



Linda S. Adams
Secretary for
Environmental Protection

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

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Arnold
Schwarzenegger
Governor

October 31, 2008

In the Matter of

**Notice of Coverage, Waiver of Waste Discharge Requirements for
Minor Dredging and Fill Activities**

for the

**Robert O'Brien Atascadero Creek Wetlands Winterization Project
Sebastopol, Sonoma County
Cleanup and Abatement Order No. R1-2008-0096
WDID No. 1B08158WNSO**

APPLICANT: Mr. Robert O'Brien
RECEIVING WATER: Atascadero Creek and nearby wetlands and tributaries
HYDROLOGIC AREA: Russian River Hydrologic Area No. 114.00
Guerneville Hydrologic Sub Unit 114.11
COUNTY: Sonoma County
FILE NAME: Robert O'Brien, Atascadero Wetlands Enforcement

BY THE EXECUTIVE OFFICER:

1. This Notice of Coverage provides notice that certain activities are covered by the Waiver of Waste Discharge Requirements for Minor Dredging and Fill Activities (Waiver), which was adopted pursuant to California Water Code Section 13269 by the California Regional Water Quality Control Board, North Coast Region, (Regional Water Board) in Resolution 2007-0098. On October 31, 2008, Mr. Ross Mayfield, Jr. of Recovery Operation Specialty Services, of Ukiah, California, on behalf of Mr. Robert O'Brien (Applicant), filed an application for water quality certification under section 401 of the Clean Water Act (33 U.S.C. § 1341) and/or Waste Discharge Requirements for dredge/fill activities for the temporary winterization of areas of disturbed watercourse and wetlands (Project) addressed in California Regional Water Quality Control Board North Coast Region Cleanup and Abatement Order No. R1-2008-0096 (CAO) (attached). A fee in the amount of \$1,741.00 was paid on October 30, 2008.

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2. The latitude and longitude of the Project is approximately 38.424687° N, and 122.872310° W, at the south end of the project and 38.427430° N and 122.8712874° W at the north end of the project. The project includes the Sonoma County Assessors Parcels Numbers (APNs) 061-040-047, 130-270-005, and 061-030-015.
3. As described in the application, (including plans prepared by Enterra Associates, Inc., "Biotic Resource Assessment and Baseline Report for 9170 Occidental Road", (Patterson Report), prepared by Mr. Charles A. Patterson, dated October 29, 2008, and during numerous site meetings and phone meetings), the Project is comprised of two separate tasks:
 - (a) Winterization of those portions of the natural linear watercourse that was dredged and had riparian vegetation removed, and;
 - (b) Restoration and winterization of a recently excavated drainage ditch which is approximately 3 feet wide, 3 feet deep, and more than 300 feet long. This portion of the project also includes the area where the excavated soil has been stockpiled.
4. The work described partially addresses actions required by the CAO. There are numerous other action items required by and necessary for compliance with the CAO. Work authorized by this Notice of Coverage is necessary to prevent additional erosion, and sediment delivery to waters of the State.
5. As described in the application and in numerous pre-implementation meetings, the work to be done in two separate areas includes:
 - a. Winterization of those portions of the natural linear watercourse by application of appropriate weight and strength of biodegradable erosion control fabric, and fiber rolls, installed per manufacturers specifications, to areas that are subject to potential erosive forces, including vertical banks, loosely deposited and/or exposed in-channel fine sediments, outside channel bends, bare soil stockpiles, and other areas that need application of erosion control.

Application of rock check dams on and with incorporated filter fabric, or the use of straw bale check dam barriers, as described on Enterra plans, sheet 5 of 6, for the purpose of limiting erosion and accumulation of sediment, to help return the channel thalweg to its pre-dredged elevation, may be done under this Notice of Coverage, provided that permits required by other agencies have been acquired prior to any such work. Note that this would be a temporary measure and all applied fabric and rock may require removal at a later date. Additionally, outlet protection for the 36-inch culvert may be

applied, however, this protection would also be a temporary feature, installed for erosion control, and may need to be removed at a later date.

- b. Backfill, apply erosion control, and revegetate the refilled drainage ditch and associated stockpile areas. As described in the Patterson Report, the drainage ditch shall be dammed at both ends with temporary coffer dams (sand bags and plastic liner, or other suitable materials as required), dewatered by pumping and sprinkling water (with no puddling or runoff) to a nearby upland area, backfilled with original side castings to natural density of surrounding areas. The scar in the wetland habitat created by the backfilled drainage ditch and previous stockpile area shall be covered with appropriate biodegradable erosion control fabric containing no plastic, and planted with locally occurring species via immediate seed collection, spreading and plug transplantation of creeping wildrye grass. Note that this may be a temporary erosion control measure; alterations to this work may be necessary pending future hydrologic/biologic studies as required by the CAO.

Due to permitting requirements by various sections of the County of Sonoma (grading, zoning, planning), the area of fill within the biotic resource setback areas at either end of the channel may be prohibited until the proper County of Sonoma permits are acquired. If this is the case, then those areas remaining unfilled must receive appropriate erosion control protection, such as proper application of erosion control fabric or turf reinforcement matting, as discussed in application meetings.

6. Monitoring and reporting and survival/growth coverage requirements for the revegetated areas are detailed within the application. Areas of restoration are required to meet success criteria within five years.
7. The Project shall employ construction stormwater best management practices (BMPs) as detailed within the Application.
8. This Project is considered to be part of restoration and winterization work that the California Department of Fish and Game, the County of Sonoma, and the Regional Water Board will require as part of their enforcement action(s) against the Applicant for unpermitted dredging and discharges of dredged and fill material into waters of the State and U.S. Additional restoration and/or mitigation for loss of and/or impacts to wetlands and other waters of the State and U.S. within the area and in nearby areas will also be required by the Regional Water Board and other agencies involved. This Notice of Coverage does not address the additional requirements or restoration within this or nearby areas that will be required in the future by the Regional Water Board, or other federal, state, or local agencies.

9. The Army Corps of Engineers is not issuing a Clean Water Act Section 404 Permit for this portion of the project. A water quality certification under section 401 of the Clean Water Act is, therefore, not required from the Regional Water Board. Because the application involves discharging waste that could affect the quality of the waters of the State, the Applicant is required to obtain coverage under the waiver of waste discharge requirements (Order No. R1-2007-0098).
10. The Regional Water Board may add to or modify the conditions of this Notice of Coverage, 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.
11. Any change to the operation of the work described in the application that would have a significant or material effect on the findings, conclusions, or conditions of this Notice of Coverage must be submitted to the Executive Officer of the Regional Water Board for prior review and written approval.
12. The Regional Water Board, as the lead California Environmental Quality Act (CEQA) agency for Resolution 2007-0098, has adopted Categorical Waivers for Resolution 2007-0098, on December 6, 2007, pursuant to CEQA.
13. The North Coast Regional Water Quality Control Board has determined that this project is categorically exempt from California Environmental Quality Act (CEQA) review under Section 15304(c)-Minor Alterations to Land. Based on a review of the project information submitted to date, Regional Water Board staff determined that this Project, as described in the Application, complies with CEQA requirements.

Receiving Water: Wetlands and Linear Watercourse tributary to Atascadero Creek and the Russian River

Hydrologic Area: Russian River Hydrologic Area No. 114.00
Guerneville Hydrologic Sub Unit No. 114.11

Filled or Excavated Area: Area permanently impacted: 0.2 Acres

Latitude/Longitude: 38.424687° N, and 122.872310° W, at the south end of the project and 38.427430° N and 122.8712874° W at the north end of the project.

Expiration: December 1, 2009

ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE REGIONAL WATER BOARD FINDS THAT THE ROBERT O'BRIEN ATASCADERO

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CREEK WETLANDS WINTERIZATION PROJECT (FACILITY NO. 1B08158WNSO, CLEANUP AND ABATEMENT ORDER R1-2008-0096), as described in the Application, is hereby covered under the Waiver of Waste Discharge Requirements (Order No. R1-2007-0098) provided that Project complies with the following terms and conditions:

1. The Russian River watershed is identified on the State of California Clean Water Act Section 303(d) list as impaired for sediment, temperature, mercury, low dissolved oxygen, pathogens, pH, nitrogen, phosphorus, and specific conductance. Total Maximum Daily Load (TMDL) analyses have not been completed for the Russian River watershed sediment and temperature listings. Activities that impact the riparian zone and riparian vegetation are identified as sources contributing to increased stream temperatures and sediment. If a TMDL implementation plan is adopted prior to the expiration date of this Notice of Coverage, the Regional Water Board may revise the provisions of this Notice of Coverage to address actions identified in such action plans.
2. Because the Project involves construction that involves the discharge of waste that may adversely affect waters of the State, the Regional Water Board has regulatory jurisdiction under Water Code sections 13260, 13263 to issue waste discharge requirements. Pursuant to Water Code section 13269, the Regional Water Board may waive waste discharge requirements for some types of discharges if it determines that the waiver is consistent with the Water Quality Control Plan for the North Coast Region (Basin Plan) and is in the public interest. The Regional Water Board, in Order No. R1-2007-0098, waived waste discharge requirements for "Minor Dredging and Fill Operations," which are defined as short-term discharges that do not result in net loss of wetlands or beneficial uses, spoil or fill is non-toxic and discharged to land, and operations are not governed by General WDRs.
3. This Notice of Coverage is contingent on compliance with all applicable requirements of R1-2007-0098 and the Basin Plan, except as may be modified by the specific conditions of the Notice of Coverage.
4. The Applicant shall construct the Project in accordance with the conditions described in the application and the findings herein, and shall comply with all applicable water quality standards.
5. Applicant shall provide Regional Water Board staff access to the project site to document compliance with this Notice of Coverage.
6. The Applicant shall provide a copy of this Notice of Coverage 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.

7. In the event of any violation or threatened violation of the conditions of this Notice of Coverage, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable State or federal law. In response to a suspected violation of any condition of this Notice of Coverage, the Regional Water Board may require Mr. Wendt 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.
8. If, at any time, an unauthorized discharge to surface waters occurs, or any situation arises that compromises water quality and its beneficial uses, Applicant shall immediately cease work on the project and notify the Regional Water Board.
9. The Regional Water Board may add to or modify the conditions of this Notice of Coverage, 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.
10. This Notice of Coverage 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 Notice of Coverage 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 Notice of Coverage to discharge dredged or fill material under this Notice of Coverage. The request must contain the following:
 - i. requesting entity's full legal name
 - ii. the state of incorporation, if a corporation
 - iii. address and phone number of contact person
 - iv. description of any changes to the project or confirmation that the successor-in-interest intends to implement the project as described in this Notice of Coverage.
11. Except as may be modified by any preceding conditions, this Notice of Coverage is contingent on: a) the discharge being limited and all work being completed in strict compliance with the applicant's project description, and b) compliance with all applicable requirements of the Basin Plan.
12. The authorization for minor dredging and fill operations given under this Notice of Coverage expires on December 1, 2009. Conditions and monitoring requirements outlined in this Notice of Coverage are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

13. Any change to the operation of the Project that would have a significant or material effect on the findings, conclusions, or conditions of this Notice of Coverage must be submitted to the Executive Officer of the Regional Water Board for prior review and written approval.
14. The construction activity meets the eligibility criteria for the Waiver and, if constructed as described in the Application and in compliance with the above-listed conditions, the Project will adhere to applicable water quality standards. A monitoring and reporting program will be conducted as described in the application.
15. The following are general conditions required for coverage under Resolution R1-2007-0098:
 - a. "The Applicant shall comply with all applicable provisions of the Water Quality Control Plan for the North Coast Region."
 - b. "The Applicant shall discharge only in accordance with the submitted Report of Waste Discharge or equivalent (i.e., the Application)."
 - c. "The Project shall not create a pollution contamination, or a nuisance, as defined by California Water Code Section 13050."
 - d. "There shall be no discharge of any waste not specifically regulated by waivers in Resolution R1-2007-0098."
 - e. "The Applicant shall allow Regional Water Board staff reasonable access onto the affected property for the purpose of performing an inspection to determine compliance with waiver conditions."
16. The following requirements from Resolution R1-2007-0098 apply specifically to dredge and fill activities.

"The Applicant shall comply with the following additional conditions:

 - a. Discharges shall be non-toxic, short term, discharges to land.
 - b. The Project shall not result in a net loss of wetlands or beneficial uses.
 - c. This Notice of Coverage is valid only if operations are not being covered by General Waste Discharge Requirements."
17. Please be aware that a failure to implement the Project according to the project description and other information submitted in the Application, or violation of any of

the terms contained in the Waiver and this Notice of Coverage, may result in the revocation of coverage under the Waiver and the initiation of formal enforcement proceedings as authorized by California Water Code.

18. Enclosed is a copy of the Waiver Policy for Minor Dredging and Fill Activities.

Please contact Stephen Bargsten of our staff at (707) 576-2653 if you have any questions.

Catherine Kuhlman
Executive Officer

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Enclosure: Waiver Policy (Res. R1-2007-0098)

Original sent to: Mr. Robert O'Brien, P.O. Box 583, Tiburon, CA 94920

Copies sent to: Ross Mayfield, Jr., Recovery Operation Specialty Services,
1621 Talmage Road, Ukiah, CA 95482

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

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Mr. Dan Wilson, California Department of Fish and Game,
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