TO: Water Board Members

FROM: Patty Z. Kouyoumdjian
Executive Officer
LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD

DATE: October 3, 2017

SUBJECT: EXEMPTION TO WASTE DISCHARGE PROHIBITIONS FOR DISCHARGES OF WASTE TO SURFACE WATERS AND LANDS WITHIN THE 100-YEAR FLOODPLAIN OF A TRUCKEE RIVER TRIBUTARY FOR THE GREGORY CREEK IMPROVEMENT PROJECT, TRUCKEE, 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, Jeff Jellin, to remove existing bank stabilization and replace in-kind within Gregory Creek.

The project meets the requirements for an exemption to the discharge prohibition for the repair or replacement of existing structures. 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 Dale Payne, Environmental Scientist, at (530) 542-5464 (dale.payne@waterboards.ca.gov), if you have any questions or comments regarding this matter.

Enclosure: Draft Water Quality Certification Order

cc: Jeff Jellin
    Gavin Ball
    Joe Morgan, Wetlands Regulatory Office, U.S. Environmental Protection Agency
    Bill Orme, State Water Resources Control Board, Division of Water Quality
    Kaitlyn Pascus, U.S. Army Corps of Engineers, Sacramento District, Sacramento
    Amy Kennedy, California Department of Fish and Wildlife
    Dale Payne, Lahontan Water Board

DYP/gg/T: Gregory Creek Improvement Project Board Notice
File Under: ECM / WDID 6A091706004
Lahontan Regional Water Quality Control Board

September 29, 2017

Jeff Jellin  
DDDD3  
1807 Glenn Place  
Davis, CA 95616

Board Order No. R6T-2017-XXXX, Clean Water Act Section 401 Water Quality Certification for the Gregory Creek Improvement Project, Nevada County

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 filing fee from Jeff Jellin (Applicant) for the Gregory Creek Improvement Project (Project) in Nevada County. The application received on June 8, 2017, was deemed complete on July 13, 2017. This WQC hereby assigns this Project the following reference number: Waste Discharge Identification (WDID) No. 6A291706004. 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 WQC, except that if the thirtieth day following the date of this WQC 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:

<table>
<thead>
<tr>
<th>WDID Number</th>
<th>6A291706004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant</td>
<td>Jeff Jellin</td>
</tr>
<tr>
<td></td>
<td>DDDD3</td>
</tr>
<tr>
<td></td>
<td>1807 Glenn Place</td>
</tr>
<tr>
<td></td>
<td>Davis, CA 95616</td>
</tr>
</tbody>
</table>
Table of Project Information (continued):

| Agent                | Gavin Ball  
P.O. Box 313  
Truckee, CA 96160 |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Name</td>
<td>Gregory Creek Improvement Project</td>
</tr>
<tr>
<td>Project Purpose and Description</td>
<td>The Project will entail the removal of debris and damaged rock revetment, and rebuilding the rock revetment to protect the creek bank and adjacent concrete revetment wall from future erosion. Doing so will prevent water quality degradation and protect the beneficial uses of Gregory Creek and Donner Lake. All construction access, staging, materials stockpiling, and equipment operation will occur from the property owned by Applicant.</td>
</tr>
<tr>
<td>Project Type</td>
<td>Repair and replacement</td>
</tr>
<tr>
<td>Project County</td>
<td>Nevada</td>
</tr>
</tbody>
</table>
| Project Address or other Locating Information | 15675 Donner Pass Road  
Truckee, CA 96160 |
| Location Latitude/Longitude | Latitude: 39.192787, Longitude: 120.170921 |
| Hydrologic Unit(s)   | Truckee River Hydrologic Area, 635.20 |
| Overall Project Area | 0.007 acre |
| Receiving Water(s) Name | Gregory Creek |
| Water Body Type(s)   | Creek |
| Designated Beneficial Uses | MUN, AGR, GWR, FRSH, REC-1, REC-2, COMM, COLD, WILD, RARE, SPWN |
| Potential Water Quality Impacts | Discharge of sediment and other construction-related pollutants from Project construction. |
| Area of Water(s) Within the Overall Project Area | 0.001 acre |

<table>
<thead>
<tr>
<th>Water-body Type</th>
<th>Temporary</th>
<th>Permanent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Physical Loss of Area</td>
<td>Degradation of Ecological Condition</td>
</tr>
<tr>
<td></td>
<td>Acres</td>
<td>Linear Feet</td>
</tr>
<tr>
<td>Stream Channel</td>
<td>0.001</td>
<td>25</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Federal Permit(s)</th>
<th>The Applicant has applied for U.S. Army Corps of Engineers (USACE) authorization to proceed under a Nationwide Permit 13, pursuant to CWA section 404.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-Compensatory Mitigation</td>
<td>Applicable Best Management Practices (BMPs) will be employed on the site at all times.</td>
</tr>
</tbody>
</table>
Table of Project Information (continued):

<table>
<thead>
<tr>
<th>Compensatory Mitigation</th>
<th>Mitigation for Temporary Impacts (CIWQS mitigation/restoration table side B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aquatic Resource Type</td>
<td>Unit</td>
</tr>
<tr>
<td>Stream Channel</td>
<td>Acres</td>
</tr>
<tr>
<td></td>
<td>Linear Feet</td>
</tr>
</tbody>
</table>

Mitigation for Permanent Degradation of Ecological Condition (CIWQS mitigation/restoration table side B)

| Aquatic Resource Type   | Unit | Establishment | Re-establishment | Rehabiliation | Enhancement | Preservation |
| Stream Channel          | Acres | 0.002          |                  |                |             |             |
|                         | Linear Feet | 18            |                  |                |             |             |

Application Fee $720.00
Fees Received $720.00
Estimated Annual Active Discharge Fee $200.00
Estimated Post-Discharge Monitoring Fee $100.00

1 The actual Annual Active Discharge Fee will be calculated using the fee schedule in effect at the time the annual fee is assessed per California Code of Regulations, Title 23, section 2200(a)(3).

RESPONSIBILITY FOR REQUESTING A NOTICE OF COMPLETION OF DISCHARGES LETTER

Upon the completion of the Project, the Applicant is responsible for contacting the Water Board to request a Notice of Project Complete Letter, which will be required to finalize the Project and discontinue fee assessments.

CEQA COMPLIANCE

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

CALIFORNIA ECOATLAS

It has been determined through regional, state, and national studies that tracking of mitigation/restoration projects must be improved to better assess the performance of these projects, following monitoring periods that last several years. In addition to effectively carry
out the State’s Wetlands Conservation Policy of no net loss to wetlands, the State needs to closely track both aquatic habitat losses and mitigation/restoration project success. Therefore, the Applicant is required to provide Project information related to impacts and mitigation/restoration measures (see Additional Conditions of this WQC) to EcoAtlas using the Project Tracker website, http://ptrack.ecoatlas.org. Instructions regarding how to request a user name and password, and how to upload Project information can also be found at the Project Tracker website. Additional information regarding the Water Board’s requirement can be found at: http://www.waterboards.ca.gov/lahontan/water_issues/programs/clean_water_act_401/index.shtml. Additional information regarding EcoAtlas can be found at www.ecoatlas.org.

WATER QUALITY CONTROL PLAN WASTE DISCHARGE PROHIBITIONS

The Water Board has adopted a Water Quality Control Plan for the Lahontan Region (Basin Plan), as amended. Chapter 4.1 specifies the following discharge prohibitions:

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

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

The project involves a threaten discharge of sediment associated with the activity of removing and reconstructing a rock revetment wall that could violate the prohibitions cited, above. An exemption to the discharge prohibitions is allowed as described in the Basin Plan and discussed below.

EXEMPTION CRITERIA AND FINDINGS

1. The Water Board may grant exemptions to Prohibition 1, above, provided the following specific criteria are satisfied:

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

      Discharges of waste will be controlled by best management practices (BMPs), such that beneficial uses will not be adversely affected. Sediment control measures will include temporary erosion control fencing and fiber rolls.

   b. There is no reasonable alternative to the waste discharge.

      The purpose of the Project is to reconstruct an 18-linear foot segment of an existing rock rip rap retention wall to eliminate further degradation of the structure and upland slope erosion, and to protect an adjacent concrete revetment wall,
which also protects the slope. Due to the location of the existing rock rip-rap retention wall there is no reasonable alternative that would avoid the potential waste discharge.

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

The Applicant will employ BMPs, including erosion and sediment controls. Construction will be limited to minimize areas of exposed soil. Applicable BMPs will minimize potential adverse impacts to water quality and beneficial uses.

2. The Water Board may grant exemptions to Prohibition 2, above, for the repair, replacement, or relocation of existing structures provided that the repair, replacement or relocation does not reduce or adversely affect the existing floodplain function. Prior to granting any such exemption, the Water Board shall require demonstration by the proposed discharger that all applicable and practicable control and mitigation measures have been incorporated into the project such that potential adverse impacts to water quality and beneficial uses are the minimum necessary to complete the project.

The Project will incorporate improvements to an existing rock rip-rap retention wall along the bank of Gregory Creek. The Project will not adversely affect the function of the floodplain due to the limited nature of impacts. Control measures as noted in 1.c., above, have been incorporated to reduce water quality impacts to the minimum necessary to complete the Project.

**EXEMPTION GRANTED**

Resolution No. R6T-2015-0038 delegates to the Executive Officer the authority to grant exemptions to Basin Plan waste discharge prohibitions when the Basin Plan exemption conditions are met. As demonstrated, above, the Project meets the conditions in the Basin Plan for granting an exemption. A draft notice of exemption posted on the Water Board website and distributed through an interested-persons mailing list allowed at least 10 days for comments to be submitted. The Project is hereby granted an exemption to the above-cited waste discharge prohibition(s).

**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 WQC under section 401 for the Project.
The Applicant has applied for USACOE authorization to proceed under Nationwide Permit No.13, 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 WQC:

1. This WQC 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 WQC 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 WQC 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 WQC 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 WQC application that was submitted to the Water Board. Deviation from the Project description constitutes a violation of the conditions upon which this WQC was granted. Any significant changes to this Project that would have a significant or material effect on the findings, conclusions, or conditions of this WQC, 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 WQC and civil or criminal liability.
7. The Water Board may add to or modify the conditions of this WQC 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 WQC, 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 WQC 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 WQC, 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 WQC.

Additional Conditions

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

1. **Prior to initiating construction of the Project, you must provide documentation to the Water Board** whether there are any subsurface utilities in the area of construction. This can be accomplished by: (1) contacting all utilities (both public and private) that provide service in the area and documenting these contacts; (2) contacting Underground Service Alert, and documenting this contact; or (3) some other equivalent affirmative action to determine and document whether or not there are any subsurface utilities in the area of construction. The area of construction is defined as any area within the project boundaries where there will be excavation, construction of borings, or driving of piles or other structures into the subsurface. If subsurface utilities are located in the construction area, you must also provide a utility avoidance plan that will be followed during construction.

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. 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.

4. 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 WQC, 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. 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 Project activities are located or in which records are kept.
   b. Access to copy any record required to be kept under the terms and conditions of this WQC.
   c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this WQC.

7. The Applicant must ensure that the Contractor employs necessary measures to prevent the introduction or spread of noxious/invasive weeds within the Project and staging areas. These measures may include 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.

8. By December 1, 2017, the Applicant is required to upload Project information (all information fields required by EcoAtlas), including a project map (either using upload or draw polygon features) to the following website: http://ptrack.ecoatlas.org/. Amendments and monitoring reports associated with the Project must also be updated/uploaded on EcoAtlas (using the “Files and Links” tab under “Projects” in EcoAtlas).

**Enforcement**

1. In the event of any violation or threatened violation of the conditions of this WQC, 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 WQC.

2. In response to a suspected violation of any condition of this WQC, the State Water Board or the Water Board may require the holder of any permit or license subject to this WQC 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 WQC, the Water Board may add to or modify the conditions of this WQC as appropriate to ensure compliance.

Section 401 Water Quality Certification Requirements Granted

I hereby issue this WQC 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 WQC.

Except insofar as may be modified by any preceding conditions, all WQC 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, 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. Please contact me at (530) 542-5412 (patty.kouyoumdjian@waterboards.ca.gov), or Dale Payne, Environmental Scientist, 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.

for
PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

Enclosure: CEQA Notice of Exemption

cc: See next Page
cc: Gavin Ball
   Joe Morgan, Wetlands Regulatory Office, U.S. Environmental Protection Agency
   Bill Orme, State Water Resources Control Board, Division of Water Quality
   Kaitlyn Pascus, U.S. Army Corps of Engineers, Sacramento District, Sacramento
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