



**California Regional Water Quality Control Board  
North Coast Region**

**John W. Corbett, Chairman**



**Linda S. Adams**  
Secretary for  
Environmental Protection

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**Arnold  
Schwarzenegger**  
Governor

October 23, 2007

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In the Matter of

**Water Quality Certification**

for the

**California Department of Fish and Game, Fay Slough Wildlife Area Levee Repair  
Project  
WDID NO. 1B03131WNHU**

APPLICANT: California Department of Fish and Game  
RECEIVING WATER: Humboldt Bay  
HYDROLOGIC UNIT: Eureka Plain Hydrologic Unit No. 110.00  
COUNTY: Humboldt  
FILE NAME: DFG, Fay Slough Wildlife Area Levee Repair Project

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BY THE EXECUTIVE OFFICER:

1. On July 18, 2007, the California Department of Fish and Game (Applicant) filed an application for water quality certification (certification) under section 401 of the Clean Water Act (33 U.S.C. § 1341) with the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) for activities related to storm damage to two sections of levee that border the Fay Slough Wildlife Area. The project location is two miles north of the City of Eureka, Humboldt County (40.802619N/124.104625 W). The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on September 26, 2007, and posted information describing the project on the Regional Water Board's website. We did not receive any public comments on this project.
2. The project involves lands which are managed by the applicant. The failed levees protect approximately 504 acres of the Fay Slough Wildlife Area and surrounding private property from salt water intrusion. The 2005/2006 winter storm event damaged two sections of levee; section one is located in the southwest portion of the property. Section two lies to the southeast. The repair of section 1 (465'x3'x10') involves approximately 494 cubic yards of engineered backfill on the interior part of the levee. The backfill will be transported by dump truck on existing access roads located on top of existing levees. Fill will be obtained from an upland stockpile remaining from a previous restoration project. The applicant plans to remove vegetation from the levee using an excavator; the material will be transported by

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dump truck to an off site location outside of ACOE jurisdiction. Vegetation will be stockpiled on existing grassland; once dry, the vegetation will be spread on the grassland.

3. The second section of levee involves repair of a 165-foot portion, by removing approximately 2 feet of material from all surfaces of the section. The applicant proposes to repair the section with approximately 342 cubic yards of engineered backfill. The project will result in approximately 0.03 acres (1,395 sq.ft.) of fill for section 1 and approximately 0.015 acres (660 sq. ft.) for section 2. The original levee footprint will not be expanded.
4. Compensatory mitigation is not required for the proposed project. Non compensatory mitigation for this project includes the use of Best Management Practices for sediment and turbidity control and the use of heavy equipment near a waterway. The applicant proposes to complete the project during the dry season, ceasing activities if inclement weather is forecast. The applicant proposes to seed the repaired sections of the levees with standard erosion control mix.
5. The applicant has applied for authorization from the United States Army Corps of Engineers to perform the project under Nationwide Permit Number 3 for *Maintenance*, pursuant to Clean Water Act, section 404.
6. The Regional Water Board, as the lead California Environmental Quality Act (CEQA) agency, has determined that this project qualifies for a Categorical Exemption, section 15304 – Minor Alterations to Land, pursuant to CEQA Guidelines.

Receiving Water: Humboldt Bay in Eureka Plain Hydrologic Unit No. 110.00

Filled or Excavated Area: Area Temporarily Impacted: None  
Area Permanently Impacted: 0.045 acres

Total Linear Impacts: Length Temporarily Impacted: None  
Length Permanently Impacted: 2,055 square feet of fill for both sections of levee

Dredge Volume: None

Latitude/Longitude: 40.802619N/124.104625 W

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Department of Fish and Game, Fay Slough Wildlife Area Levee Repair Project (WDID No. 1B03131WNHU), as described in the application, will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law, provided that the Applicant complies with the following terms and conditions:

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 title 23, California Code of Regulations, section 3867.

2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to title 23, California Code of Regulations, section 3855, subdivision (b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. This certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 2200, and owed by the Applicant.
4. The Regional Water Board shall be notified prior to the commencement of ground disturbing activities, with details regarding the construction schedule, in order to allow staff to be present onsite during construction, and to answer any public inquiries that may arise regarding the project.
5. A copy of this Order and the application submitted by the Applicant for this certification shall be provided to all contractors and subcontractors conducting the work, and shall be in their possession at the work site.
6. All project work shall be conducted as described in this Order and in the application submitted by the Applicant. It is the Applicant's responsibility to ensure that their contractor(s) are knowledgeable of the authorized project activities, BMPs, avoidance measures and mitigation measures contained in the application submitted by the Applicant. If the Regional Water Board is not notified of a significant alteration to the project, it will be considered a violation of this Order, and the Applicant may be subject to Regional Water Board enforcement actions.
7. BMPs for erosion, sediment and turbidity control shall be implemented and in place at commencement of, during and after any ground clearing activities or any other project activities that could result in erosion or sediment discharges to surface water.
8. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this Order, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the State. When operations are completed, any excess material or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream.
9. If, at any time, an unauthorized discharge to surface water (including wetlands, rivers or streams) occurs, or any water quality problem arises, the associated project activities shall cease immediately until adequate BMPs are implemented. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.
10. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete the project.

11. Prior to implementing any change to the project that may have a significant or material effect on the findings, conclusions, or conditions of this Order, the Applicant shall obtain the written approval of the Regional Water Board Executive Officer.
12. The Regional Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standards and implementation plans adopted and approved pursuant to the Porter-Cologne Water Quality Control Act or Section 303 of the Clean Water Act.
13. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
14. 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 applicable State or federal law. For the purposes of section 401(d) of the Clean Water Act, 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 Regional Water Board may require the holder of any federal permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear 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 Regional Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.
15. In the event of any change in control of ownership of land presently owned or controlled by the Applicant, the Applicant shall notify the successor-in-interest of the existence of this Order by letter and shall forward a copy of the letter to the Regional Water Board at the above address.

To discharge dredged or fill material under this Order, the successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of the Order. The request must contain the requesting entity's full legal name, the state of incorporation if a corporation, and the address and telephone number of the person(s) responsible for contact with the Regional Water Board. The request must also describe any changes to the project proposed by the successor-in-interest or confirm that the successor-in-interest intends to implement the project as described in this Order.

16. Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited to and all proposed mitigation being

completed in strict compliance with the Applicant's project description, and b) compliance with all applicable requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan).

17. The authorization of this certification for any dredge and fill activities expires on October 23, 2012. Conditions and monitoring requirements outlined in this certification are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

If you have any questions or comments please call Diana Henriouille at (707) 576-2350.

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Robert R. Klamt  
Interim Executive Officer

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Original to: Ms. Karen Kovacs, Department of Fish and Game, 619 Second Street  
Eureka, CA 95501

Copies to: U.S. Army Corps of Engineers, District Engineer, P.O. Box 4863, Eureka,  
CA 95502

Ms. Jane Hicks, U.S. Army Corps of Engineers, Regulatory Functions,  
1455 Market Street, San Francisco, CA 94103-1398