



**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, 2009

In the Matter of
Water Quality Certification
For the
**LAKE EARL FLOOD CONTROL PROJECT
WDID No. 1A1001WNDN**

APPLICANT: Del Norte County
RECEIVING WATER: Lake Talawa, Lake Earl, and the Pacific Ocean
HYDROLOGIC UNIT: Smith River Plain Hydrologic Subarea No. 103.11
COUNTY: Del Norte
FILE NAME: CDFG – Lake Earl Flood Control Project

BY THE EXECUTIVE OFFICER:

1. On October 13, 2004, the North Coast Regional Water Quality Control Board (Regional Water Board) issued Federal Clean Water Act, section 401, Water Quality Certification (Water Quality Certification) for activities associated with breaching the sandbar between Lake Talawa and the Pacific Ocean in order to lower the water level in Lake Earl and Lake Talawa. The Water Quality Certification expired on February 15, 2009.
2. On August 31, 2009, the Regional Water Board received an application for Water Quality Certification from Del Norte County (Applicant) requesting authorization to continue the previously authorized breaching activities. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on October 1, 2009, and posted information describing the project on the Regional Water Board's website. We did not receive any public comments on this project.
3. On August 13, 2004, the California Department of Fish and Game (CDFG) certified a Final Environmental Impact Report - Lake Earl Wildlife Area Management Plan (Plan) (SCH No.1989013110) for the project in order to comply with CEQA. The Regional Water Board has considered the environmental document. Mitigation measures are incorporated into this Water Quality Certification.

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4. The Plan provides long-term direction for managing the Lake Earl Wildlife Area (LEWA) in order to optimize the management of a variety of plant and animal species with an emphasis on wetland dependent wildlife. Long-term management of the LEWA will seek the best balance between private property concerns, agriculture, and management of fish and wildlife habitat. The Plan specifies that breaching shall take place at the narrowest part of the sandbar between Lake Talawa and Pacific Ocean. Breaching the sandbar involves excavating a trench approximately 200 feet long by 20 feet wide by 4 feet deep between Lake Talawa and the Pacific Ocean to start the flow of water from the lake into the ocean. Once the flow is started the flow increases rapidly and causes additional erosion of the sandbar. A breaching event is allowed whenever the water surface elevation of the lakes reaches 8.0 feet above mean sea level (MSL) during the period between September 1 and February 15. A final breaching event is allowed again on February 15 if the water surface elevation in the lakes is above 5.0 MSL. The actual surface elevation of the lakes could reach 10.0 feet MSL before breaching is completed.
5. The proposed project will result in no net loss of wetlands. The project does not require removal of any trees or riparian vegetation. Approximately 0.1 acre of sandbar will be temporarily impacted during breaching events. The volume of material mechanically dredged during a breaching event is approximately 750 cubic yards.
6. 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 on the sandbar.
7. The Applicant obtained authorization (File No. 27850N) from the United States Army Corps of Engineers to perform the project under an individual permit, pursuant to Clean Water Act Section 404. The Applicant has also obtained a Lake or Streambed Alteration Agreement from the California Department of Fish and Game.
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: Lake Earl, Lake Talawa, and the Pacific Ocean in the Smith River Plain Hydrologic Subarea No. 103.11

Filled or Excavated Area: Area Temporarily Impacted: 0.1 acre of sandbar/beach
Area Permanently Impacted: None

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

Dredge Volume: 750 cubic yards

Latitude/Longitude: 41.82972 N/124.22590 W

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Lake Earl Flood Control Project (WDID No. 1A1001WNDN), 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 as soon as possible that a breaching event has been scheduled and prior to the commencement of a breaching event in order to allow staff to be present onsite and to answer any public inquiries that may arise regarding the project.
5. The breaching location shall be at the narrowest part of the sandbar between Lake Talawa and the Pacific Ocean.
6. A breaching event is allowed whenever the water surface elevation of the lakes reaches 8.0 feet above mean sea level (MSL) during the period between September 1 and February 15. A final breaching event is allowed again on February 15 if the water surface elevation in the lakes is above 5.0 MSL. This authorization is for breaching events conducted prior to February 15, 2014. The applicant must apply for a new Water Quality Certification for any proposed breaching activities beyond February 15, 2014.
7. The applicants shall restrict public access to all areas within 500 feet of the breaching location for 12 hours prior to breaching, during the 24 hours of breaching operation, and for 24 hours afterwards.
8. Breaching shall not be conducted when Brown Pelicans are within a 200-foot radius of the breach site. Immediately prior to breaching, a qualified wildlife biologist shall

ensure that no pelicans are at risk from the breaching. The applicants shall use noise or visual methods (e.g. zod guns) to haze all on-water birds near the breach site. Hazing shall continue throughout the breaching event.

9. The applicants shall survey for stranded tidewater gobies for 14 days following each breaching event. The applicants shall return stranded gobies to the main basin of the lagoon.
10. The applicants shall collect one water sample from the channel (the narrows) between Lake Earl and Lake Talawa immediately prior to each breaching event. The sample shall be analyzed for total coliform, fecal coliform, and enterococcus. The time of sample collection and the water level at the sampling location shall be noted when the samples are collected.
11. The applicants shall collect water samples from the narrows during the 48-hour period immediately following each breaching event. At least four samples shall be collected at regular intervals during the 48-hour period (two a.m. samples and two p.m. samples). These samples shall be analyzed for total coliform, fecal coliform, and enterococcus. The time of sample collection and the water level at the sampling location shall be noted when the samples are collected.
12. Within four weeks of a breach event the applicants shall submit a written report to the Regional Water Board containing the results of the sampling required in Additional Conditions 10 and 11.
13. 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.
14. Fueling, lubrication, maintenance, and storage of vehicles and equipment shall not result in a discharge or a threatened discharge to waters of the United States. At no time shall the applicants use any vehicle or equipment, which leaks any substance that may impact water quality. Staging and storage areas for vehicles and equipment shall be located outside of waters of the state.
15. All activities and BMPs shall be implemented according to the submitted application and the conditions in this certification.
16. 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.
17. 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.

18. 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.
19. 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.
20. 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.
21. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
22. 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.
23. 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.

24. 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).

25. The authorization of this certification for any dredge and fill activities expires on February 15, 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. Art Reeve, Del Norte County, 981 H Street, Suite 110,
Crescent City, CA 95531

Copies to: U.S. Army Corps of Engineers, District Engineer, 601 Startare Drive, Box
14, Eureka, CA 95501
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