



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



Linda S. Adams
Acting Secretary for
Environmental Protection

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Edmund G. Brown Jr.
Governor

May 31, 2011

In the Matter of
Water Quality Certification
For
Gallo Vineyards Inc., Porter Creek Fish Barrier Removal Project
WDID No. 1B10133WNSO
Sonoma County

APPLICANT: Mr. Robert Weinstock, E&J Gallo Vineyards, Inc.
RECEIVING WATER: Porter Creek
HYDROLOGIC AREA: Guerneville Hydrologic Subarea No. 114.11,
Russian River Hydrologic Area 114.00
COUNTY: Sonoma County
FILE NAME: Gallo Vineyards Inc., Porter Creek Fish Barrier Removal
Project

BY THE EXECUTIVE OFFICER:

1. On December 28, 2010, the North Coast Regional Water Quality Control Board (Regional Water Board) received an application from Ms. Kara Heckert of Sotoyome Resource Conservation District (agent), on behalf of Mr. Robert Weinstock of E&J Gallo Vineyards, Inc. (applicant), requesting a Water Quality Certification and/or Waste Discharge Requirements (Dredge/Fill Projects) for the Porter Creek Fish Barrier Removal Project (Project). The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on May 10, 2011, and posted information describing the Project on the Regional Water Board's website. No comments were received. The Project will cause permanent impacts to 0.018 acres of streambed and bank associated with Porter Creek.
2. The project is located on Porter Creek, 9015 Westside Road, Healdsburg, latitude 38.519329° N, longitude 122.892728° W, in Sonoma County.

3. The Project is a Supplemental Environmental Project (SEP) proposed for compliance with the State Water Resources Control Board Order (WR 2010-0014-EXEC). This project will be financed by the E&J Gallo Winery Inc., as mitigation for their operations along Porter Creek.
4. The purpose of the Project is habitat restoration and/or enhancement. The Project will improve salmonid passage to upstream habitat by removing a stream barrier and the creation of two refugia pools. The Project is designed to address a habitat limiting factor for salmonids resulting from a bridge support structure which is a flat 20-foot long concrete slab installed across the bottom of Porter Creek. The structure acts to support two 12-foot tall concrete buttresses which support a wood and steel pedestrian bridge across Porter Creek. The current configuration of the barrier impedes migration of salmonids.
5. The Project includes: (1) the creation of an 8-foot wide by 22-foot long by 3-foot deep trench through the center of the in-stream concrete slab bridge support (box culvert); (2) reinforcement of the trench with concrete and steel rebar; the bottom of the trench will be below the natural grade of the stream channel to allow for natural material deposition; (3) three pairs of notches will be installed into the walls of the new concrete channel to allow for three flashboards to be placed at 10-foot intervals to control stream flow, if necessary; (4) installation of a concave rock weir, 24-feet down stream of the concrete bridge support structure; for the purpose of creating two refugia pools and fish access to the newly created fish passage; (5) placement of concrete debris, larger than 30 inches, placed within the scour underneath the existing box culvert, (6) revegetation of the temporary access road.
6. Compensatory mitigation is not required for this Project; the Project will improve habitat and enhance the beneficial use of waters of the State.
7. Non-compensatory mitigation will include, at a minimum, the following construction Best Management Practices (BMP's), to be employed during construction to reduce and control soil erosion. Work in and around waterways will be conducted during the dry season; installation of construction barrier fencing to preclude equipment entry into sensitive areas; installation of silt fencing or fiber rolls to prevent sediment loss from immediate work area; vegetation that is disturbed by equipment will be replanted with native plants and grasses; access to the site will be via an existing under-vegetated road bed down the stream bank immediately adjacent to the site, this area will be revegetated after construction. All erosion control measures will be installed and in place prior to construction, or during non-construction periods as necessary, and maintained thereafter by the contractor/Applicant.
8. In-channel work will be conducted during the dry season (June 15-October 31).

9. The Applicant has applied to the California Department of Fish and Game for a Lake and Streambed Alteration Agreement.
10. The applicant has received authorization from the United States Army Corps of Engineers to perform the project under Department of the Army Nationwide Permit 27-Aquatic Habitat Enhancement, Establishment and Restoration Activities. File No. 2011-00028N.
11. Sotoyome Resource Conservation District has submitted a Notice of Determination with the State Clearinghouse for a Mitigated Negative Declaration for the project in order to comply with the California Environmental Quality Act (SCH No. 2010122064). The Regional Water Board will consider 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.
12. Because the Project involves construction that may adversely affect waters of the State, the Regional Water Board has regulatory jurisdiction under Water Code Section 13269.

Receiving Water: Porter Creek within the Guerneville Hydrologic Subarea No. 114.11, Russian River Hydrologic Area 114.00.

Filled or Excavated Area: Permanent impacts to 0.018 acres of stream bed and bank.

Latitude/Longitude: 38.519329° N, 122.892728° W

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Porter Creek Fish Barrier Removal Project (WDID No.1B10133WNSO), 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 Russian River is identified as impaired on the Clean Water Act Section 303(d) list. The Russian River is listed as impaired for sediment and temperature. At present, total maximum daily loads (TMDLs) have not been established for this water body. If TMDLs are established and implementation plans are adopted for this watershed prior to the expiration date of this Order, the Regional Water Board may revise the provisions of this Order to address actions identified in such action plans. Roads and bank erosion are identified as sources contributing to the sediment impairment. Removal of riparian vegetation is identified as a source contributing to temperature impairment. Actions authorized by this Order require implementation of Best Management Practices (BMPs) for sediment control and planting of more riparian zone shade vegetation at and near the project site. Accordingly, this Order is consistent with, and implements BMPs that would attenuate sediment and temperature adverse impacts.
5. Pursuant to Regional Water Board Resolution R1-2004-0087, Total Maximum Daily Load Implementation Policy Statement for Sediment-Impaired Receiving Waters within the North Coast Region (Sediment TMDL Implementation Policy), the Executive Officer is directed to “rely on the use of all available authorities, including existing regulatory standards, and permitting and enforcement tools to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste.”
6. 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.
7. Applicant shall prioritize use of wildlife-friendly 100% biodegradable erosion control products/BMP’s wherever feasible. For purposes of this Order, photodegradable synthetic products are not considered biodegradable. Applicant shall not use or allow the use of erosion control products, that contain synthetic (e.g., plastic or nylon) netting or materials for permanent erosion control (i.e., erosion control materials to be left in place for two years or after the completion date of the

- project). If the Applicant finds that erosion control netting or products have entrapped or harmed wildlife, the Applicant shall remove the netting or product and replace it with wildlife-friendly biodegradable products. The Applicant shall not use or allow the use of soil stabilization products that contain synthetic materials within waters of the United States or waters of the State at any time. Applicant shall remove any remaining synthetic netting or materials remaining at the end of two years, or sooner.
8. If any stream flow or ponding in the channel is encountered, a dewatering approach will be implemented. Dewatering would be accomplished by installing temporary coffer dams/sumps at the upstream end of the project, and pumping or using gravity flow piping of any nuisance water around the worksite to re-enter the channel below the downstream end of the project. Fish screening shall be conducted at the intake that meets all NOAA Fisheries fish screen criteria. Large sediment filtering bags will be incorporated into the outlet end of the discharge line to minimize turbidity. The dewatering system will be removed following project completion.
 9. Containment of construction debris from the concrete excavation will be obtained by lining the work area with plastic for debris collection and a vacuum system will be engaged to collect dust when the concrete is being cut.
 10. Excavated materials will be removed from the site for proper disposal. Equipment shall not be staged, or fueled near waters of the State. Additionally, all equipment shall be maintained in good working order and spill kits will be readily accessible during construction.
 11. The project will include the use of heavy equipment in the stream channel. An excavator will be located top of bank and a backhoe will be used in the stream channel. Where vegetation is disturbed by heavy equipment, it will be replanted with native vegetation.
 12. To ensure a successful revegetation/stabilization effort, plantings shall be monitored and maintained (including irrigation if necessary) for five years. All tree and shrub plantings shall have a minimum of 85% success of thriving growth at the end of five years with a minimum of two consecutive years (2 growing seasons) of monitoring after the removal of irrigation. The Applicant is responsible for replacement planting, additional watering, weeding, invasive exotic eradication, or any other practice to achieve these goals. Replacement plants shall be monitored with the same survival success for an additional five years from the year of installation. A status report shall be submitted to the Regional Water Board by December 31st of the each year. Photos shall be submitted with the report.

13. The Regional Water Board shall be notified 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.
14. 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.
15. BMP's 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.
16. All activities and BMP's shall be implemented according to the submitted application and the conditions in this certification.
17. 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.
18. 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 BMP's 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.
19. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete the project.
20. 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.
21. 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.

22. 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.
23. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
24. 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.
25. 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.

26. 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).

27. The authorization of this certification for any dredge and fill activities expires on May 31, 2016. 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 Stephen Bargsten at (707) 576-2653.

Catherine Kuhlman
Executive Officer

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- Web link: 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 may be found at:
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf
- Original to: Mr. Robert Weinstock, E&J Gallo Vineyards Inc., 3387 Dry Creek Road, Healdsburg, CA 95448
- Copy to: Ms. Kara Heckert, Sotoyome Resource Conservation District, P.O. Box 11526, Santa Rosa, CA 95406
Mr. John O'Hagan, State Water Resources Control Board, Division of Water Rights, 1001 I Street, Sacramento, CA 95814
- ECopies sent to: Mr. Richard Fitzgerald, California Department of Fish and Game, P.O. Box 47, Yountville, CA 94599.
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