



**California Regional Water Quality Control Board
North Coast Region
Geoffrey M. Hales, Chairman**



Linda S. Adams
Secretary for
Environmental Protection

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**Arnold
Schwarzenegger**
Governor

July 9, 2010

In the Matter of

Water Quality Certification

for the

**WIYOT TRIBE – INDIAN ISLAND RESTORATION PROJECT
WDID No. 1B10044WNHU**

APPLICANT: Wiyot Tribe
RECEIVING WATER: Humboldt Bay
HYDROLOGIC UNIT: Eureka Plain Hydrologic Unit No. 110.00
COUNTY: Humboldt
FILE NAME: Wiyot Tribe – Indian Island Restoration Project

BY THE EXECUTIVE OFFICER:

1. On April 26, 2010, the Wiyot Tribe (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 cleanup, construction, repair, maintenance, and restoration activities associated with the Indian Island Cultural and Environmental Restoration Project (project). The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on June 16, 2010, 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 northeastern end of Indian Island in Humboldt Bay. Indian Island, including tidelands/mudflats, is nearly one-mile long and less than a half-mile wide. Most of the island is submerged at extreme high tides. The project area is comprised of relatively flat tidal salt marsh, an historic American Indian shell mound known as Tuluwat, the remains of an abandoned ship repair yard, and two unoccupied buildings. The Tuluwat shell mound covers approximately 6 acres and contains human remains, tools, and artifacts from daily life, parts of which have been dated to as far back as 900 AD. Several buildings and the remains of a boat repair facility and dry dock exist on the upland area that is associated with its historical use as a residence and a ship repair facility.

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3. The project will be completed in four phases: Phase 1 - Cleanup and Remediation; Phase 2 - Public Access; Phase 3 - Cultural Development; and Phase 4 - Ecological Restoration. This Order covers activities associated with Phase 1. Remaining Phase 1 activities include: placement of a temporary causeway on Humboldt Bay mudflats in order to transfer construction materials from barges to the island during low tides; repairing the existing bulkhead; installing a protective soil and geotextile cover across the majority of the upland portion of the 1.5 acre parcel; and, installing a shoreline revetment (as a footing to the protective soil/geotextile cap) consisting of approximately 130 linear feet of carbon reinforced fiberglass sheet piling.
4. In 2008, the Applicant obtained authorization under U.S. Army Corps of Engineers Nationwide Permit No. 38 (Cleanup of hazardous and Toxic Waste) and completed some of the Phase 1 activities, including removal of debris and demolition of various dilapidated structures, and excavation of approximately 24 cubic yards of the most contaminated midden soils in a 600-square foot area near the paint shed and wayrunners. A temporary cover was placed over the excavation area. Activities authorized by Nationwide Permit No. 38 are subject to conditions contained in State Water Resources Control Board General 401 Water Quality Certification Order of U.S. Army Corps of Engineers Nationwide Permits (Statewide General Certification).
5. The project includes installation of a protective soil and geotextile (woven monofilament) cover over most of the upland and shoreline portion of the 1.5-acre parcel that is known or suspected to contain elevated levels of contamination. The purpose of the cover is to protect visitors from possible contact with the residual contamination contained within the midden. A minimum 12-inch thick soil cover will be placed over the geotextile cover. Permeable concrete pavers or an equivalent erosion control technology will be incorporated into the protective cover in areas with high foot traffic or where tidal erosion is a concern. Base rock may be used in selected areas associated with trails and buildings.
6. A degraded bulkhead that was filled with remnant construction and household debris exists at the site. The Applicant has removed the debris, but a new concrete retaining wall needs to be constructed inside the concrete footing. This area will be used for access for small barges during construction, and a place for viewing the bay and picnicking when the entire project is complete. The Applicant will also be installing a shoreline revetment structure as a footing to the protective soil/geotextile cap. The shoreline revetment wall will consist of approximately 130 linear feet of new carbon reinforced fiberglass sheet piling installed (4 to 6 feet deep) between the existing revetment and the bulkhead area. Approximately 29 cubic yards of rock slope protection will be placed on the bay side of the new sheet piling. The shoreline revetment will link the log portion of the bulkhead with the southern portion of the existing revetment wall.
7. The project includes placement of a temporary causeway within the bay mudflats for the purpose of transferring construction materials from barges to the island during lower tides. The temporary causeway will be 15 feet wide by 150 feet long,

extending from the bay to the island between existing eelgrass beds. The temporary causeway will be constructed using temporary piers and beams, or rock placed over geotextile and geoweb, a cellular confinement product used to reduce lateral spreading of fill materials on non-cohesive soils. Geoweb and/or mud mat materials may also be used in order to spread the weight load and to minimize compaction of the mudflat.

8. The Applicant has received authorization from the United States Army Corps of Engineers to perform the project under Nationwide Permit Numbers 13, 33, and 38 (File No. 2005-298990N), pursuant to Clean Water Act, section 404. A Lake or Streambed Alteration Agreement from the California Department of Fish and Game is not required.
9. On April 23, 2008, the City of Eureka certified an Environmental Impact Report (EIR) (SCH No. 2004122022) 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. The federal antidegradation policy requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. This Order is consistent with applicable federal and State antidegradation policies, as it does not authorize the discharge of increased concentrations of pollutants or increased volumes of treated wastewater.
11. 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: Humboldt Bay in the Eureka Plain Hydrologic Unit No. 110.00

Filled or Excavated Area: Area Temporarily Impacted: 1,930 square feet of mudflat
Area Permanently Impacted: None

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

Dredge Volume: None

Latitude/Longitude: 40.81529N/124.15821 W

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Wiyot Tribe – Indian Island Restoration Project (WDID No. 1B10044WNHU), 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 California Code of Regulations, title 23, 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 California Code of Regulations, title 23, section 2200, and owed by the Applicant.
4. The Regional Water Board shall be notified 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, 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 sediment and turbidity control shall be implemented and in place at commencement of, during and after any project activities that could result in 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. The Applicant shall implement the Mitigation Measures for Biological Resources and Hydrology and Water Quality contained in the Statement of Mitigation Monitoring and Reporting Programs dated April 14, 2008.
10. The Applicant shall implement the Final Eelgrass Protection Plan as described in Attachment 6 of the application for certification.
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. 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. 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.
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 July 9, 2015. 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. Stephen Kullmann, Wiyot Tribe, 1000 Wiyot Drive, Loleta, CA 95551

Copies to: Mr. Mike Foget, SHN Consulting, 812 W. Wabash, Eureka, CA 95521