



**California Regional Water Quality Control Board
North Coast Region
John W. Corbett, Chairman**



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Secretary for
Environmental Protection

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Arnold
Schwarzenegger
Governor

April 9, 2008

In the Matter of
Water Quality Certification

for the

**BOHAN & CANELIS,
LOWER AUSTIN CREEK FISHERY ENHANCEMENT PROJECT
WDID NO. 1B02077WNSO**

APPLICANT: Bohan & Canelis
RECEIVING WATER: Austin Creek Sub Area No. 114.12
HYDROLOGIC AREA: Russian River Area No. 114.00
COUNTY: Sonoma County
FILE NAME: Lower Austin Creek Fishery Enhancement/Gravel Mining Project

BY THE EXECUTIVE OFFICER:

1. On August 7, 2007, Mr. Steve Canelis, on behalf of Bohan & Canelis (Applicant), filed an application for water quality 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 associated with the Lower Austin Creek Fishery Enhancement/Gravel Mining Project (Project). A fee in the amount of \$500.00 was received on August 7, 2007. A following fee of \$4,000.00 was received on February 1, 2008, based on a total maximum extraction of 50,000 cubic yards of gravel. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on March 6, 2008, by posting information describing the Project on the Regional Water Board's website. No comments were received.

The proposed Project stream reach is located on Austin Creek, within 5,000 feet of the confluence with the Russian River, Sonoma County, California. The latitude and longitude is 38.28'13.16"N and -123.02'42.51"W at the start of reach and 38.27'57.27"N and 123.02'57.32"W at the end of the reach. The purpose of the project is to continue gravel removal from areas of gravel bars that are exposed during summer low flow conditions.

2. Bohan & Canelis Aggregates will continue to mine gravel from Austin Creek, Cazadero, California. The project is done in two ongoing phases, each year of mining. The first phase involves gravel skimming of four identified gravel bars and excavation of alcoves in the downstream end of the bar, located in a continuous reach from approximately 1,940 feet up gradient of the confluence of Austin Creek

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and the Russian River, to a point approximately 4,820 feet up gradient of the confluence. The second phase involves the creation or enhancement of seven in-stream pools, located within the reach of Austin Creek beginning just below the Highway 116 bridge and extending up gradient to the upper extent of gravel bar skimming. During previous mining/enhancement activity, the pools were dug to a maximum initial target depth of 10 feet. The following years, pools are examined to determine if the excavated pools have maintained a target depth of eight feet (As described in National Marine Fisheries Biological Opinion, File 151422SWR03SR8613). Gravel extraction will be accomplished by surface skimming of four to six bars totaling 6.0 acres, and seven to ten pools totaling from between 2.0-3.0 acres. The estimated maximum volume to be excavated on a yearly basis will be 25,000 cubic yards, however the exact volume will be based on replenishment rates and allowable extraction rates as outlined in the Sonoma County Aggregate Resources Management Plan (ARM) and Environmental Impact Report (November 1994). It is anticipated that approximately 15,000 cubic yards will be removed during 2008, and up to 25,000 cubic yards in 2009.

No gravel skimming operations will take place in the wetted stream. Pool creation/enhancement may take place at or below water level. Buffer zones will separate the operational areas from the low-water channel. Skimming will generally progress from downstream to upstream and will not be conducted simultaneously at multiple sites. Two stream crossings will be utilized, with a maximum of two bridges in place at any time. No gravel will be extracted if there is insufficient replenishment above the baseline elevations that were established in 1995.

3. The dredging activity will result in temporary impacts to the beneficial uses of Austin Creek and the Russian River as identified in the Water Quality Control Plan for the North Coast Region (Basin Plan). Some of the beneficial uses impacted by dredging activities include Water Contact Recreation; Non-contact Water Recreation; Wildlife Habitat; Warm Freshwater Habitat; Cold Freshwater Habitat; and Water Quality Enhancement. In order to address temporal impacts, compensatory mitigation is required. Compensatory mitigation is achieved through improvement of beneficial uses of Austin Creek. Beneficial uses and the methods used to achieve improvement, respectively, are:
 - Cold Freshwater Habitat (COLD), by creating and increasing depth of pools. Water temperature within the created/deepened pools has decreased due to entrance of cooler bar underflow into the deeper pools. Installation of log and boulder structures increases complexity and pool scour, and thus improves habitat.
 - Migration of Aquatic Organisms (MIGR), has been improved by providing a low flow channel and deepened thalweg. Previously, migration and fish passage was hampered by lack of a well formed low flow channel.
 - Spawning, Reproduction and/or Early Development (SPWN), may have been improved by increase in fish passage.
 - Rare, Threatened, or Endangered Species (RARE), Improved salmonid and fishery habitat. Austin Creek, and the Russian River provide habitat for Steelhead Trout, Chinook Salmon, Coho Salmon and the California Freshwater Shrimp. Steelhead Trout, Chinook Salmon and Coho Salmon are listed as threatened under the Endangered Species Act. The California Freshwater Shrimp is listed as endangered under the Endangered Species Act.

Additional compensatory mitigation such as bank stabilization using bioengineering techniques and/or revegetation may be necessary if conditions develop from gravel skimming/mining activities that warrant this mitigation, or if deemed necessary by regulatory agencies or the Regional Water Board.

4. Non-compensatory mitigation: Upon completion of the skimming activities, areas disturbed by the mining operations shall be graded to ensure that no pits or depressions are left where fish entrapment may occur. Gravel extraction will cease by October 31. Temporary crossings shall be constructed using temporary bridges with gravel approach ramps that use only cleaned gravel, which will reduce the potential of turbid discharges to the river. Equipment will not be operated in the flowing river except as may be necessary to construct stream crossings. Any equipment entering the active stream will be preceded by an individual on foot to displace fish and wildlife. Appropriate sediment control measures will be implemented to ensure that in stream turbidity levels do not exceed water quality standards contained in the Water Quality Control Plan for the North Coast Region. Riparian vegetation growing along the perimeter of, or as dense stand on each bar or on the outer bank, will not be removed or otherwise disturbed. The landowner has developed, and agreed to a Department of Fish and Game (DFG) and National Marine Fisheries Service (NMFS) management plan for the project area. Cross section surveys of the channel will be completed and provided to all reviewing agencies by February 1st of the following year. In addition to conditions set forth by the Regional Water Board, additional conditions are imposed by the County of Sonoma, California Department of Fish and Game, U. S. Army Corps of Engineers (ACOE), State Mining and Geology Board, National Marine Fisheries Service, and the recommendations made by the Scientific Review Committee (SRC).

Annual extensive monitoring is required including data gathering and reporting. The use permits issued by Sonoma County under the ARM Plan requires standard and site specific monitoring, including site inspections, full channel cross sections, and annual aerial photographs. Other monitoring and reporting is also required by other involved resource agencies.

All extraction operations, extraction techniques, reclamation activities, monitoring, project impact minimization measures, revegetation activities and terms of conditions will be implemented as described in the National Marine Fisheries Service Biological Opinion, the final Regional Water Board Order, the California Department of Fish and Game permit, Sonoma County permit, and SRC recommendations.

Monitoring information received may necessitate modifying the conditions of the 401 Water Quality Certification to provide an adaptive management approach. Conditions and requirements within the 401 Water Quality Certification may be changed/amended by the Regional Water Board within the time period that the 401 Water Quality Certification is issued. Changes may be initiated by factors such as: observations made by or reported to the Regional Water Board, or by recommendations made by the SRC, or other agencies. Such modifications may require an amendment to the current 401 Water Quality Certification.

5. On August 27, 2004, the Applicant adopted a mitigated negative declaration (State Clearinghouse number PLP04-0054) for the Project in order to comply with the California Environmental Quality Act (CEQA). The Regional Water Board has

considered the environmental document and any proposed changes incorporated into the Project or required as a condition of approval to avoid significant effects to the environment.

6. The applicant has applied for a California Department of Fish and Game 1600 Streambed Alteration Agreement, Expiring on December 31, 2008, File Number 1600-2004-0702-3.
7. Applicant has applied for a United States Army Corps of Engineers Individual Permit, File Number 263670N.
8. Applicant has received a NOAA Fisheries Biological Opinion File Number 151422SWR03SR8613.

Receiving Water: Austin Creek Sub Area No. 114.12, within the Russian River Hydrologic Area No. 114.00.

Filled or Excavated Area: Approximately 9.0 acres of temporary impacts to waters of the United States/State.

Latitude/Longitude: Start of Reach: 38.28'13.16"N and -123.02'42.51"W.
End of Reach: 38.27'57.27"N and 123.02'57.32"W.

Expiration: October 31, 2009

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Bohan & Canelis, Lower Austin Creek Fishery Enhancement/Gravel Mining Project (FACILITY NO. 1B02077WNSO), 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 the Applicant complies with the following terms and conditions:

1. This Order 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 Order 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 Order is conditioned upon total payment of any fee required under chapter 28, title 23, California Code of Regulations, and owed by the Applicant.
4. 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 certification (Enclosed).

5. The Russian River watershed is identified on the State of California Clean Water Act Section 303(d) list. The Russian River is listed as impaired for sediment and temperature. At present, there is no watershed-specific implementation plan for this TMDLs. If TMDL implementation plans are adopted for this watershed prior to the expiration date of this Order, the Regional Water Board may revise the provisions of this Order to address actions identified in such action plan.
6. Applicant shall construct the Project in accordance with the conditions described in the application and the findings above, and shall comply with all applicable water quality standards.
7. The Applicant shall provide Regional Water Board staff access to the Project site to document compliance with this Order.
8. Any change to the operation of the Project that would have a significant or material effect on the findings, conclusions, or conditions of this Order shall be submitted to the Executive Officer of the Regional Water Board for prior review and written approval.
9. Applicant shall provide a copy of this Order and attachments to the contractor and all subcontractors conducting the work, and require that copies remain in their possession at the work site. The Applicant shall be responsible for work conducted by its contractor or subcontractors.
10. All conditions required by this Order shall be included in the Plans and Specifications prepared by the Applicant for the contractor. In addition, the Applicant shall require compliance with all conditions included in this Order in the bid contract for this Project.
11. All mitigation activities shall be completed as proposed in the application.
12. 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 constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Order. In response to a suspected violation of any condition of this Order, the Regional Water Board may require the holder of any federal or state 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.

13. 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 or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
14. This Order is not transferable. 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. The successor-in-interest must send to the Regional Water Board Executive Office a written request for transfer of this certification to discharge dredged or fill material under this Order. The request must contain the following:
 - a. requesting entity's full legal name
 - b. the state of incorporation, if a corporation
 - c. address and phone number of contact person
 - d. description of any changes to the Project or confirmation that the successor-in-interest intends to implement the Project as described in this Order.
15. Except as may be modified by any preceding conditions, all Orders are contingent on: a) the discharge being limited 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 Basin (Basin Plan).
16. The authorization of this Order for any dredge and fill activities expires on October 31, 2009. Conditions and monitoring requirements outlined in this Order are not subject to the expiration date outlined above, and remain in full effect and are enforceable.
17. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete 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.
18. When operations are complete, any excess material or debris shall be removed from the work area and disposed of properly.
19. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall be outside of waters of the State and United States. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall not result in a discharge or a threatened discharge to any waters of the State or the United States. At no time shall the Applicant use any vehicle or equipment which leaks any substance that may impact water quality.
20. BMPs for erosion, sediment and turbidity control shall be implemented and in place at commencement of, during and after any ground clearing activities, construction activities, or any other project activities that could result in erosion or sediment discharges to surface water.

21. 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.

Please contact Stephen Bargsten of our staff at (707) 576-2653 if you have any questions or need to report any violation of this Order.

Catherine Kuhlman
Executive Officer

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Enclosure: State Water Resources Control Board Order No. 2003-0017-DWQ

Original sent to: Mr. Steve Canelis, Bohan & Canelis, P.O. Box 317, 600 Austin Creek Road, Cazadero, CA 95421

Copies sent to: Mr. Bill Orme, SWRCB, 401 Program Manager, Clean Water Act Section 401 Certification and Wetlands Unit Program

Ms. Kim Niemeyer, SWRCB, Office of the Chief Counsel

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

Mr. Dan Wilson, California Department of Fish and Game, P.O. Box 47, Yountville, CA 94599

Mr. Dan Logan, National Marine Fisheries Service, 777 Sonoma Avenue, Suite 325, Santa Rosa, CA 95404

Mr. Dave Shiltgen, Sonoma County Permit and Resource Management Department, 2550 Ventura Avenue, Santa Rosa, CA 95403

Mr. Dave Smith, Supervisor of Wetlands Regulatory Office (WTR-8), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105