

Lahontan Regional Water Quality Control Board

TO: Water Board Members



FROM: Patty Z. Kouyoumdjian
Executive Officer

LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: April 8, 2016

SUBJECT: Exemption to Discharge Prohibitions, Truckee River Hydrologic Unit, for the Tahoe Truckee Unified School District Access and Improvements Project, Nevada County

In ten days, I intend to sign the enclosed Order granting an exemption to the above-cited discharge prohibitions specified in the *Water Quality Control Plan for the Lahontan Region* (Basin Plan). The exemption will allow the project proponent to conduct excavation and fill activities within the 100-year floodplain of a seasonal tributary drainage to Donner Creek to provide safe access and traffic circulation at the Truckee High School.

The project meets requirements for an exemption to the discharge prohibitions. A public notice soliciting comments on the proposed Project will be posted on the Water Board's website for 10 days.

Please contact me at (530) 542-5412 (patty.kouyoumdjian@waterboards.ca.gov), or Alan Miller, Senior Water Resources Control Engineer, at (530) 542-5430 (alan.miller@waterboards.ca.gov), if you have any questions or comments regarding this matter.

Enclosure: Draft Water Quality Certification Order

cc (via email):

Jim Sajdak, Tahoe Truckee Unified School District
Kevin Derby, Dudek
Aaron C. Park, U.S. Army Corps of Engineers, Reno Office
Patrick Moezinger, California Department of Fish and Wildlife
Alan Miller, Regional Water Quality Control Board, Lahontan

DYP/ma/T: TTUSD HS Improvement Project Board Notice
File Under: 6A291601001

Lahontan Regional Water Quality Control Board

Jim Sajdak
Tahoe Truckee Unified School District
11603 Donner Pass Road
Truckee, CA 96161

WDID 6A291601001

Board Order No. R6T-2016-XXXX, Clean Water Act Section 401 Water Quality Certification for Tahoe Truckee Unified School District, Truckee High School Access and Parking Lot Improvements Project, Nevada County

The California Regional Water Quality Control Board, Lahontan Region (Water Board) has received a complete application for Clean Water Act (CWA) section 401 Water Quality Certification (Certification) and applicable filing fee from Tahoe Truckee Unified School District (District) (Applicant) for the Truckee High School Access and Parking Lot Improvements Project (Project) in Nevada County. The application received on January 13, 2016, was deemed complete on February 13, 2016. This Certification hereby assigns this Project the following reference number: Waste Discharge Identification (WDID) No. 6A291601001. 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 (CCR), title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Certification, except that if the thirtieth day following the date of this Certification 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	6A291601001
Applicant	Jim Sajdak Tahoe Truckee Unified School District 11603 Donner Pass Road Truckee, Ca 96161
Agent	Kevin Derby Dudek 853 Lincoln Way, Suite 208 Auburn, CA 95603

Table of Project Information (continued):

Project Name	Access and Parking Lot Improvements Project									
Project Purpose and Description	The Project includes constructing an American with Disabilities Act-compliant sidewalk, bike path, and expanded parking necessary to provide safe travel routes between Truckee High School and its track facilities, Sierra Expeditionary Learning School, and District offices. The Project will also improve safety by increasing the separation between the student drop-off and bus staging areas. The Project places two degraded ephemeral stream channel segments into 24-inch culverts: one near Donner Pass Road encompassing 34 linear feet; the second crossing located between the athletic track and District offices encompassing 205 linear feet. Installation of culverts will ensure proper drainage through the Project area (239 linear feet).									
Project Type	Fill and Excavation									
Project County	Nevada									
Project Address or other Locating Information	11725 Donner Pass Road, Truckee, CA 96161									
Location Latitude/Longitude	Latitude:39.19.28, Longitude: 120.12.42									
Hydrologic Unit(s)	Truckee River Hydrologic Unit, 635.20									
Overall Project Area	18 acres									
Receiving Water(s) Name	Unnamed tributaries of Donner Creek									
Water Body Type(s)	Stream									
Designated Beneficial Uses	MUN, AGR, GWR, REC-1, REC-2, COMM, COLD, WILD, RARE, MIGR, SPWN									
Potential Water Quality Impacts	Discharge of sediment from installation of culvert. Loss of certain water body area and functions from culvert installation.									
Area of Water(s) Within the Overall Project Area	0.731 acres									
Impacts of Fill and Excavation to Waters of the State, including Waters of the U.S.	Water-body Type	Temporary			Permanent					
					Physical Loss of Area			Degradation of Ecological Condition		
		Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards	Acres	Linear Feet	Cubic Yards
	<i>Lake</i>									
	<i>Riparian</i>									
<i>Stream</i>				0.024	239	38				
<i>Wetland</i>										
Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACE) authorization to proceed under a Nationwide Permit 39, pursuant to CWA section 404.									
Non-Compensatory Mitigation	Applicable Best Management Practices (BMPs) will be employed on the site at all times.									
Compensatory Mitigation	In-Lieu Fee to National Fish and Wildlife Foundation (NFWF) at a ratio of mitigation lands to disturbed lands of 1.5:1 (required mitigation - 0.036 acres).									
Applicable Fees	\$200									
Fees Received	\$200									

CEQA COMPLIANCE

The District adopted a Mitigated Negative Declaration (State Clearinghouse No. 2015042079) on June 17, 2015, and filed a Notice of Determination on June 23, 2015 for the Project, pursuant to CEQA.

The Water Board, acting as a CEQA Responsible Agency in compliance with CCR, title 14, section 15096, has considered the District'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.

WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITIONS

The *Water Quality Control Plan for the Lahontan Region* (Basin Plan) contains certain waste discharge prohibitions that apply to the Truckee River Hydrologic Unit (HU No. 636), including prohibitions 1 and 2, respectively, which state:

"1. The discharge, attributable to human activities, of any waste or deleterious materials to surface waters of the Truckee River HU or Little Truckee River HU is prohibited."

And

"2. The discharge or threatened discharge, attributable to human activities, of waste to lands within the 100-year floodplain of the Truckee River, Little Truckee River, and their tributaries is prohibited."

The Project, in part, includes installing two new culverts within 239 linear feet (0.024 acres) of heavily impacted and degraded ephemeral tributaries to Donner Creek, a tributary of the Truckee River. Culvert installation and fill activities, at a minimum, threaten to discharge waste earthen materials to the two ephemeral tributaries. Such waste discharges and threatened discharges are subject to the two prohibitions cited, above.

The culverts are part of a project that will construct American with Disabilities Act (ADA)-compliant sidewalks and a bike path, providing safe travel routes to, from, and in between the public right-of-way on Donner Pass Road, Truckee High School and its track facilities, Sierra Expeditionary Learning School (SELS), and District offices. The Project will also modify circulation routes near the District offices, improving safety by increasing separation between the student drop off and bus staging areas. Parking will also be expanded to accommodate the increasing combined parking demand between the District offices and SELS campus.

BASIN PLAN DISCHARGE PROHIBITION EXEMPTION CRITERIA AND FINDINGS

The Water Board may grant an exemption to Prohibition 1, above, when the Water Board finds all of the following criteria are satisfied:

1. *The discharge of waste will not individually or collectively, directly or indirectly, adversely affect beneficial uses.*

The Project's waste discharge will be minimal due to implementing and maintaining temporary and permanent BMPs that will effectively minimize, and likely prevent, waste earthen materials from entering the ephemeral creek channels. Permanent BMPs will also prevent channel erosion that can occur at culvert inlets and outlets. The beneficial uses of the ephemeral creek channels and downstream receiving waters will not be adversely impacted by the Project's potential waste discharges, given their very limited extent and potential to occur.

2. *There is no reasonable alternative to the waste discharge.*

The Project is located in an area that is surrounded by multiple surface water bodies, significantly reducing the number of feasible project alternatives that meet the Applicant's legal mandates (ADA-compliant facilities and safety requirements) and eliminate any potential for waste discharges to surface waters. The Applicant has selected the Project alternative that impacts the least amount of surface waters, and those that have already been heavily impacted and have minimal environmental functions. There is no reasonable alternative that would further reduce the Project's waste discharge potential and meet the Applicant's legal mandates.

3. *All applicable and practicable control and mitigation measures have been incorporated to minimize potential adverse impacts to water quality and beneficial uses.*

All applicable and practicable control and mitigation measures have been incorporated into the Project to minimize any discharges of wastes and adequately protect water quality and beneficial uses of surface waters during and following construction with the use of Best Management Practices (BMPs) for construction activities. Temporary BMPs will include straw wattles, silt fencing, high visibility construction fencing, and mulching of disturbed soil areas. Permanent BMPs will include a designed storm drain system with sediment-capturing capacity, detention basins, stabilized conveyance, and infiltration capacity, where none of these features currently exist. The Project should reduce the amount of sediment currently being discharged into the Project area's surface waters, that are subsequently transported downstream to wetlands, and eventually to Donner Creek and the Truckee River.

The Water Board may grant an exemption to Prohibition 2 for certain project categories within the 100-year floodplain, including:

1. *Projects and activities necessary to protect public health and safety or provide essential services.*

The Project elements directly impacting the ephemeral creek channels are necessary to improve public safety and to provide essential services. These Project elements, in part, will improve facility safety by providing dedicated, safe travel routes and by reducing congestion involving student drop-off and bus staging areas. The expanded parking area is also necessary to provide adequate parking for the existing schools and their associated facilities. The schools and their associated facilities provide essential services and need adequate parking to effectively continue doing so.

2. *There is no reasonable alternative that avoids or reduces the extent of encroachment by the Project within the 100-year floodplain.*

As stated above, the Project area is surrounded by and has multiple surface water bodies dispersed throughout, making it very challenging to avoid all impacts to 100-year floodplain areas. The Applicant has selected the Project alternative that impacts the minimal amount of 100-year floodplain area and still meets its legal mandates to provide ADA-compliant and safe travel routes, and continue effectively providing its essential services. The Applicant has also selected the Project alternative that affects poorly functioning 100-year floodplain areas that likely contribute to downstream water quality degradation, given their current condition and locations.

3. *The Project incorporates all applicable and practicable control and mitigation measures such that adverse impacts to water quality and beneficial uses are the minimum necessary to complete the Project.*

As discussed above, the Project will incorporate appropriate temporary and permanent Best Management Practices (BMPs), including those identified in the Town of Truckee Code of Ordinances. Doing so will adequately protect water quality and beneficial uses during and following the Project.

4. *The Project will not reduce or adversely affect the existing floodplain function. This shall be ensured by restoration of previously disturbed areas within the 100-year floodplain within the Project site, or by improvement of floodplain function within or as close as practical to the Project site. The restored or improved 100-year floodplain function must more than offset the floodplain function lost by construction of the Project.*

The Applicant has committed to paying in-lieu mitigation fees to the National Fish and Wildlife Foundation (NFWF) at a ratio of mitigation lands to disturbed lands of 1.5:1 (required mitigation - 0.036 acres) to mitigate Project impacts to the affected 100-year floodplain areas. The NFWF will use the fees to fund aquatic habitat restoration projects within the Truckee River watershed. Such projects will provide mitigation for the loss of the affected 100-year floodplain areas, that are currently in a very poorly functioning, degraded condition.

The Project meets the criteria for granting an exemption, as noted above.

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 U.S., 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 Certification under section 401 for the Project. The Applicant has applied for USACOE authorization to proceed under Nationwide Permit No. 39 pursuant to CWA section 404.

CCR, title 23, section 3831(e) grants the Water Board Executive Officer the authority to grant or deny Certification for projects in accordance with CWA section 401. The Project qualifies for such Certification.

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 Certification application that was submitted to the Water Board. Deviation from the Project description constitutes a violation of the conditions upon which this 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 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 Water Board may add to or modify the conditions of this Certification as appropriate to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the CWA, or as appropriate to coordinate the operations of this Project with other projects where coordination of operations is reasonably necessary to achieve water quality standards or protect the beneficial uses of water. Notwithstanding any more specific conditions in this Certification, the Project must be constructed and operated in a manner consistent with all water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the CWA.
8. This Certification does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under the California Endangered Species Act (Fish and Game Code sections 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 provide information to the Water Board verifying the purchase of mitigation credits with the National Fish and Wildlife Foundation (NFWF) In-Lieu Fee Program within the Truckee River Watershed (Hydrologic Area 635.20). Mitigation credits must be purchased by **November 1, 2016**, for a total of 0.024 acres, and proof of purchase provided to the Water Board by **December 1, 2016**.
2. Construction equipment must be clean and free from oil, grease, and loose metal material and must be removed from service if necessary to protect water quality.
3. All temporary best management practices (BMPs) must be inspected by Project personnel daily during Project construction. The Applicant must maintain daily inspection logs on site during Project construction and provide a copy of inspection logs to Water Board staff upon request.
4. Debris, cement, concrete (or wash water therefrom), oil or other petroleum products must not be allowed to enter into or be placed where they may be washed from the Project site by rainfall or runoff into waters of the state. When operations are completed, any excess material must be removed from the Project work area and any areas adjacent to the work area where such material may be transported into waters of the state.
5. 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 Certification, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. Pursuant to CWC section 13267(b), 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.
6. An emergency spill kit must be at the Project site at all times.
7. The Applicant must permit Water Board staff or its authorized representative upon presentation of credentials:
 - a. Entry onto Project premises, including all areas where records are kept.
 - b. Access to copy any record required to be kept under the terms and conditions of this Certification.
 - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Certification.

8. The Applicant must prevent the introduction or spread of noxious/invasive weeds within the Project and staging areas. Control measures may include, but are not limited to, the treatment of onsite 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.

Enforcement

1. In the event of any violation or threatened violation of the conditions of this Certification, the violation or threatened violation must be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of CWA section 401(d), the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification.
2. In response to a suspected violation of any condition of this Certification, the State Water Board or the Water Board may require the holder of any permit or license subject to this Certification to furnish, under penalty of perjury, any technical or monitoring report the State Water Board or Water Board deems appropriate, provided that the burden, including costs, of the reports must be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
3. In response to any violation of the conditions of this Certification, the Water Board may add to or modify the conditions of this Certification as appropriate to ensure compliance.

Section 401 Water Quality Certification Requirements Granted

I hereby issue this Certification certifying that any discharge from the referenced Project will comply with the applicable provisions of CWA sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards), and with other applicable requirements of state law. This discharge is also regulated under State Water Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this Certification.

Except insofar as may be modified by any preceding conditions, all 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 Certification, and (b) compliance with all applicable requirements of the Basin Plan.

Jim Sajdak
Tahoe Truckee Unified School District

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We look forward to working with you in your efforts to protect water quality. Please contact me at (530) 542-5412 (patty.kouyoumdjian@waterboards.ca.gov), Dale Payne, Environmental Scientist, at (530) 542-5464 (dale.payne@waterboards.ca.gov), or Alan Miller, Senior Water Resources Control Engineer, at (530) 542-5430 (alan.miller@waterboards.ca.gov) if you have any questions or comments regarding this permit. **Electronic document submittal is required. Please send your comments or documents to the Water Board's email address at Lahontan@waterboards.ca.gov and include your WDID No. and Project/Facility Name in the Subject Line.**

PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

cc (via email):

Kevin Derby, Dudek

Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9

Bill Orme, State Water Resources Control Board, Division of Water Quality

Krystel Bell, U.S. Army Corps of Engineers, Sacramento District

Tanya Sheya, California Department of Fish and Game

Alan Miller, Regional Water Quality Control Board, Lahontan

Dale Payne, Regional Water Quality Control Board, Lahontan

DYP/ma/T: R6T-2016-XXX_TTUSD HS Improvement Project 401_WDID No. 6A291601001
File Under: WDID 6A291601001 TTUSD HS Improvement Project, Nevada County