

Lahontan Regional Water Quality Control Board

June 2, 2015

Jennifer Harris
California Department of Parks and Recreation
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Sacramento, CA 95814

BOARD ORDER NO. R6T-2015-0023, ORDER FOR CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION FOR THE DONNER MEMORIAL STATE PARK NATURE TRAIL UPGRADE PROJECT, NEVADA COUNTY, WDID 6A291403006

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 Donner Memorial State Park Nature Trail Upgrade Project (Project) in Nevada County. This Order for WQC hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A291403006. 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	6A291403006
Applicant	Jennifer Harris - California Department of Parks and Recreation One Capitol Mall, Suite 500 Sacramento, CA 95814
Agent	Roy Martin - California Department of Parks and Recreation One Capitol Mall, Suite 500 Sacramento, CA 95814
Project Name	Donner Memorial State Park Nature Trail Upgrade Project

Table of Project Information continued:

Project Purpose and Description	The Project will implement improvements to the existing nature trail system at Donner Memorial State Park to comply with the Americans with Disabilities Act (ADA) guidelines and meet ADA trail standards. Improvements include: aligning a trail segment to connect to the new visitor center; realigning three (3) additional trail segments within the 100-year floodplain (0.25 acre outside of OHW) or wetland area (0.026 acre) that tend to flood during wet seasons; installation of retaining walls in upland areas; installation of drain lenses under five (5) segments of trail in upland areas; and trail signage. Construction of 296 linear feet of an elevated boardwalk on either side of an existing foot bridge will replace 219 linear feet of trail at ground level and 77 linear feet of existing boardwalk. Elevated boardwalk segments will reduce flooding of the trail and provide increased flood plain capacity. Removal of fill within wetlands will provide aquatic enhancement of 0.023 acre. Restoration of this area will mitigate for temporary impacts.						
Project Type	Enhancement						
Project County	Nevada						
Project Address or other Locating Information	Donner Memorial State Park, 12593 Donner Pass Road, Truckee CA						
Location Latitude/Longitude	Latitude: 39° 32'16.67" Longitude: 120° 23'16.67"						
Hydrologic Unit(s)	Truckee River Hydrologic Unit, 635.00						
Project Area	22,743 square feet						
Receiving Water(s) Name	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 removal of wetland fill and realignment of upland trails within the project area.						
Area of Water(s) within the Project Area	3,500 square feet						
Impacts of Fill to Waters of the State, including Waters of the U.S.	Total Ecological Restoration and Enhancement Quantity for Temporary Impacts (CIWQS mitigation/restoration table side B)						
	Aquatic Resource Type	Unit	Establishment	Re-establishment	Rehabilitation	Enhancement	Preservation
	Wetland	Acres			0.023		
	Riparian Zone	Acres				1.12	
Linear Feet							
Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACOE) authorization to proceed under a Non-Reporting Nationwide Permit 27, pursuant to Clean Water Act section 404.						
Non Compensatory Mitigation	Applicable Best Management Practices (BMPs) will be employed on the site at all times, and throughout implementation.						
Compensatory Mitigation	None required						
Applicable Fees	\$600 Fill and Excavation Discharges fee (\$5,670 x 0.003 acre = \$600)						
Fees Received	\$1,097 – Refund of \$497 will be processed						

CEQA COMPLIANCE

The Water Board has determined that this Project is exempt from the California Environmental Quality Act (Public Resources Code section 21000 et seq.). In accordance with section 15302, the basis for the CEQA exemption is "Replacement or Reconstruction." A Notice of Exemption will be filed with the State Clearinghouse concurrently with issuing this Order.

100-YEAR FLOODPLAIN WASTE DISCHARGE PROHIBITION

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 prohibition 2, which states:

"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 threatens discharges that would violate the prohibition as it involves alterations within the 100-year floodplain of Donner Creek, a tributary of the Truckee River. The Water Board may grant exemptions to the above-cited prohibition for certain project categories within the 100-year floodplain, including:

Projects involving the repair, replacement, or relocation of existing structures, provided such activities do not reduce or adversely affect the existing floodplain function.

The Project consists of making improvements/modifications to Donner Memorial State Park's existing nature trail system in order to comply with ADA requirements. Project design elements have been incorporated into the Project that will improve floodplain function. Floodplain function improvement will be achieved by retiring and revegetating 42,705 square feet of legacy trail segments currently located in the floodplain of Donner Creek, constructing 758 square feet of new trail segments that incorporate drain lens to facilitate water flow under the trail surface, and reconstructing 6,154 square feet of trail segment that will provide stable surfaces to reduce the amount of erosion from these trail segments.

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.

The Project will incorporate appropriate temporary Best Management Practices (BMPs) that include placement of straw wattles in appropriate locations, and permanent BMPs including trail sections that incorporate a drain lens feature, trail sections with aggregate mixed into the soil to provide a stable surface to minimize erosion with use, and the retirement and rehabilitation of legacy trail sections that will adequately protect water quality and beneficial uses.

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

DELEGATION OF AUTHORITY FOR GRANTING AN EXEMPTION

The Water Board has delegated authority to the Executive Officer pursuant to Resolution No. R6T-2008-0031 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 in the Basin Plan and will be regulated under a WQC. The Project will be regulated under the terms and conditions of this WQC, which includes coverage under general waste discharge requirements prescribed by State Water Board Order No. 2003-0017-DWQ.

Based on the information above and contained in the application materials provided, the Project meets the above-referenced criteria.

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 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. Jennifer Harris (Applicant) submitted a complete application and the fees required for WQC under Section 401 for the Project. The Applicant has applied for U.S. Army Corps of Engineers (ACOE) authorization to proceed under Nationwide Permit No. 27 pursuant to CWA section 404.

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

Standard Conditions

Pursuant to CCR title 23, section 3860, the following standard conditions are requirements of this certification:

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to 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 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 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 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 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 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. Monitoring and Reporting of Restored Areas Within the 100-Year Floodplain:

Monitoring and reporting of restored areas within the 100-year floodplain of Donner Creek, a tributary to the Truckee River will be required. By **August 1** of each year, **beginning August 1, 2016**, the Applicant must submit to the Water Board an annual report describing and documenting the implementation and success of revegetation and other efforts associated with restoration within the 100-year floodplain at the Project site. Each report must compare the restoration activities to the success criteria specified in a restoration and monitoring plan that must be provided by California State Parks with the reports, and provide corrective actions, if needed, and a timeline for completion. The reports must describe the restoration activities completed since August 1 of the prior year for 2016, 2017, and 2018, or until the final success criteria have been met as determined by the Executive Officer.

2. A copy of this WQC Order and a copy of the complete WQC application submitted to the Water Board must be available at the Project site during construction of the Project.
3. No debris, cement, concrete (or wash water therefrom), oil or petroleum products shall 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.
4. The Applicant must immediately (within two hours) notify Water Board staff by telephone whenever an adverse condition occurs as a result of this discharge. Such a condition includes, but is not limited to, a violation of the conditions of this

Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. A written notification of the adverse condition must be provided to the Water Board within two weeks of occurrence. The written notification must identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to any modifications by Water Board staff, for the remedial actions.

5. An emergency spill kit must be at the Project site at all times.
6. There must be no construction activity between October 31 and May 1 of the following year unless a written variance is granted by the Executive Officer.

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.

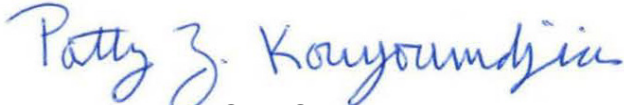
Section 401 Water Quality Certification Requirements Granted

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



PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

cc:

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