



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



Linda S. Adams
Secretary for
Environmental Protection

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**Arnold
Schwarzenegger**
Governor

October 29, 2008

In the Matter of

Water Quality Certification

for the

**MILLER FAMILY'S MAD RIVER SLOUGH LEVEE REHABILITATION AND
WETLAND ENHANCEMENT PROJECT
WDID NO. 1B08128WNHU**

APPLICANTS: Dick and Joan Miller
RECEIVING WATER: Wetlands and Mad River Slough
HYDROLOGIC UNIT: Eureka Plain Hydrologic Unit No. 110.00
COUNTY: Humboldt
FILE NAME: Miller Family's Mad River Slough Levee Rehabilitation and
Wetland Enhancement Project

BY THE EXECUTIVE OFFICER:

1. On August 13, 2008, Dick and Joan Miller (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 rehabilitation of 4,020 linear feet of existing levee along the Mad River Slough, restoration of riparian habitat, and enhancement of seasonal freshwater wetland that is used for agricultural purposes. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on October 3, 2008, 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 is located west of Mad River Road and north of Lanphere Road near the upstream extent of the Mad River Slough. The project is located on approximately 18 acres of a 77-acre parcel that is owned by the applicants. The applicants have observed that the frequency of peak high tides and over-topping of the levees on their property has increased in recent years. This is due to erosion of the levees over time and what appears to be an increase in high tide elevations in Mad River Slough.

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3. The primary purpose of the project is to rehabilitate the existing levee system to protect and maintain the applicant's agricultural uses on their property by preventing salt water inundation of their fields. The project includes an innovative design to integrate levee rehabilitation with restoration of former salt marsh habitat, enhancement of seasonal freshwater wetland areas, and restoration of riparian habitat. The project will rehabilitate 4,020 feet of existing levee by rebuilding the levee in place and by relocating portions of the levee. The project is necessary to enable continued agricultural usage on hundreds of acres of surrounding pasture land. In 2007, the applicants received project funding from U.S. Fish and Wildlife Service.
4. Approximately 800 linear feet of the north bank levee will be removed and relocated. Removal of this portion of the levee will allow for creation of 0.35 acre of salt marsh habitat along the bank of the Mad River Slough. The north bank levee will also be relocated away from the slough and the old levee footprint area will be restored to salt marsh habitat. The relocated levee section will be placed in farmed seasonal freshwater wetlands. The relocated levee will impact the same amount of wetland area that will be restored in the former levee location plus an additional 0.86 acre of farmed wetland area. The additional 0.86 acre of levee footprint will be designed as a low elevation bench that will continue to function as a farmed seasonal freshwater wetland.
5. The south bank levee will be rehabilitated in place without any expansion of the existing levee footprint. The surface of the south bank levee will be raised approximately 3 feet. The south bank levee activities will not result in any additional impacts to wetlands. The project also includes activities to increase riparian habitat along Mad River Slough and grading activities on approximately 12 acres of farmed seasonal freshwater wetland for the purpose of enhancing the existing wetlands.
6. The Applicant intends to implement the project according to the non-reporting provisions of the United States Army Corps of Engineers' Nationwide Permit Number 27, pursuant to Clean Water Act, section 404. A Lake or Streambed Alteration Agreement from the California Department of Fish and Game is not required for the proposed project.
7. The Planning Division of Humboldt County Community Development Services adopted a mitigated negative declaration (SCH No. 2008032072) for the project in order to comply with 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. The proposed project is scheduled for construction between October 2008 and October 2009.
8. 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: Wetlands and Mad River Slough in the Eureka Plain
Hydrologic Unit No. 110.00

Filled or Excavated Area: Area Temporarily Impacted: 12 acres of farmed seasonal
freshwater wetland
Area Permanently Impacted: 0.72 acre of farmed seasonal
wetland

Restoration: Area Restored: 0.72 acre of salt marsh wetland
Area Created: 0.35 acre of salt marsh wetland
Area Enhanced: 12.86 acres of farmed seasonal
freshwater wetland

Total Linear Impacts: Length Temporarily Impacted: None
Length Permanently Impacted: None

Dredge Volume: None

Latitude/Longitude: 40.91201 N/124.12330 W

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Miller Family's Mad River Slough Levee Rehabilitation and Wetland Enhancement Project (WDID No.1B08128WNHU), 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 in writing at least five working days (working days are Monday – Friday) 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. 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. 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.
7. All activities and BMPs shall be implemented according to the submitted application and the conditions in this certification.
8. A copy of this Order and the application documents 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.
9. The Applicant shall implement the mitigation measures for biological resources, geology and soils, hazards and hazardous materials, and hydrology and water quality as described in the mitigated negative declaration (SCH No. 2008032072). A final monitoring report shall be submitted to the Regional Water Board upon completion of these mitigation requirements.
10. 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.
11. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete the project.
12. 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.
13. 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.
14. 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.

15. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
16. 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.
17. 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.
18. 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).
19. The authorization of this certification for any dredge and fill activities expires on October 29, 2010. 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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Original to: Mr. Dick and Mrs. Joan Miller, P.O. Box 988, Willow Creek, CA 95573

Copies to: U.S. Army Corps of Engineers, District Engineer, 601 Startare Drive,
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