Beneficial Uses	MUN, AGR, IND, GWR, FRSH, POW, REC-1, REC-2, COMM, COLD, WILD, RARE, MIGR, SPWN						
Potential Water Quality Impacts	Discharge of earthen materials, aggregate base, asphalt concrete, and rock						
Area of Water(s) within the Overall Project Area	2.0 acres						
Project Impacts (Fill) to Waters of the State, including Waters of the U.S. (WOUS)	Waterbody Type	Permanent			Temporary		
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yard
	<i>Lake</i>						
	<i>Riparian</i>						
	<i>Stream</i>						
	<i>Wetland</i>	0.003	33.7	9.7	0.092	0	170
Project Impacts (Excavation) to Waters of the State, including WOUS.	Waterbody Type	Permanent			Temporary		
		Acres / Sq. Ft.	Linear Feet	Cubic Yards	Acres / Sq. Ft.	Linear Feet	Cubic Yard
	<i>Lake</i>						
	<i>Riparian</i>						
	<i>Stream</i>						
	<i>Wetland</i>						
	Total	0	0	0	0	0	0
Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Nationwide Permit Number 42, pursuant to Clean Water Act section 404.						
Non-Compensatory Mitigation	Temporary and permanent Best Management Practices (BMPs) including site-specific BMPs to be used during construction and for winterization purposes.						
Compensatory Mitigation	0.095 acres of wetland restoration onsite, 0.046 acres of offsite wetland creation, previously accomplished, on Trout Creek Reach 3 (under WDID 6A291104003).						
Applicable Fees	\$944						
Fees Received	\$944						

CEQA COMPLIANCE

Compliance with California Environmental Quality Act (CEQA, Public Resources Code 21000, et seq.) – The Applicant certified a Mitigated Negative Declaration (MND, State Clearinghouse No. 2012111094) on November 30, 2012, and filed a Notice of Determination on December 31, 2012 for the Truckee River Legacy Trail Phase 3B Project, pursuant to the CEQA. The Water Board, acting as a CEQA Responsible Agency in compliance with California Code of Regulations, title 14, section 15096, has considered the Applicant's MND for the Project and mitigation measures incorporated into the MND to reduce potentially significant water quality impacts to less than significant. As a result of the analysis, the Water Board finds the mitigation measures in the MND are adequate to reduce potentially significant water quality impacts to less than significant levels.

WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITION

The Water Board specifies the following discharge prohibition in the Water Quality Control Plan for the Lahontan Region (Basin Plan):

"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 threatens discharges that would violate the prohibition as it involves alterations within the 100-year floodplain the Truckee River and Martis Creek, a tributary to the Truckee River. The Water Board may grant an exemption to the above-cited prohibition under certain conditions.

EXEMPTION GRANTED

An exemption to the Basin Plan 100-year floodplain prohibition within the Truckee River Hydrologic Unit was granted for the Project by the Water Board at the June 19, 2013 Water Board meeting, pursuant to Resolution No. R6T-2013-0054.

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. 42 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 California Water Code section 13330 and CCR title 23, section 3867.
2. This certification action is not intended and must not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license unless the pertinent certification application was filed pursuant to CCR title 23, section 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial certification action must be conditioned upon total payment of the full fee required under CCR title 23, section 3833, unless otherwise stated in writing by the certifying agency.
4. Neither Project construction activities nor operation of the Project may cause a violation of the Basin Plan, may cause a condition or threatened condition of pollution or nuisance, or cause any other violation of the California Water Code.
5. The Project must be constructed and operated in accordance with the Project described in the application for WQC that was submitted to the 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 Clean Water Act, or as appropriate to coordinate the operations of this Project with other projects where coordination of

operations is reasonably necessary to achieve water quality standards or protect the beneficial uses of water. Notwithstanding any more specific conditions in this certification, the Project must be constructed and operated in a manner consistent with all water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or Section 303 of the Clean Water Act.

8. This certification does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under the California Endangered Species Act (Fish and Game Code section 2050 et seq.) or the federal Endangered Species Act (16 U.S.C. sections 1531 et seq.). If a "take" will result from any act authorized under this certification, the Applicant must obtain authorization for the take prior to construction or operation of the Project. The Applicant is responsible for meeting all applicable requirements of the Endangered Species Act for the Project authorized under this certification.

Additional Conditions

Pursuant to CCR title 23, section 3859(a), the following additional conditions are requirements of this certification:

1. 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.
2. All temporary BMPs must be inspected (a) daily during Project construction and (b) monthly during the October 15 to May 1 period(s), when not snow-covered, to ensure they are functioning properly. The Applicant must maintain BMPs and keep daily inspection logs onsite during Project construction and produce the inspection logs and records of any corrective actions to Water Board staff on request.
3. 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 for the Project to be considered complete.
4. Wetland areas that will be avoided near Project and/or staging areas must be protected by colored construction fencing or equivalent barriers.
5. 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.
6. Water Board staff must be notified 48 hours prior to commencement of ground disturbance.
7. 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.
8. 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.
 9. 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.
 10. Construction equipment must be monitored for leaks, and removed from service if necessary to protect water quality.
 11. An emergency spill kit must be at the Project site at all times.
 12. Mitigation monitoring reports acceptable to the Executive Officer must be provided as described in the Mitigation Monitoring and Reporting Plan, dated June 20, 2013. Reports must be provided annually for five years, starting on **November 30, 2013**. The reports must be provided by November 30 of each year and must describe the results of monitoring performed during the previous year and progress towards achieving the performance standards and Project objectives in the application. The reports must also describe any problem(s) encountered during the year, and explain actions taken or proposed to address the problem(s), and a schedule for completion.

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 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 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 WQC" 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 Dale Payne, Environmental Scientist, at (530) 542-5464 or Alan Miller, Chief, North Basin Regulatory Unit, at (530) 542-5430.



PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

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