
Lahontan Regional Water Quality Control Board

January 27, 2021

WDID 6A182005003

Lassen County Public Works
ATTN: Larry Millar
707 Nevada Street, Suite 4
Susanville, CA 96130

Board Order No. R6T-2021-0001, Granting Clean Water Act Section 401 Water Quality Certification, Hackstaff Road Bridges Project, Lassen County

Lahontan Regional Water Quality Control Board (Lahontan Water Board) staff has received a complete Clean Water Act (CWA) section 401 Water Quality Certification (WQC) application, and application filing fee, from Lassen County Public Works (Applicant) for the Hackstaff Road Bridges Project (Project) in Lassen County. The application was received on March 25, 2020 and deemed complete on December 17, 2020. This WQC hereby assigns this Project Waste Discharge Identification (WDID) No. 6A182005003. Please use this reference number in all future correspondence regarding this Project.

Any person aggrieved by this action of the Lahontan Water Board may petition the State Water Resources Control Board (State Water Board) to reconsider this WQC in accordance with Water Code section 13320 and California Code of Regulations (CCR), title 23, sections 2050 and 3867. The State Water Board must receive the petition within thirty (30) days after the date of this WQC, by 5:00 p.m. on the thirtieth day except 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 the [Water Quality Petitions](http://www.waterboards.ca.gov/public_notices/petitions/water_quality/) page: (http://www.waterboards.ca.gov/public_notices/petitions/water_quality/) or will be provided upon request.

PROJECT INFORMATION

Project details are listed in the following tables.

General Project Information

Category	Data
Applicant	Larry Millar Lassen County Public Works 707 Nevada Street, Suite 4 Susanville, CA, 96130 530-251-8288 lmillar@co.lassen.ca.us
Agent	Taraneh Emam ECORP Consulting, Inc. 2525 Warren Drive Rocklin, CA 95677 916-782-9100 temam@ecorpconsulting.com
Project Name	Hackstaff Road Bridges
Project Purpose and Description	The purpose of the Project is to replace two bridges that span Long Valley Creek and Long Valley Creek Overflow Channel on Hackstaff Road. These bridges have been in place for over 50 years and have been determined by Caltrans to be structurally deficient by both State and Federal standards. Permanent impacts to surface waters will occur as a result of the placement of new bridge abutments and road, in addition to use of a sediment basin for dewatering. This project will permanently impact 0.138 acres due to permanent loss of area from bridge footings and ecological degradation of the wetland adjacent to the creek overflow channel. The project will temporarily impact 0.37 acres of Waters of the State from the placement of sheet piling in Long Valley Creek and the overflow channel as well as construction access through riparian areas. The temporarily impacted areas will be restored to pre-Project conditions. See Enclosure 1 for a map showing Project impacts.
Project Type	Transportation
Project Address or other Locating Information	Bridge 7C-12 and 7C-81 Hackstaff Road, Doyle, Lassen County
Project Location Latitude/Longitude	40.03694444, -120.09638889
Hydrologic Unit	637.20 – Honey Lake
Total Project Size	9.47 acres
Receiving Water Name	Long Valley Creek
Water Body Types	Stream, wetlands, riparian zones
Beneficial Uses	AGR, GWR, FRSH, REC-1, REC-2, COMM, WARM, COLD, SAL, WILD, FLD

Category	Data
Potential Water Quality Impacts	Sediment and other construction-related pollutants entering surface waters
Federal Permit	The Applicant has applied for U.S. Army Corps of Engineers (USACE) authorization to proceed under Nationwide Permit 14 Linear Transportation Projects, pursuant to CWA section 404.
Non-Compensatory Mitigation	Sheet piling will be placed around bridge footings to be removed and reconstructed to isolate work areas. Equipment will not be working within the creek and creek overflow. A dewatering system will be in place for the construction of the piling that is in the center of bridge 7C-81. A catchment basin will be placed in uplands to avoid sedimentation in the creek. Other controls to mitigate impacts to surface waters will be implemented in accordance with the statewide Construction General Permit (2009-0009-DWQ)
Compensatory Mitigation	Permanent wetland and stream channel impacts will be mitigated through the payment of in-lieu fees to the National Fish and Wildlife Foundation at a 2:1 (mitigation: impact) ratio. Permanent impacts to riparian areas from the new bridge abutments will be mitigated through revegetation of riparian habitat at the existing abutments at a 1:1 ratio. Temporarily impacted stream channel and riparian areas will be restored to pre-Project conditions in accordance with an approved restoration plan.
Application Fee and Fee Code	\$1,949 – Fee Code 84
Fees Received	\$1,949
Estimated Annual Fee ¹	\$1,638 (annual fee assessed each fiscal year or portion of a fiscal year during which discharges occur until the Lahontan Water Board issues a Notice of Project Complete Letter to the Applicant).
¹ The actual Annual 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).	

Impacts of Fill and Excavation to Waters of the State

Water-body Type	Temporary Impacts			Permanent Physical Loss of Area			Permanent Degradation of Ecological conditions		
	Acres	Cubic Yards	Linear Feet	Acres	Cubic Yards	Linear Feet	Acres	Cubic Yards	Linear Feet
Riparian Zone	0.050	0	35	0.034		50			
Stream Channel	0.320	0	35	0.072	1993	50			

Wetland				0.018			0.048		
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Mitigation for Temporary Impacts

Aquatic Resource Type	Units	Establishment	Re-establishment	Rehabilitation	Enhancement	Preservation
Riparian Zone	Acres		0.050			
	Linear Feet		35			
Stream Channel	Acres		0.320			
	Linear Feet		35			

Mitigation for Permanent Degradation of Ecological Condition

Aquatic Resource Type	Units	Establishment	Re-establishment	Rehabilitation	Enhancement	Preservation
Wetland	Acres		0.096			

Mitigation for Permanent Physical Loss of Area

Aquatic Resource Type	Units	Establishment	Re-establishment	Rehabilitation	Enhancement	Preservation
Riparian Zone	Acres		0.034			
	Linear Feet		50			
Stream Channel	Acres		0.144			
	Linear Feet		50			
Wetland	Acres		0.036			

CEQA COMPLIANCE

The Lahontan 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 (Enclosure 2) was 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) (<http://ptrack.ecoatlas.org>). Instructions and how to request a username and password can also be found at the Project Tracker website.

More information about the Water Board's [Clean Water Act \(CWA\) Section 401](http://www.waterboards.ca.gov/lahtontan/water_issues/programs/clean_water_act_401/index.shtml) requirements can be found at: (http://www.waterboards.ca.gov/lahtontan/water_issues/programs/clean_water_act_401/index.shtml). More information about EcoAtlas can be found at: www.ecoatlas.org.

SECTION 401 WATER QUALITY CERTIFICATION

Authority

CWA section 401 (33 U.S.C §1341) requires that any applicant for a federal license or 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 the permitting agency a certification from the state that the discharge will be in compliance with applicable water quality standards of the state in which the discharge will originate. The Applicant submitted a complete application and the fees required for WQC under CWA section 401 for the Project. The Applicant has applied for USACE authorization to proceed under Nationwide Permit No. 14 pursuant to CWA section 404. CCR, title 23, section 3831(e) grants the Lahontan 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

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 through section 3869.
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 WQC is 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 (CWC) .

5. The Project must be constructed and operated in accordance with that described in the WQC application and supporting documentation that was submitted to the Lahontan Water Board. Deviation from the Project 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 Lahontan 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 CWC 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 CWC 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 USC 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, the following additional conditions are requirements of this WQC:

1. Within thirty (30) days from the date of issuance of this Order for WQC, 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 to and monitoring reports associated with the Project must be updated on EcoAtlas (using the "Files and Links" tab under "Projects" in EcoAtlas) in addition to any other reporting required as part of this WQC.

2. Flowing waters shall be diverted away from areas undergoing grading, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving water. At least 30 days prior to in-stream activities, the Applicant shall develop and submit a Diversion and Dewatering Plan to Lahontan Water Board staff for review and written acceptance. The plan shall include the proposed method and duration of diversion and dewatering activities, erosion and sediment controls, and a map or drawing indicating the locations of diversion and discharge points as well as sampling locations. Upstream and downstream monitoring for pH and turbidity shall be monitored on a daily basis during the first week of diversion activities, and then on a weekly basis, thereafter, until in-stream work is complete. Monitoring results shall be provided to Lahontan Water Board staff upon request. Diversion activities shall not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters.
3. Prior to initiating Project-related work, the Applicant must provide documentation to the Lahontan Water Board that they have purchased 0.280 aquatic resource credits from the National Fish and Wildlife Foundation's (NFWF) Sacramento District California In-Lieu Fee Program for the Modoc Aquatic Resources Watershed Service Area to mitigate for 0.138 acres of permanent impacts to waters of the State from the Project.
4. Within 72 hours prior to the commencement of the Project, the Applicant must inform Lahontan Water Board staff by email with a Project implementation schedule.
5. Beginning on December 15 of the year the Project is constructed and continuing until success criteria outlined in the Restoration Plan dated November 25, 2020 have been met, the Applicant must provide an annual monitoring report, due on December 15 of each year. The annual report must include photo points and other methods described in Restoration Plan. If annual monitoring indicates a lack of progress towards meeting success criteria and/or signs of erosion, an adaptive monitoring plan must be provided with that year's annual report for review and written acceptance by Lahontan Water Board staff. The adaptive monitoring plan must describe actions taken and/or planned activities for the upcoming year to remediate issues identified.
6. To document completion of the Project, the Applicant must submit a Project Completion Report to the Lahontan Water Board within 60 days following completion of the Project, including successful completion of all required mitigation and associated monitoring and reporting. The Project Completion Report should include the following, at minimum: (1) a summary of the Project

activities including: the date(s) those activities were performed, identification of work locations, techniques used (hand tools, mechanized equipment, etc.), and activities related to construction storm water controls and the BMPs used; (2) a description of the areas of temporary and permanent disturbance to waters of the state and volume of rip-rap and backfill/cover used (cubic yards); (3) a summary of any activities that deviated from those described in the original application and supporting documents; and (4) Photo-documentation of completed project.

7. Sheet piling must be used during Project implementation to effectively contain and isolate waters from Project-related excavation and fill and prevent re-suspension of sediment.
8. The Applicant must stabilize from erosion all areas of temporary impacts to waters of the State and all other areas of temporary upland disturbance which could result in a discharge or a threatened discharge to waters of the State.
9. The Applicant must not conduct Project activities within waters of the State during a rainfall event, or during any period when site conditions would lead to erosion that would violate receiving water objectives. The Applicant must provide materials necessary to prevent water degradation on site and ensure that all stabilization procedures are in place and effective prior to any rainfall event.
10. All excess sediment excavated from the site that is not used on-site will be removed from the site and stockpiled in an upland location so as to not be transported by wind or water into surface water. An adequate combination of sediment and erosion control BMPs must be implemented and maintained, as needed, to temporarily stabilize stockpiled soils until such time that they are reused and/or permanently stabilized.
11. This WQC does not authorize emergency repair activities. The Applicant is required to apply for separate authorization to perform emergency repairs should that be necessary.
12. Construction equipment vehicles and equipment must be monitored for leaks, and proper BMPs must be implemented should leaks be detected, or the vehicles/equipment must be removed from service, if necessary, to protect water quality.
13. Debris, cement, concrete (or wash water therefrom), oil or other petroleum products (e.g. asphalt grindings) must not be allowed to enter 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.

14. The Applicant must immediately notify Lahontan 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 Lahontan Water Board within two weeks of occurrence. The written notification must identify the adverse condition, describe the actions completed or necessary to remedy the condition, and specify a timetable, subject to any modifications by Lahontan Water Board staff, for the remedial actions, if not already accomplished.
15. An "Annual Fee" will be assessed each year this WQC remains in "Active" status. The actual Annual 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). The Annual Fee will apply each fiscal year or portion of fiscal year until the Applicant submits a Project Completion Report (see Additional Condition No. 6 above) and Lahontan Water Board staff issues a Notice of Project Complete Letter to the Applicant.
16. An emergency spill kit must always be at the Project site during the Project.
17. The Applicant must permit Lahontan 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 WQC.
 - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this WQC.
 - d. Sampling of any discharge or surface water covered by this WQC.
18. The Applicant must prevent the introduction or spread of noxious/invasive organisms within the Project and staging areas. The control 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.
19. The Applicant must maintain at the Project site a copy of this WQC and a copy of the complete WQC application provided to the Lahontan Water Board so as to be available at all times to site operating personnel and agencies.

20. Wetland areas near project area and staging area that, according to the application, will be avoided must be protected by colored construction fencing or equivalent barriers at all times during Project implementation.
21. The Applicant is responsible for informing any contractors of the specific conditions contained in this WQC.

Enforcement

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.

In response to a suspected violation of any condition of this WQC, the State Water Board or the Lahontan 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 Lahontan 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.

In response to any violation of the conditions of this WQC, the Lahontan 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. A copy of State Water Board Order No. 2003-0017-DWQ is enclosed for your reference (Enclosure 3).

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. If you have any questions regarding this matter, please contact Sabrina Rice, Scientific Aid, at (530)

542-5578 (sabrina.rice@waterboards.ca.gov) or Doug Cushman, Sr. Water Resource Control Engineer, at (530) 542-5417 (douglas.cushman@waterboards.ca.gov).

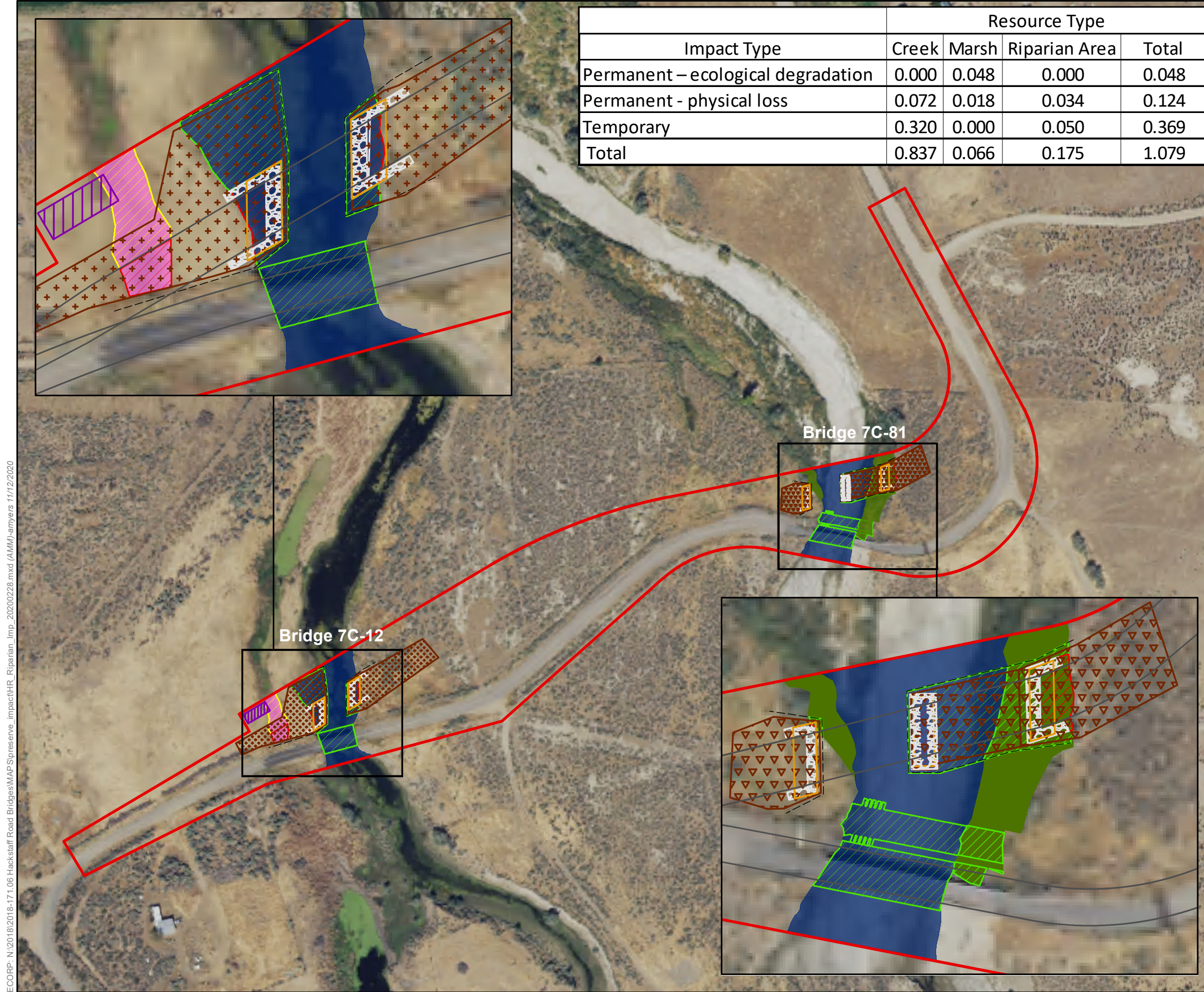
Electronic document submittal is required. Please send all future correspondence regarding this Project to the Lahontan Water Board's email address at lahontan@waterboards.ca.gov and include your WDID No. and Project/Facility Name in the subject line.



MICHAEL R. PLAZIAK
EXECUTIVE OFFICER

Enclosures: (1) Site Plan
(2) CEQA Notice of Exemption
(3) SWRCB Order No. 2003-0017-DWQ

cc: Dave Ernaga, Lassen County Public Works
Taraneh Emam, ECORP Consulting
Joe Morgan, USEPA
Elizabeth Payne, Division of Water Quality
Matthew Roberts, USACE
Lassen: Region 1, CDFW
Doug Cushman, Lahontan Water Board
Liz van Diepen, Lahontan Water Quality Board
Sabrina Rice, Lahontan Water Board



Impact Type	Resource Type			
	Creek	Marsh	Riparian Area	Total
Permanent – ecological degradation	0.000	0.048	0.000	0.048
Permanent - physical loss	0.072	0.018	0.034	0.124
Temporary	0.320	0.000	0.050	0.369
Total	0.837	0.066	0.175	1.079

Map Features

Project Boundary (9.47 acres)

Waters of the U.S. (0.904 total acres)

Creek (0.837 acres)

Marsh (0.066 acres)

Riparian Areas

Riparian Areas (0.175 acres)

Impact Type

Temporary

Permanent – ecological degradation

Permanent – physical loss

Site Plan

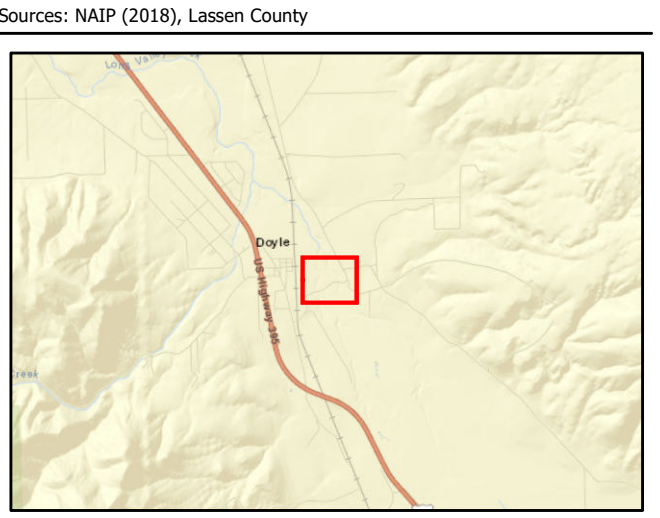
New Bridge Excavation Area

New Bridge Footing

Riprap

Sediment Basin

Temporary Sheet Piling



Notice of Exemption

To: Office of Planning and Research
P.O. Box 3044
1400 Tenth Street, Room 222
Sacramento, CA 95812-3044

From: Lahontan Regional Water Quality
Control Board
2501 Lake Tahoe Blvd.
South Lake Tahoe, CA 96150

Project Title: Hackstaff Bridges Project

Project Location - Specific: 40.03684444, -120.09638889, Bridge 7C-12 and 7C-81
Hackstaff Road, Doyle, CA Lassen County 96109

Project Location – City: Doyle **Project Location - County:** Lassen County

Description of Project: The replacement of two bridges in the same location they are currently located.

Name of Public Agency Approving Project: Lahontan Regional Water Quality Control Board

Name of Person or Agency Carrying Out Project: Lassen County Public Works

Exempt Status: (check one)

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption. State type and section number: Replacement or Reconstruction, Sec. 15302
- ☐ Statutory Exemptions. State code number: Code Number, if applicable

Reasons why project is exempt:


The RWQCB, Lahontan Region finds that this project, as permitted, will not have a significant effect on the environment and shall, therefore, be exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15302, Replacement or Reconstruction.

Responsible Agency Contact Person: Sabrina Rice

Telephone: (530) 542-5578

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project?
☐ Yes ☐ No

Signature:  Date: January 27, 2021 Title: Executive Officer,
Lahontan Region

☒ Signed by Responsible Agency

☐ Signed by Applicant

Date received for filing at OPR: _____

STATE WATER RESOURCES CONTROL BOARD

WATER QUALITY ORDER NO. 2003 - 0017 - DWQ

STATEWIDE GENERAL WASTE DISCHARGE REQUIREMENTS FOR DREDGED OR FILL DISCHARGES THAT HAVE RECEIVED STATE WATER QUALITY CERTIFICATION (GENERAL WDRs)

The State Water Resources Control Board (SWRCB) finds that:

1. Discharges eligible for coverage under these General WDRs are discharges of dredged or fill material that have received State Water Quality Certification (Certification) pursuant to federal Clean Water Act (CWA) section 401.
2. Discharges of dredged or fill material are commonly associated with port development, stream channelization, utility crossing land development, transportation water resource, and flood control projects. Other activities, such as land clearing, may also involve discharges of dredged or fill materials (e.g., soil) into waters of the United States.
3. CWA section 404 establishes a permit program under which the U.S. Army Corps of Engineers (ACOE) regulates the discharge of dredged or fill material into waters of the United States.
4. CWA section 401 requires every applicant for a federal permit or license for an activity that may result in a discharge of pollutants to a water of the United States (including permits under section 404) to obtain Certification that the proposed activity will comply with State water quality standards. In California, Certifications are issued by the Regional Water Quality Control Boards (RWQCB) or for multi-Region discharges, the SWRCB, in accordance with the requirements of California Code of Regulations (CCR) section 3830 et seq. The SWRCB's water quality regulations do not authorize the SWRCB or RWQCBs to waive certification, and therefore, these General WDRs do not apply to any discharge authorized by federal license or permit that was issued based on a determination by the issuing agency that certification has been waived. Certifications are issued by the RWQCB or SWRCB before the ACOE may issue CWA section 404 permits. Any conditions set forth in a Certification become conditions of the federal permit or license if and when it is ultimately issued.
5. Article 4, of Chapter 4 of Division 7 of the California Water Code (CWC), commencing with section 13260(a), requires that any person discharging or proposing to discharge waste, other than to a community sewer system, that could affect the quality of the waters of the State,¹ file a report of waste discharge (ROWD). Pursuant to Article 4, the RWQCBs are required to prescribe waste discharge requirements (WDRs) for any proposed or existing discharge unless WDRs are waived pursuant to CWC section 13269. These General WDRs fulfill the requirements of Article 4 for proposed dredge or fill discharges to waters of the United States that are regulated under the State's CWA section 401 authority.

¹ "Waters of the State" as defined in CWC Section 13050(e)

6. These General WDRs require compliance with all conditions of Certification orders to ensure that water quality standards are met.
7. The U.S. Supreme Court decision of *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (the SWANCC decision) called into question the extent to which certain “isolated” waters are subject to federal jurisdiction. The SWRCB believes that a Certification is a valid and enforceable order of the SWRCB or RWQCBs irrespective of whether the water body in question is subsequently determined not to be federally jurisdictional. Nonetheless, it is the intent of the SWRCB that all Certification conditions be incorporated into these General WDRs and enforceable hereunder even if the federal permit is subsequently deemed invalid because the water is not deemed subject to federal jurisdiction.
8. The beneficial uses for the waters of the State include, but are not limited to, domestic and municipal supply, agricultural and industrial supply, power generation, recreation, aesthetic enjoyment, navigation, and preservation and enhancement of fish, wildlife, and other aquatic resources.
9. Projects covered by these General WDRs shall be assessed a fee pursuant to Title 23, CCR section 3833.
10. These General WDRs are exempt from the California Environmental Quality Act (CEQA) because (a) they are not a “project” within the meaning of CEQA, since a “project” results in a direct or indirect physical change in the environment (Title 14, CCR section 15378); and (b) the term “project” does not mean each separate governmental approval (Title 14, CCR section 15378(c)). These WDRs do not authorize any specific project. They recognize that dredge and fill discharges that need a federal license or permit must be regulated under CWA section 401 Certification, pursuant to CWA section 401 and Title 23, CCR section 3855, et seq. Certification and issuance of waste discharge requirements are overlapping regulatory processes, which are both administered by the SWRCB and RWQCBs. Each project subject to Certification requires independent compliance with CEQA and is regulated through the Certification process in the context of its specific characteristics. Any effects on the environment will therefore be as a result of the certification process, not from these General WDRs. (Title 14, CCR section 15061(b)(3)).
11. Potential dischargers and other known interested parties have been notified of the intent to adopt these General WDRs by public hearing notice.
12. All comments pertaining to the proposed discharges have been heard and considered at the November 4, 2003 SWRCB Workshop Session.
13. The RWQCBs retain discretion to impose individual or general WDRs or waivers of WDRs in lieu of these General WDRs whenever they deem it appropriate. Furthermore, these General WDRs are not intended to supersede any existing WDRs or waivers of WDRs issued by a RWQCB.

IT IS HEREBY ORDERED that WDRs are issued to all persons proposing to discharge dredged or fill material to waters of the United States where such discharge is also subject to the water quality certification requirements of CWA section 401 of the federal Clean Water Act (Title 33 United States Code section 1341), and such certification has been issued by the applicable RWQCB or the SWRCB, unless the applicable RWQCB notifies the applicant that its discharge will be regulated through WDRs or waivers of WDRs issued by the RWQCB. In order to meet the provisions contained in Division 7 of CWC and regulations adopted thereunder, dischargers shall comply with the following:

1. Dischargers shall implement all the terms and conditions of the applicable CWA section 401 Certification issued for the discharge. This provision shall apply irrespective of whether the federal license or permit for which the Certification was obtained is subsequently deemed invalid because the water body subject to the discharge has been deemed outside of federal jurisdiction.
2. Dischargers are prohibited from discharging dredged or fill material to waters of the United States without first obtaining Certification from the applicable RWQCB or SWRCB.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 19, 2003.

AYE: Arthur G. Baggett, Jr.
 Peter S. Silva
 Richard Katz
 Gary M. Carlton
 Nancy H. Sutley

NO: None.

ABSENT: None.

ABSTAIN: None.


Debbie Irvin
Clerk to the Board