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

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Arnold
Schwarzenegger
Governor

March 17, 2009

In the Matter of

Water Quality Certification

for the

**CITY OF ETNA – ETNA CREEK FISHWAY AND WATER DIVERSION
IMPROVEMENTS PROJECT
WDID NO. 1A08173WNSI**

APPLICANT: City of Etna
RECEIVING WATER: Etna Creek
HYDROLOGIC UNIT: Scott Valley Hydrologic Subarea No. 105.42
COUNTY: Siskiyou
FILE NAME: Etna, City of – Etna Creek Fishway and Water Diversion
Improvements Project

BY THE EXECUTIVE OFFICER:

1. On December 8, 2008, the City of Etna (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 improving the existing water diversion structures and improving fish passage around the existing diversion dam. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on February 11, 2009, 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 at the City of Etna's existing dam and water diversion facility on Etna Creek, approximately two miles southwest of the City of Etna. The existing dam is an 8-foot tall by approximately 70-foot wide concrete barrier owned and maintained by the City of Etna to divert surface water from Etna Creek to the City's water treatment facility located approximately 1.7 miles away. The diverted surface water is the sole municipal supply for the City of Etna.

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3. Improvements to the dam and associated facilities include: relocating and widening the dam's weir past the point of diversion so that flows within a new fish ladder (fishway) will be adequate for fish passage throughout the year; removal and reconstruction of the existing intake structure and sediment basin; replacement of the existing fish screen with a screen that meets National Oceanic and Atmospheric Administration guidelines; flaring the dam's apron to ensure safer passage for fish cresting the spillway; installation of a sluice gate on a 12-inch diameter bypass pipe; installation of a staff gage adjacent to the diversion facility to measure stream flow; and construction of security fencing around these facilities. The project also includes rehabilitating the deteriorated concrete dam crest and modifying its configuration to prevent flood damage to the new fishway structure. Modifications include reducing the dam crest width from 70 feet to 65 feet, which will in turn increase the 100-year base flood elevation at the diversion by approximately 1.3 feet. The upper 6 to 10 inches of the diversion crest will be sawcut, removed, and replaced at approximately the same elevation. The existing concrete floodwall on the west bank of the creek will be elevated by approximately two feet to adjust for the new base flood elevation.
4. The fish passage component of the project entails removal of the existing Alaskan steep-pass fishway and construction of a concrete step-and-pool fishway designed for salmonids, stream type, and dam elevation. The existing fishway currently provides the only passage across the dam for both adult and juvenile salmonids. Steep-pass fishways provide poor passage for adult salmonids. The new fishway was designed in consultation with California Department of Fish and Game staff and will allow for fish passage during at least 90 percent of flow conditions, including both high and low flows. Construction of the new fishway structure will require excavation of approximately 575 square feet of streambed and streambank for the footprint of the new structure.
5. In addition to the work on the dam and construction of the fishway, the project involves stabilizing the eroded streambank located immediately downstream of the dam. Approximately 40 cubic yards of rock riprap will be placed along 30 linear feet of the right streambank. A 4-foot deep, 6-foot wide, and 30-foot long toe-trench will be excavated along the base of the eroded slope to provide greater stability for the rock riprap during high flows. Bioengineered bank stabilization techniques were considered but not incorporated into the design because the energy associated with anticipated flows over the dam crest and the potential for additional bank scour were determined to be too large for a bioengineered bank stabilization structure.
6. Eight trees greater than 6-inches diameter at breast height (dbh) will be removed along the stream's left bank for installation of the fishway. Once cleared of vegetation, the area will be used as a temporary access route to the creek channel. An excavator will be walked across the creek at low flows (between August 1 and November 15) to a temporary work area located adjacent to the

eroded streambank. Prior to excavating the toe-trench and placement of the rock riprap, a sediment barrier will be installed around the temporary work area to minimize potential impacts to water quality. After the toe-trench has been excavated and the riprap is placed, the sediment barrier will be removed and the excavator will be walked back across the creek and out of the stream channel. A second sediment barrier will then be installed adjacent to the fishway and the footprint for the fishway, fish screen, and sediment basin will be excavated. Following construction of those facilities, the sediment barrier will be removed downstream of the dam and identical water quality control measures will be established upstream of the dam. The excavator will re-enter the stream channel upstream of the dam to re-establish the upstream pool. Due to the amount of gravel, cobble and rock that has accumulated behind the dam over many years, an approximately 60-foot by 35-foot area will be excavated to a depth of three feet, resulting in the removal of approximately 220 yards of material. After the pool has been established and the excavator and sediment barrier are removed from the stream channel, work on the diversion intake and floodwall structures will be completed. Flows will be temporarily diverted through the newly constructed intake and fishway so that work on the crest of the dam can be completed. Upon completion, the diversion will be removed and revegetation of the site will occur

7. Compensatory mitigation for impacts to riparian vegetation is required. Revegetation of the site will occur at a ratio of three native tree specimens planted for each tree removed that is over 6-inches dbh. Noncompensatory mitigation includes the use of best management practices for sediment and turbidity control, for use of concrete in a stream channel, and for operation of heavy equipment in a stream channel. The project is scheduled for construction between August 1, 2009 and November 15, 2009, and is expected to take 76 working days to complete.
8. The applicant has applied for authorization from the United States Army Corps of Engineers to perform the project under Nationwide Permit No. 3 (File No. 400412), pursuant to Clean Water Act, section 404. The Applicant has also applied to the California Department of Fish and Game for a Lake or Streambed Alteration Agreement.
9. On September 4, 2007, the City of Etna approved a mitigated negative declaration (SCH No. 2007072134) 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.
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: Etna Creek in the Scott Valley Hydrologic Subarea No. 105.42

Filled or Excavated Area: Area Temporarily Impacted: 2,100 square feet of streambed
Area Permanently Impacted: 1,175 square feet of streambank

Total Linear Impacts: Length Temporarily Impacted: 30 linear feet of streambed
Length Permanently Impacted: 70 linear feet of streambank

Dredge Volume: None

Latitude/Longitude: 41.42914 N/122.92101 W

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the City of Etna, Etna Creek Fishway and Water Diversion Improvements Project (WDID No. 1A08173WNSI), 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. Nothing in this certification shall be construed as approval of the validity of any consumptive water rights, including pre-1914 claims, referenced in the Scott River Decree or elsewhere. The State Water Board has separate authority under the Water Code to investigate and take enforcement action if necessary to prevent any unauthorized or threatened unauthorized diversions of water.

5. 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.
6. 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.
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. All activities and BMPs shall be implemented according to the submitted application and the conditions in this certification.
9. 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.
10. The Applicant shall implement the mitigation measures for Biological Resources (Mitigation Measure No. MM 4.1), and Hydrology and Water Quality (Mitigation Measure No. 6.1) as described in the mitigated negative declaration for this project.
11. 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.
12. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete the project.
13. 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.

14. 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.
15. 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.
16. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
17. 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.
18. 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.

19. 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).
20. The authorization of this certification for any dredge and fill activities expires on March 17, 2014. 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: Ms. Pamela Russell, City of Etna, P.O. Box 460, Etna, CA 96027

Copies to: U.S. Army Corps of Engineers, District Engineer, 601 Startare Drive,
Box 14, Eureka, CA 95501
Ms. Jane Hicks, U.S. Army Corps of Engineers, Regulatory Functions,
1455 Market Street, San Francisco, CA 94103-1398
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