

Lahontan Regional Water Quality Control Board

September 4, 2015

Jeff Ulrich, District Ranger
USFS – Humboldt-Toiyabe National Forest
Bridgeport Ranger District
P.O. Box 1000
Bridgeport, CA 93517

BOARD ORDER NO. R6T-2015-0052, CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION FOR THE WHEELER CREEK HABITAT IMPROVEMENT PROJECT, MONO COUNTY, WDID NO. 6A261508006

The California Regional Water Quality Control Board, Lahontan Region (Water Board) received a complete Clean Water Act (CWA) Section 401 Water Quality Certification (WQC) application and application filing fee from the U.S. Forest Service – Humboldt-Toiyabe National Forest (Applicant) for the Wheeler Creek Habitat Improvement Project (Project) in Mono County. The original application was received on July 17, 2015. Water Board staff suggested improvements to that application that were addressed by the Applicant, and a revised application was deemed complete on August 25, 2015. This Order for WQC hereby assigns this Project the following reference number: Waste Discharger Identification (WDID) No. 6A261508006. 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 (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 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	6A261508006
Applicant	Jeff Ulrich USFS – Humboldt-Toiyabe National Forest Bridgeport Ranger District P.O. Box 1000 Bridgeport, CA 93517
Agent	Sally Champion Humboldt-Toiyabe National Forest 1536 South Carson Street Carson City, NV 89701

KIMBERLY COX, CHAIR | PATTY Z. KOUYOUMDJIAN, EXECUTIVE OFFICER

Table of Project Information Continued:

Project Name	Wheeler Creek Habitat Improvement Project
Project Purpose and Description	The purpose of the Project is to improve habitat for bi-state sage grouse through implementation of stream and meadow restoration measures in and immediately adjacent to Wheeler Creek. The Project involves work at over two dozen locations along a 1.5 mile reach of Wheeler Creek. The Project restoration treatments include: headcut stabilization using boulders, rock, or vegetation; biotechnical methods such as willow staking and fencing; stream bank reshaping; and new channel creation. Work will be implemented primarily with hand crews, however small mechanized equipment will be used at some locations. Installation of appropriate Best Management Practices will minimize potential impacts.
Project Type	Ecological Restoration
Project County	Mono
Project Address or other Locating Information	Wheeler Creek is located on National Forest lands approximately 12 miles northwest of Bridgeport, CA and 1.5 miles south of the Hwy 395/Hwy 108 junction (Sonora Junction)
Location Latitude/Longitude	Latitude: 38.343 Longitude: -119.426 (center) 38.344 -119.437 38.335 -119.428
Hydrologic Unit	Upper West Walker River Hydrologic Unit 631.40
Overall Project Area	Project disturbance area 0.8 acres; the stream corridor from upstream site to the downstream site is approximately 15 acres
Receiving Water(s) Name	Wheeler Creek (tributary to Hot Creek and West Walker River)
Water Body Type(s)	Surface Water
Designated Beneficial Uses	MUN, AGR, GWR, FRSH, REC-1, REC-2, COMM, COLD, WILD, RARE, SPWN
Potential Water Quality Impacts	Discharge of sediments and suspended solids during grading and fill activities related to filling of incised channels, headcut stabilization, and new channel creation.
Area of Water(s) within the Overall Project Area	1 acre

Table of Project Information Continued:

Impacts of Fill to Waters of the State, including WOUS.	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
Stream Channel	Acres						
	Linear Feet				670		
Wetland	Acres						
Riparian Zone	Acres						
	Linear Feet						
Federal Permit(s)	The Applicant has applied for U.S. Army Corps of Engineers (USACE) authorization to proceed under a Nationwide Permit 27, pursuant to CWA section 404.						
Non-Compensatory Mitigation	Implementation of sediment and erosion control best management practices, and revegetation upon Project completion. The project will occur when flows are seasonally low and will divert flow around work areas.						
Compensatory Mitigation	None required. The Project purpose is meadow and riparian area restoration.						
Application Fee	\$200						
Estimated Annual Active Discharge Fee ¹	\$200 (An annual active discharge fee of \$200 will be assessed each fiscal year beginning July 1 st until Applicant receives a Notice of Completion of Discharges Letter from the Lahontan Water Board.)						
Estimated Post-Discharge Monitoring Fee ¹	\$100 (An annual fee of \$100 will be assessed each fiscal year beginning July 1 during the Post-Discharge Monitoring Period until the Water Board issues a Notice of Project Complete Letter to the discharger.)						
Fees Received	\$200						

¹The actual Annual Active Discharge Fee and Post-Discharge Monitoring 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).

CEQA COMPLIANCE

The Lahontan Water Board has determined that this Project is exempt from the California Environmental Quality Act (CEQA, Public Resources Code section 21000 et seq.). In accordance with section 15333, the basis for CEQA exemption is “Small Habitat Restoration Projects.” A Notice of Exemption will be filed with the State Clearinghouse concurrently with issuing this Order.

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 USACE authorization to proceed under Nationwide Permit No. 27 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 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 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 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.

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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 Wildlife 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. Water Board staff must be notified 48 hours prior to commencement of ground disturbance.
2. All Best Management Practices must be implemented as described in the Project application.
3. 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.
4. An emergency spill kit must be at the Project site at all times.
5. Water Board staff must be permitted to enter the Project site and sample any discharge.
6. No debris, cement, concrete (or wash water therefrom), oil or petroleum products are 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 any areas adjacent to the work area where such material may be transported into waters of the state.
7. 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 Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. Pursuant to Water Code 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.
8. The Applicant must prevent the introduction or spread of noxious/invasive organisms within the Project and staging area. The control measures may include activities such as cleaning 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.

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9. All surface waters, including ponded waters, must be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water in accordance with the Application for CWA Section 401 WQC.
10. By **December 31, 2015**, submit to this office documentation that demonstrates the Project has been constructed pursuant to the plans reviewed by this office. This report must also:
 - a) Provide baseline vegetative monitoring data of all revegetated and wetland restoration areas.
 - b) Identify vegetative monitoring data that will be used to evaluate revegetation and habitat restoration areas.
 - c) Identify transects, photo points, or other methods that will be used to evaluate revegetation and floodplain habitat restoration success efforts.
11. By **December 31, 2016**, submit to this office the results of the Year 1 revegetation and restoration monitoring.
12. By **December 31, 2017**, submit to this office the results of the Year 2 revegetation and restoration monitoring.
13. By **December 31, 2018**, submit to this office the results of the Year 3 revegetation and restoration monitoring.

Enforcement

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall 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.

In response to a suspected violation of any condition of this certification, the State Water Board or 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 shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

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.

CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION GRANTED

I hereby issue this Order certifying that any discharge from the referenced Project will comply with the applicable provisions of 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) of the CWA, 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.

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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 WQC order and (b) compliance with all applicable requirements of the Basin Plan. The Water Board will consider requests to cease required annual reporting once all revegetated and restored sites satisfy the success criteria for at least one year.

If you have any questions or comments regarding this permit, please contact Laurie Scribe, Environmental Scientist, at laurie.scribe@waterboards.ca.gov (530-542-5465), or Doug Cushman, Chief, Non-Point Source Unit, at douglas.cushman@waterboards.ca.gov (530-542-5417).

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. or Facility Name in the Subject Line.

for 
PATTY Z. KOUYOUMDJIAN
EXECUTIVE OFFICER

cc (via email): Sally Champion, Humboldt-Toiyabe National Forest
Stephanie Heller, Lake Tahoe Basin Management Unit
Jordan Krug, Corps of Engineers, Sacramento District
Heidi Sickler, California Dept. of Fish and Wildlife
Bill Orme, State Water Resources Control Board, Division of Water Quality
Jason Brush, Wetlands Regulatory Office (WTR-8), US EPA, Region 9