



**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

May 6, 2009

In the Matter of

Water Quality Certification

for the

**FLEMING RESIDENCE – CULVERT INSTALLATION AND REMOVAL, UNNAMED
TRIBUTARY TO SLATER CREEK
WDID NO. 1B08163WNHU**

APPLICANT: John Fleming
RECEIVING WATER: Unnamed tributary to Slater Creek
HYDROLOGIC UNIT: Lower Eel River Hydrologic Area No. 111.10
COUNTY: Humboldt
FILE NAME: Fleming, John – Culvert Installation

BY THE EXECUTIVE OFFICER:

1. On November 6, 2008, John Fleming (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 installation of a new culvert and associated outlet protection. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on April 8, 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 on the north side of Monument Road approximately one mile west of Rio Dell. The project involves installation of a new 48-inch diameter and 46.5-foot long culvert on an unnamed tributary to Slater Creek for the purpose of providing access to a residential building site. The project includes installation of a geotextile fabric-lined rock energy dissipater that will extend 29.3 linear feet downstream from the outlet of the new culvert. The project originally included resurfacing an existing access road where it crosses a deteriorated 48-inch diameter culvert that is located a short distance upstream of the new culvert. During the permit application and review process, the project was revised to include removal of the existing culvert to restore the currently filled section of stream channel.

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3. The new culvert will result in 93 linear feet of permanent impacts to the stream banks and 186 square feet of permanent impacts to the stream channel. The rock energy dissipater will permanently impact 420 square feet and 29.3 linear feet of stream channel. The project will not result in any temporary impacts to the stream channel. Compensatory mitigation for the project includes decommissioning the existing culvert and stream crossing located upstream of the new culvert. Noncompensatory mitigation includes the use of Best Management Practices for sediment and turbidity control and for operation of heavy equipment near a stream channel.
4. The applicant has applied for authorization from the United States Army Corps of Engineers to perform the project under Nationwide Permit, pursuant to Clean Water Act, section 404. The Applicant has obtained a Lake or Streambed Alteration Agreement from the California Department of Fish and Game.
5. The County of Humboldt has prepared a mitigated negative declaration (SCH No. 2008032092) 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.
6. 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: Unnamed tributary to Slater Creek in the Lower Eel River Hydrologic Area No. 111.10

Filled or Excavated Area: Area Temporarily Impacted: None
Area Permanently Impacted: 606 square feet of stream channel

Total Linear Impacts: Length Temporarily Impacted: None
Length Permanently Impacted: 93 linear feet of streambank and 22.3 linear feet of stream channel

Dredge Volume: None

Latitude/Longitude: 40.49047 N/124.11979 W

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Fleming, John - Culvert Installation Project (WDID No.1B08163WNHU), 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 most current 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 remove the existing culvert located approximately 15 feet upstream of the new culvert location as described in the March 31, 2009, Project Description Supplement submitted by LACO Associates. The existing culvert shall be removed and the stream crossing shall be decommissioned within two weeks of completion of the new stream crossing.
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 May 5, 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: Mr. John Fleming, 201 Amherst Avenue, Kensington, CA 94708-1011

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
Ms. Deirdre MacClelland, LACO Associates, P.O. Box1023, Eureka, CA
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