



**California Regional Water Quality Control Board
North Coast Region
Bob Anderson, Chairman**



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Secretary for
Environmental Protection

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**Arnold
Schwarzenegger**
Governor

August 28, 2008

In the Matter of

Water Quality Certification

for the

**NOBLE, JACK – VAN DUZEN RIVER RANCH STREAMBANK PROTECTION
PROJECT
WDID NO. 1B06078WNHU**

APPLICANT: Mr. Jack Noble and Mrs. Mary Noble
RECEIVING WATER: Van Duzen River
HYDROLOGIC UNIT: Hydesville Hydrologic Subarea No. 111.21
COUNTY: Humboldt
FILE NAME: Noble, Jack – Van Duzen River Streambank Protection
Project

BY THE EXECUTIVE OFFICER:

1. On May 24, 2006, Mr. Jack Noble and Mrs. Mary Noble (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 associated with stabilizing eroding sections of Van Duzen River streambank near Hydesville, Humboldt County. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on July 14, 2006. The Regional Water Board received public comments from several parties. On September 28, 2006, certification was issued for the project and Regional Water Board staff sent letters to the public parties containing responses to their comments.
2. Several parties filed petitions for reconsideration with the State Water Resources Control Board (State Water Board) challenging the Regional Water Board's decision to issue certification for this project. On April 18, 2007, the State Water Board revoked and remanded the Regional Water Board's certification for this project (WQO 2007-0002). The State Water Board directed the Regional Water Board to obtain relevant environmental documents and make its own findings regarding the

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adequacy of those documents as a responsible agency. Regional Water Board staff received and reviewed the relevant environmental documents and determined that the Supplemental Environmental Impact Report, assessing the Applicant's gravel mining activities and the potential for streambank erosion, is adequate for compliance with the California Environmental Quality Act.

3. On April 21, 2008, the Regional Water Board provided another public notice of the project, containing the Regional Water Board's findings regarding the adequacy of the relevant environmental documents, pursuant to title 23, California Code of Regulations, section 3858. The Regional Water Board received public comments from one party that had previously filed a petition for reconsideration with the State Water Board.
4. The project is located on the Applicant's Van Duzen River Ranch, which straddles approximately 3 miles of the Van Duzen River, from approximately one and one-half miles upstream to one and one-half miles downstream of the confluence of Yager Creek. This project area is in the low gradient depositional reach of the river and the eroding streambanks are mainly composed of fine-grained unconsolidated alluvial deposits. The primary purpose of the project is to stabilize the eroding streambank areas to reduce the risk of additional streambank failures that could result in additional loss of riparian vegetation and agricultural land. The project is also designed to increase riparian vegetation and salmonid habitat.
5. The project involves maintaining existing hard points and installation of new hard points along sections of the streambank that are at risk of failing during high flow events. Hard points may consist of concrete riprap, rock riprap, and/or large woody debris. Willow plantings are incorporated into the hard points. Streambank areas between the hard points are also planted after fine sediment accumulates and these areas become suitable for planting.
6. The size and shape of individual hard points varies due to the variations in bank height and the changes in topography along the streambank. Hard points are typically installed by excavating a toe trench at the base of the streambank and backfilling the toe trench with large riprap to create a foundation for the additional hard point material. Additional riprap is then placed between the toe trench and the top of the streambank. Typical hard points are approximately 25 feet to 30 feet wide along the streambank and they gradually taper to an approximately 10-foot wide point as they project into the streambed. The tops of the hard points are usually at the top of the streambank and outside of waters of the United States, and the tips usually extend below the ordinary high water elevation and into waters of the United States.
7. Compensatory mitigation is not required for the project. Noncompensatory mitigation includes planting native riparian vegetation (primarily willows) and the use of Best Management Practices for the use of heavy equipment in a waterway. The

hard point installation and maintenance activities begin no sooner than August 15 each year, when flows in the river are low, to prevent direct impacts to salmonids.

8. The Applicant has received authorization from the United States Army Corps of Engineers to perform the project under Nationwide Permit Numbers 13 and 14 (File No. 2008-00014N), pursuant to Clean Water Act, section 404. The applicant has applied for a Lake or Streambed Alteration Agreement from the California Department of Fish and Game.
9. On September 10, 1992, Humboldt County certified a Program Environmental Impact Report (PEIR) for gravel removal from the Lower Eel River (SCH #1992013033). That document "describes and analyzes the potential environmental effects resulting from 13 gravel removal operations located close to one another in the Lower Eel River watershed," including gravel mining on the property owned by the Applicant, and "provides an overview of the cumulative effects of removal of gravel from the bed of the Eel River near Fortuna, California." Subsequently, the County Planning Commission certified a Supplemental EIR (SEIR) assessing the environmental impacts of the Applicant's gravel mining activities on the Van Duzen River, including the potential for streambank erosion. The County filed a Notice of Determination with the County Recorder's office on June 4, 1998; the NOD does not specify the date upon which the Planning Commission certified the SEIR. However, a subsequent NOD filed by the County on September 14, 2000, for a proposed expansion project indicates that the County certified the SEIR on October 28, 1997. The SEIR identifies the Applicant's hard points as a mitigation measure for streambank erosion, and finds that these hard-rock non-alluvial channel boundaries "control erosion at critical sites," and have been "especially effective in creating and protecting riparian habitat and in improving aquatic habitat." The Regional Water Board considered the environmental document and determined that the SEIR is adequate CEQA compliance for this project.
10. 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 water quality certification.

Receiving Water: Van Duzen River in the Hydesville Hydrologic Subarea No. 111.21

Filled or Excavated Area: Area Temporarily Impacted: 0.1 acre of stream channel
Area Permanently Impacted: 0.7 acre of streambank and streambed

Total Linear Impacts: Length Temporarily Impacted: None
Length Permanently Impacted: 500 linear feet of streambank

Dredge Volume: None

Latitude/Longitude: Approximate upstream limit: 40.52341 N/124.06484 W
Approximate downstream limit: 40.53026 N/124.10273 W

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Van Duzen River Ranch Streambank Protection Project (WDID No.1B06078WNHU), 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 Applicant shall notify Regional Water Board staff at least five working days (working days are Monday – Friday) prior to the annual commencement of project activities, with details regarding the schedule of operations, to allow staff the opportunity to be present onsite and to answer any public inquiries that may arise regarding the project
5. 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.
6. All activities and BMPs shall be implemented according to the submitted application and the conditions in this certification.
7. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall be outside of waters of the United States. Fueling, lubrication, maintenance, storage and staging of vehicles and equipment shall not result in a discharge or a

threatened discharge to waters of the United States. At no time shall the applicant use any vehicle or equipment, which leaks any substance that may impact water quality.

8. 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.
9. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete the project.
10. Materials used for building the hard points shall consist of appropriately sized large rock or pieces of broken concrete that are primarily one-quarter ton and larger. The hard point materials shall be free of exposed steel protrusions and other residual materials such as soil or petroleum hydrocarbons.
11. Heavy equipment that is used to build hard points shall only be operated from the top of the streambank or from the dry gravel bar. Heavy equipment shall not enter the wet portion of the stream channel. This Water Quality Certification does not authorize installation of any temporary stream crossings.
12. The applicant shall take photographs of the project areas before and after new hard points are installed. The project areas are defined as the areas along the river bank that are marked in red on an aerial photo in the application and the river banks 150 feet upstream and 150 feet downstream of each area marked in red. Each new individual hard point and any hard points that are strengthened shall be captured in the photographs. Those photos shall provide the baseline for monitoring changes in and around the project areas over time.
13. The applicant shall submit a report to the Regional Water Board within 90 days after the project start date that contains a copy of the required photos. The report and photographs shall be organized in a manner that clearly indicates the location of each new hard point with respect to the project area. Each individual hard point shall have a clear and unique identification, such as a numbering or lettering system, and corresponding map or aerial photo that will allow Regional Water Board staff to observe any changes to the project area over time.
14. The applicant shall inspect the project area semi-annually as described below for a minimum of five-years and shall monitor any changes in the project area over time. The applicant shall inspect and photograph the project area at least once each year during the low flow period and at least once each year when flows are above the level of ordinary high water. The applicant shall submit a report to the Regional Water Board by July 31st each year that contains the required annual photographs and a written description of the inspection results, including the date of the

inspection and a description of any repairs, maintenance, or vegetation planting work that was completed in the project area that year.

15. Vehicle bodies, vehicle parts and other trash or metal debris that becomes exposed on dry areas of the Applicant's gravel bars may be removed and hauled out of the river. All removed materials shall be disposed of properly and any disturbed gravel bar surfaces shall be graded to match the surface surrounding the disturbed area.
16. 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.
17. All project work shall be conducted as described in this Order and 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.
18. 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.
19. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
20. 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 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.
21. 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.

22. 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).
23. The authorization of this certification for any dredge and fill activities expires on August 28, 2013. 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 Dean Prat at (707) 576-2801.

Catherine Kuhlman
Executive Officer

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