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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

July 28, 2009

In the Matter of

Water Quality Certification

for the

**ARCATA, CITY OF – KLOPP LAKE AND WASTEWATER POND LEVEE REPAIRS
WDID No. 1B09042WNHU**

APPLICANT: City of Arcata
RECEIVING WATER: Klopp Lake and Humboldt Bay
HYDROLOGIC UNIT: Eureka Plain Hydrologic Unit No. 110.00
COUNTY: Humboldt
FILE NAME: Arcata, City of – Klopp Lake and Wastewater Pond Levee Repairs

BY THE EXECUTIVE OFFICER:

1. On April 3, 2009, the City of Arcata (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 repairing and restoring existing levees located along the northern perimeter of Humboldt Bay. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on June 9, 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 primary purpose of the project is to repair and maintain existing levees that were damaged during severe storm events in late December 2005 and early January 2006. The existing levees separate Klopp Lake (part of the Arcata Marsh and Wildlife Sanctuary) and the Applicant's wastewater ponds from Humboldt Bay. A breach in the wastewater pond levee could potentially spill millions of gallons of primary treated sewage into Humboldt Bay. Repairs will be made along the inboard and outboard sides (bay side) of both Klopp Lake and the wastewater ponds. Activities to repair the inboard side of the wastewater pond levee will not result in any impacts to waters of the state. The project also involves activities to repair the

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existing islands located in Klopp Lake that provide habitat for wildlife including a variety of birds and waterfowl.

3. The Regional Water Board issued Federal Clean Water Act, section 401, water quality certification for similar repair activities on September 2, 2003, after the levees were damaged during the winter of 2002/2003. The California Coastal Commission (Commission) issued an emergency Coastal Development Permit (CPD) in October 2003 to allow the Applicant to repair the most severely damaged area of the wastewater pond levee while a larger-scale CDP application was being reviewed by the Commission. All other regulatory permits expired during the time period that the Commission took to issue the CDP and the Applicant was not able to complete all the levee repair work previously approved by the Regional Water Board.
4. Levee repair activities involve removing the existing riprap, disposing of any asphalt and concrete in the existing riprap material, and stockpiling the remaining riprap for reuse. A three-foot wide and three-foot deep toe trench will be excavated along the base of the bay side of the levees. The exposed surface will be graded, built up, and compacted with engineered fill as necessary. Geotextile filter fabric will be installed over the bay side of the levee face and into the toe trench. Stockpiled riprap and additional imported rock riprap will be placed over the filter fabric. The gravel trail will be replaced on the top of the levee. Additional riprap will also be placed as necessary along the toe of the levee on the Klopp Lake side. The three habitat islands in Klopp Lake will be restored by using clean fill from offsite or by dredging approximately 180 cubic yards of mud from the lake bottom. The material will be used to rebuild the islands, and rock riprap or secured logs will be placed along the shoreline of each island to protect the islands from erosion.
5. Approximately 3,300 linear feet of the outboard side of the Klopp Lake levee, and 2,100 linear feet of the inboard side, will be repaired. Klopp Lake earthwork activities will include 1,528 cubic yards of cut, 53 cubic yards of aggregate base fill, and 3,153 cubic yards of rock slope protection. Up to 670 linear feet of shoreline around the perimeter of the three islands inside Klopp Lake will also be repaired. The total amount of rock riprap or log fill used for the three islands will be 140 cubic yards. Activities to repair the Klopp Lake levee and islands will result in permanent impacts to 45,000 square feet and 6,070 linear feet of shoreline. Permanent impacts from this project are to areas that were previously occupied by the eroded levee and islands.
6. Approximately 3,300 linear feet of the outboard side of the wastewater pond levee will be repaired. The wastewater pond levee earthwork activities include 1,060 cubic yards of cut, 787 cubic yards of aggregate base fill, and 2,715 cubic yards of rock slope protection. Activities to repair the wastewater pond levee will result in permanent impacts to 43,930 square feet and 3,300 linear feet of shoreline. Permanent impacts from this project are to areas that were previously occupied by the existing levee.

7. Compensatory mitigation is not required for the project. Noncompensatory mitigation includes the use of Best Management Practices for sediment and turbidity control and for operation of heavy equipment. Noncompensatory mitigation also includes revegetation of disturbed areas. Activities will be conducted between April 15 and October 15 to minimize potential impacts to sensitive habitats by storm water runoff and wet conditions. Activities will also be conducted during low tide to avoid impacts to the marine environment. The project is expected to take up to four months to complete.
8. The applicant has applied for authorization from the United States Army Corps of Engineers (USACOE File No. 2009-00137) to perform the project under Nationwide Permit Number 3, 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. The Regional Water Board, as the lead California Environmental Quality Act (CEQA) agency, has determined that this project is statutorily exempt from CEQA review (Section 15269 – emergency projects), pursuant to CEQA.
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: Klopp Lake and Humboldt Bay in the Eureka Plain
Hydrologic Unit No. 110.00

Filled or Excavated Area: Area Temporarily Impacted: none
Area Permanently Impacted: 88,930 square feet of
shoreline to restore the habitat islands and the original
footprint of the existing levees

Total Linear Impacts: Length Temporarily Impacted: none
Length Permanently Impacted: 9,370 linear feet of shoreline
to restore the habitat islands and the original footprint of the
existing levees

Dredge Volume: 180 cubic yards

Latitude/Longitude: Klopp Lake: 40.85825 N/124.09392 W
Wastewater Pond: 40.85469 N/124.08911 W

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the City of Arcata – Klopp Lake and Wastewater Pond Levee Repair Project (WDID No. 1B09042WNHU), 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.
6. Best Management Practices (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. 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.

10. 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.
11. 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.
12. 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.
13. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
14. 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.
15. 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.

16. 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).

17. The authorization of this certification for any dredge and fill activities expires on July 28, 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. Morgan Kessler, City of Arcata Public Works Department, 736 F Street, Arcata, CA 95521

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