



**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

November 2, 2009

In the Matter of

Water Quality Certification

For the

**DENNIS SHAHA – UNPERMITTED FILL IN STREAMSIDE MANAGEMENT AREA
PROJECT
WDID NO. 1B09086WNHU**

APPLICANT: Dennis Shaha
RECEIVING WATER: Unnamed Tributary to Freshwater Slough
HYDROLOGIC UNIT: Eureka Plain Hydrologic Unit No. 110.00
COUNTY: Humboldt
FILE NAME: Shaha, Dennis – Unpermitted Fill in Streamside
Management Area

BY THE EXECUTIVE OFFICER:

1. On July 15, 2009, Dennis Shaha (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 placement of unpermitted fill within a Streamside Management Area in Humboldt County. 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.
2. The Applicant secured a building permit from Humboldt County for the placement of 50 cubic yards of fill to be placed as yard area in 1999. During the building inspection process it was verified by the California Department of Fish and Game (CDFG) that fill was deposited within the Streamside Management Area (SMA). Humboldt County required the Applicant to obtain a Special Permit for the reduction of the SMA and for the alteration and restoration of the drainage that was affected by the fill. Restoration of the drainage was completed under agreement with the CDFG (No. R1-07-0365). Humboldt County also required the Applicant to obtain after-the-fact authorization from the U.S. Army Corps of Engineers (USACOE), pursuant to Clean Water Act section 404, and after-the-fact Clean Water Act section 401 Water Quality Certification from the Regional Water Board.

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3. On November 16, 2007, the applicant obtained authorization from the USACOE to perform the project under Nationwide Permit No. 13, pursuant to Clean Water Act Section 404.
4. On December 31, 2007, Humboldt County Community Development Services approved a Mitigated Negative Declaration (SCH No. 2007112010) 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.
5. The unpermitted fill issues have been resolved and stream restoration has already been completed. This certification does not authorize any additional dredge or fill activities within waters of the state.
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 Freshwater Slough in the Eureka Plain Hydrologic Unit No. 110.00

Filled or Excavated Area: Area Temporarily Impacted: None
Area Permanently Impacted: 5,000 square feet of Streamside Management Area adjacent to unnamed ephemeral drainage

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

Dredge Volume: None

Latitude/Longitude: 40.77165 N/124.10671 W

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Dennis Shaha Unpermitted Fill in Streamside Management Area Project (WDID No. 1B09086WNHU), 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

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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. All activities and maintenance of Best Management Practices (BMPs) for sediment and erosion control shall be implemented according to the submitted application and the conditions in this certification.
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.
6. If, at any time, an unauthorized discharge to surface water (including wetlands, rivers or streams) occurs, or any water quality problem arises, the Applicant shall cease the associated project activities 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.
7. 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. Implementation of such change in the project prior to Regional Water Board notification and approval is a violation of this Order subject to enforcement action under the Water Code.
8. 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.
9. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
10. 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.

11. 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.

12. This certification is contingent on compliance with all applicable requirements of the North Coast Water Quality Control Plan, except as may be modified by the specific conditions of the certification.
13. The authorization of this certification expires on November 16, 2010. 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. Dennis Shaha, 844 W. 14th Street, Eureka, CA 95501

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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